

Deckblatt Übersetzung

Daten der Übersetzung:

Court/Gericht:	Bundesgerichtshof
Date of Decision / Datum der Entscheidung:	2017-05-16
Docket Number / Aktenzeichen:	X ZR 85/14
Name of Decision / Name der Entscheidung:	Sektionaltor II





FEDERAL COURT OF JUSTICE

IN THE NAME OF THE PEOPLE

JUDGMENT

X ZR 85/14

Pronounced on:
16 May 2017
Anderer
Judicial Secretary as
Clerk of the court
registry

in the matter

Sektionaltor II/
Sectional gate II

Civil Code Sec. 745(2)

- a) Whether a co-entitled person is entitled to monetary compensation for the use of an invention by another co-entitled person within the framework of equity may also depend on the reasons for which the claimant refrained from using the invention himself.
- b) The creditor of such a claim does not only have the level of knowledge required for the commencement of the limitation period under Sec. 199(1) No. 2 Civil Code when he has been legally awarded a co-entitlement to filed or granted property rights or the amount of his non-material share has been clarified.

Civil Code Sec. 259(1)

- a) Pursuant to Sec. 259(1) Civil Code, the claim to the submission of receipts does not depend on whether the submission of receipts is customary in the context of the accounting owed. Rather, the decisive factor is whether the provision of receipts is customary for the transaction which the receipt is to document.
- b) If the claim to invoicing arises from Sec. 242 Civil Code, a claim to the submission of receipts only exists in principle if receipts are usually submitted in comparable contractual relationships.

Federal Court of Justice, judgment of 16 May 2017 - X ZR 85/14 –

Higher Regional Court of Düsseldorf
Regional Court of Düsseldorf

ECLI:DE:BGH:2017:160517UXZR85.14.0

The X. Civil Senate of the Federal Court of Justice, following the oral hearing on 16 May 2017, attended by the presiding judge Prof. Dr. Meier-Beck, the judges Gröning, Dr. Grabinski and Dr. Bacher as well as the judge Dr. Kober-Dehm

ruled that:

On appeal by the defendant, the basic and partial judgment of the 2. Civil Senate of the Higher Regional Court of Düsseldorf of 7 August 2014 is set aside insofar as the Court of Appeal ruled to the disadvantage of the defendant.

The plaintiff's appeal is dismissed.

To the extent of the reversal, the matter is referred back to the Court of Appeal for a new hearing and decision, including on the costs of the appeal proceedings.

By operation of law

Facts of the case:

1 The parties are competitors in the manufacture and sale of garage doors. They are in dispute over compensation claims relating to the defendant's use of two inventions to which they are jointly entitled.

2 On 28 July 2000, the defendant filed two patent applications relating to a sectional gate, which gave rise to European patents 1 176 279 (patent in suit 1) and 1 176 280 (patent in suit 2). The notice of grant of the IP rights was published on 27 November 2013 and 19 February 2014, respectively.

3 On the basis of an assignment agreement with L. W., whom the plaintiff considered to be the sole inventor, the plaintiff filed a claim against the defendant for assignment of the rights arising from the two applications or, in the alternative, for grant of a joint entitlement. In its final judgment of 22 December 2011 (2 U 15/04), the Higher Regional Court of Düsseldorf ordered the defendant to grant a co-entitlement. It also determined that the plaintiff was entitled to a non-material share of 5 percent in each case.

4 In the course of that legal dispute, the plaintiff had informed the defendant, among other things, of the following in a letter dated 1 September 2005, from its legal counsel:

"In the first place, our client asserts the claims that can be based on the fact that Mr. W. is the sole inventor. Alternatively, in the event that Mr. W. is only a joint inventor, our client asserts the claims that can be based on Sec. 745(2) Civil Code, namely a management and use that is in accordance with the interests of the joint owners according to equitable discretion. To this end, we first request information on the nature and extent of the acts of use performed by your client. In doing so, your client should state all income and other benefits which it has obtained by using the above-mentioned applications. Once the information is provided, our client will submit a concrete proposal for an agreement."

