

GERMANY

The effects of a cooking pan

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In a recent decision (Kochgefäß [Cooking pan], X ZR 81/13) the Federal Supreme Court (FSC) once again dealt with the requirements of an infringement under the doctrine of equivalence.

According to the case law of the FSC, three conditions must be satisfied if an embodiment departing from the literal meaning of a patent claim is to fall within its scope of protection. First, the embodiment must solve the problem underlying the invention with means that, while being modified, having objectively the same effect. Second, the skills of the person skilled in the art must enable him to determine that the modified embodiment with its different means has the same effect. Third, the considerations to be applied here by the person skilled in the art must be based on the semantic content of the teaching protected in the patent claim.

The decision at issue further clarifies the third condition.

The case concerns cooking pans made of a metal with a low thermal conductivity. With such cooking pans, a better distribution of the heat is achieved by applying a thermally conductive layer to the bottom of the pan. In order to protect the thermally conductive layer, it is entirely encapsulated by metal with low thermal conductivity and greater resistance to mechanical damage.

With respect to the effects that are to be achieved by the capsular base, the appeal court had held that the claim did not disclose minimum requirements of the protection against mechanical damage. Thus, the appeal court considered this as an additional effect, which does not need to be achieved by the attacked device.

This legal conclusion was found to be

wrong by the FSC. Instead, the FSC held that an equivalent effect can only be assumed if *all* the effects according to the invention are achieved. In contrast to the appeal court's approach, effects of essence to the invention and additional effects cannot be distinguished.