5 In the present lawsuit, the plaintiff filed a claim against the defendant for the distribution of sectional gates according to the invention for payment of a

compensation amount of 827,500 euros plus interest, rendering of accounts and surrender of receipts, as well as a determination of the obligation to pay further compensation. The Regional Court dismissed the action.

6 The Court of Appeal found by basic and partial judgment that the plaintiff was entitled to monetary compensation against the defendant for use of the German part of the two patents on the merits and that the amount of this claim was to be assessed on the basis of licensing principles. It also ordered the defendant to provide an accounting of the sales activities and the sales achieved in this context. It dismissed the plaintiff's appeal with respect to the additional claims for accounting and submission of documents and the further claim for a declaratory judgment.

7 In their appeals, which were allowed by the Senate, both parties challenge the judgment of the Court of Appeal insofar as it was unfavorable to them.

Grounds of the decision:

8 The defendant's appeal is fully justified, but the plaintiff's appeal is
unsuccessful.

9 I. The Court of Appeal substantiated its decision, insofar as it is
relevant to the appeal, essentially as follows:

10 The plaintiff was entitled to equitable compensation against the
defendant on the merits because of the use of the teaching in dispute in the
patent. According to Sec. 745(2) Civil Code, a claim for monetary compensation
arises between co-owners of a patent or patent application if the owner of the
right asserts it and if substantive justice requires that the person using the
invention pay monetary compensation to the other co-owners for advantages of
use that exceed his share.

11 In the case in dispute, according to the unambiguous wording of the letter
of 1 September 2005, the plaintiff had demanded - without any doubt
recognizable for the defendant - a financial compensation. The interests of both
parties required that the defendant pay monetary compensation to the plaintiff
for its acts of use. For such a claim, it was in principle irrelevant whether a
participant voluntarily refrained from using the invention.

12 The claim for compensation was neither forfeited nor time-barred. The
defendant was not entitled to draw the conclusion that the plaintiff would no
longer assert such a claim from the fact that the plaintiff had primarily asserted
an exclusive right in the previous legal dispute and had not asserted a
compensation claim in the alternative. The plaintiff had not had the knowledge
required for the commencement of the statute of limitations pursuant to Sec.
195 and Sec. 199(1) Civil Code until after the previous legal dispute had been
finally concluded.

13 The plaintiff's claim for compensation was to be determined according to
licensing principles. The acts of use by the defendant as co-owner had been
lawful. For statutory claims for lawful use of inventions under Sec. 33(1) Patent
Act, Art. II Sec. 1(1) German Act on International Patent Conventions or Sec.
9(1) Employee Inventions Act, it was acknowledged that the entitled party could

not demand surrender of the profit achieved, but only compensation to be calculated according to the rules of license analogy. The same applies to compensation claims between co-inventors.

14 The plaintiff was also entitled to an accounting claim. However, this is not directed to information on costs and profits, because the plaintiff can only demand compensation according to licensing principles. The presentation of receipts was not owed because it was neither explained nor otherwise evident that it was customary in the business field concerned here, in the event of a license being granted and subsequent lawful use, to present receipts as proof of the remuneration-relevant information on the type and scope of use.

15 II. This assessment does not fully withstand the defendant's attacks on appeal.

16 1. Contrary to the view of the defendant, however, the findings pronounced by the Court of Appeal do not go beyond the requests made by the plaintiff.

17 This is not contradicted by the fact that neither a time period nor a maximum amount is specified in the judgment formula. The required interpretation of the formula of the judgment in light of the facts and the reasons for the decision (see in this regard Federal Court of Justice, judgment of 21 February 2012 - X ZR 111/09, GRUR 2012, 485 marginal no. 11 Rohrreinigungsdüse II; judgment of 2 October 2009 - V ZR 235/08, BGHZ 182, 307 marginal no. 22) shows beyond doubt that the Court of Appeal, in pronouncing I.1. issued a basic judgment on the quantified payment claim raised by the plaintiff for acts of use since 1 September 2005 and, in the statement under I.2, ruled on the interim declaratory motion which the plaintiff filed at its suggestion instead of the declaratory motion at first instance and which relates exclusively to the asserted payment claim.

18 There was no need for an express reference to the motions filed or a literal adoption of the same. The plaintiff did not file any further motions with comparable content. There are no indications in the contested judgment that the Court of Appeal intended to rule on a different request.

19 2. Furthermore, the Court of Appeal did not err in law in concluding
that the plaintiff had asserted a claim for compensation pursuant to Sec. 745(2)
Civil Code by means of the lawyer's letter of 1 September 2005.

20 According to the case law of the Federal Court of Justice, a co-owner is
in principle only entitled to compensation for the use of the joint invention by
another co-owner from the point in time at which he has demanded a
corresponding usage arrangement, i.e. appropriate compensation in money,
with sufficient clarity (Federal Court of Justice, judgment of 22 March 2005 - X
ZR 152/03, BGHZ 162, 342, 348 - Gummielastische Masse II).

21 Contrary to the view of the defendant, the Court of Appeal inferred such
a request from the letter of 1 September 2005 without any legal error.

22 This is not contradicted by the fact that the plaintiff only requested
information for the past in this letter and did not expressly formulate a request
for payment. The appraisal by the Court of Appeal that the plaintiff,
notwithstanding this wording, impliedly requested a compensation payment, at
least in the alternative, is possible and does not reveal any legal error.

23 Contrary to the plaintiff's complaint, the Court of Appeal also took into
account the plaintiff's brief of 16 July 2009 in its assessment. In connection with
the question of forfeiture, the Court of Appeal assumed that this pleading did not
permit the conclusion that the plaintiff intended to waive the claim.
Correspondingly, it concluded in connection with the question of interest here
that the overall circumstances did not permit the conclusion that the plaintiff had
not intended to demand a compensation payment or had subsequently waived
it. This makes it sufficiently clear that the Court of Appeal saw the defendant's
argumentation and merely assessed it differently. The latter does not constitute
a violation of Art. 103(1) German Constitution or any other legal error.

24 3. Contrary to the view of the defendant, the Court of Appeal was not
required to decide conclusively on the amount of the share of the invention to
which the plaintiff is entitled.

25 The Court of Appeal stated that the amount of the share to which a
partner is entitled is also decisive for the question of whether he is entitled to

compensation. Against this background, it could only affirm a claim by the plaintiff without contradiction if it assessed its share as sufficiently high.

26 The appealed judgment meets these requirements.

27 The Court of Appeal found that the plaintiff's share was at least 5 percent and that even this relatively low share was sufficient under the circumstances of the dispute to affirm a claim for compensation on the merits. This argumentation is internally consistent.

28 4. However, the Court of Appeal erred in law in considering the question for which reasons the plaintiff refrained from using the invention itself as irrelevant for the existence of the claim for compensation.

29 a) According to the case law of the Federal Court of Justice, the circumstances of the individual case must be comprehensively assessed when evaluating the question of whether a co-entitled party is entitled to compensation in money within the framework of equity (Federal Court of Justice, judgment of 22 March 2005 - X ZR 152/03, BGHZ 162, 342, 348 Gummielastische Masse II). Contrary to the view of the Court of Appeal - also held in parts of the literature (see Ann in Ann/Kraßer, Patentrecht, 7th ed., Sec. 19 marginal no. 85; in contrast Melullis in Benkard, Patentgesetz, 11th ed., Sec. 6 marginal no. 65; Henke GRUR 2007, 89 et seq.; Hauck GRUR-Prax 2014, 430 et seq.) - the relevant circumstances also include the reasons for which the claimant refrained from own use.

30 The Federal Court of Justice has indeed considered a claim for compensation also possible in the event that the creditor does not want to use the object of the right (BGHZ 162, 342, 347 - Gummielastische Masse II). However, these remarks are related to the question (answered in the affirmative by the Federal Court of Justice) whether the statutory provisions in Sec. 741 et seq. Civil Code are sufficient to enable each partner of a joint patent to realize his due share in the economic value of the right. It cannot be inferred from them that the reasons for which the claimant refrained from using the invention are always meaningless.

31 If the possibilities of the individual co-owners to use the invention are

already fundamentally different for structural reasons, e.g. due to their traditional field of activity or the resources available to them, it will, however, be obvious as a rule to affirm an obligation to compensate of the co-owner who makes considerable use of the invention through his own production or sales activities. In such cases, the other co-entitled person who does not have comparable experience or resources, such as an individual inventor who typically uses the rights to which he is entitled by granting rights of use, need not, as a matter of principle, elaborate on the reasons why he has refrained from any other exploitation of the property right in dispute.

32 If, however, as in the case at issue, the co-owners are competitors of each other, it is not necessarily fair to award one of them a claim for compensation and the associated claim for accounting solely because he has refrained from using the right himself. Even in such constellations, a claim for compensation may be affirmed in individual cases. However, this requires a more detailed presentation of why it was not possible for the claimant to use the invention (to a comparable extent) or why he did not make use of an existing possibility. This applies in particular to the case that his share in the invention and the resulting contribution to the economic success achieved by the other co-entitled party is to be assessed as rather small.

33 b) The contested decision does not prove to be correct in the result because the defendant alone applied for the patents in suit and claimed them for itself during the preceding legal dispute.

34 However, a co-entitled person who applies for a patent for an invention for himself alone violates his duty of joint administration pursuant to Sec. 744(1) Civil Code. At the same time, he infringes the intangible property right to the invention to which the other co-entitled persons are entitled, which is protected as a miscellaneous right under Sec. 823(1) Civil Code. Therefore, the other co-entitled parties are entitled to compensation for damages, which may include pro rata compensation for benefits of use drawn and whose time of accrual does not depend on when it was first asserted (Federal Court of Justice, judgment of 27 September 2016 - X ZR 163/12, GRUR 2016, 1257 marginal no. 18 et seq. - Beschichtungsverfahren).

35 In such constellations, it will generally not be reasonable for a claimant asserting a joint entitlement to use the invention before the final clarification of the entitlement issue. It is true that the co-entitled party is not materially prevented from using the invention himself, because he can counter the patent proprietor's claims based on the formal legal position with the objection of unlawful taking (see Federal Court of Justice, order of 17 May 2011 - X ZR 77/10, GRUR 2011, 853 marginal no. 11 - Treppenlift; Melullis in Benkard, Patentgesetz, 11th edition, Sec. 8 marginal no. 46). However, due to the formal right ownership of the other party, he would generally be exposed to a considerable risk through his own use, which may constitute a creditable reason for non-use and thus at the same time a circumstance speaking in favor of granting a claim for compensation.

36 However, this aspect may also not be assessed in isolation. Rather, it must be included in the necessary weighing of all relevant circumstances. This has not yet been done and cannot be done in the appeal instance.

37 In assessing the dispute, the Court of Appeal will also have to take into account that the plaintiff had originally also claimed the subject matter of the patent in suit for itself alone. As long as this dispute had not been finally decided by the courts, both sides ran an equal risk of becoming liable for damages by using the invention. In this initial situation, it is necessary for the claimant to provide more detailed information on the reasons why he refrained from his own acts of use.

38 5. With legally erroneous considerations, the Court of Appeal also considered the claims to be fully time-barred.

39 Contrary to the opinion of the Court of Appeal, a co-entitled party does not only have the level of knowledge required for the commencement of the limitation period under Sec. 199(1) No. 2 Civil Code when he has been legally granted a co-entitlement to filed or granted property rights and the amount of his non-material share has been clarified.

40 a) According to the established case law of the Federal Court of Justice, it is sufficient for the knowledge of the circumstances giving rise to the

claim required under Sec. 199(1) No. 2 Civil Code if the creditor, on the basis of the facts known to him or which remained unknown to him due to gross negligence, can reasonably be expected to bring an action against a certain person with good prospects of enforcing his claims, albeit not without risk. It is not necessary for the creditor to be able to quantify his claim conclusively. It is sufficient if he can bring an action for a declaratory judgment (see only Federal Court of Justice, judgment of 22 July 2014 - KZR 13/13, WuW/E DE-R 4336 = RdE 2014, 453 marginal no. 22 - Stromnetznutzungsentgelt VII; judgment of 8 November 2016 VI ZR 594/15, NJW 2017, 949 marginal no. 11).

41 In the case in dispute, the plaintiff required knowledge for this purpose of the circumstances from which its co-entitlement arose, of the use of the invention by the defendant and of the circumstances that are relevant for the equity consideration to be made in the context of Sec. 745(2) Civil Code.

42 b) In contrast, the granting of a co-entitlement to property right applications or granted property rights is not a prerequisite for the existence of a claim for compensation.

43 As the Federal Court of Justice has already ruled, financial compensation in favor of an unregistered co-inventor for the possibility of using the subject matter of the invention himself, which the co-inventor did not exercise, can also be considered if the joint right of the co-inventors to a technical property right did not result in a joint right to the property right (Federal Court of Justice, judgment of 21 December 2005 X ZR 165/04, GRUR 2006, 401, 402 - Zylinderrohr).

44 In the case in dispute, the plaintiff was therefore not prevented from asserting its claims for compensation by way of an action for a declaratory judgment at the same time as the claim for the granting of a joint right - either by way of an objective accumulation of actions or by way of a separate action. Both would have led to an additional cost burden, which would have proved to be of little practical use if the claim for the granting of a co-entitlement had been unsuccessful. However, this does not constitute a sufficient reason to wait with the assertion of the claim for compensation. For a co-entitled person who takes action against a sole use by another co-entitled person, the starting position is

no different than for an entitled person who takes action against a patent infringement by a third party. In the latter constellation, the entitled party may likewise not wait until the dispute about the infringement issue has been decided before asserting claims for damages by way of an action for a declaratory judgment.

45 c) The same applies with regard to the share of the invention to which the claimant is entitled.

46 The amount of this share can, as the Court of Appeal correctly saw in the approach, also be of importance for the question of whether and in what amount a co-entitled party is entitled to a claim for compensation. For the start of the limitation period, however, it is at most necessary that the claimant knows the facts that are decisive for the amount of his share. A formal determination of this share by a court judgment is not required. In any case, an application for the granting of a co-entitlement does not require the specification of a specific non-material share.

47 Irrespective of this, the determination and evaluation of the substantive shares with which two or more co-entitled persons have contributed to the subject matter of the invention applied for may in any case only be of limited value for the question of whether and to what extent a claim for compensation exists. As the Federal Court of Justice has already ruled, it does not appear to be mandatory that a possible participation of the co-owner not using the invention in the benefits that the other co-owner derives from the use of the invention reflects the size of the non-material fraction of the patent to which the other co-owner is entitled (Federal Court of Justice, judgment of 12 March 2009 - Xa ZR 86/06, GRUR 2009, 657 marginal no. 18 - Blendschutzbehang).

48 III. The partial dismissal of the plaintiff's claim proves to be free of legal errors. 1.

49 1. The Court of Appeal was correct in denying the plaintiff's claim for compensation based on the amount of the profit achieved by the defendant and a corresponding claim for an accounting of costs and profit for the periods from the grant of the patents in dispute.

50 a) According to the case law of the Federal Court of Justice, the license analogy as an assessment criterion for the value of the use of the invention is, as a rule, particularly well suited to bring about an appropriate balance of interests. For this reason, a mutually agreed usage regulation with this content among partners of an inventor community is generally to be regarded as appropriate and can only be objected to if special circumstances exist which make the calculation on this basis appear unsuitable in the specific case (Federal Court of Justice, judgment of 21 December 2005 - X ZR 165/04, GRUR 2006, 401, 404 - Zylinderrohr).

51 b) The conclusion drawn from this by the Court of Appeal that the compensation claim is always to be assessed according to the principles of the license analogy even in cases in which the partners have not made a corresponding usage arrangement does not appear to be completely free of doubt.

52 The Court of Appeal's consideration that each partner is entitled to use the invention is correct and indeed speaks in favor of assessing the compensation payment as a rule according to licensing principles, as is also provided for in the law on employee inventions. However, even an employee whose service invention has been validly claimed may, under certain conditions, be entitled to compensation calculated on the basis of the profit, because he must in principle participate "appropriately" in all financial benefits (see Federal Court of Justice, judgment of 17 November 2009 - X ZR 137/07, BGHZ 183, 182 = GRUR 2010, 223 marginal no. 20 - Türinnenverstärkung). Against this background, it does not appear to be excluded that in certain exceptional cases also between co-entitled parties a compensation payment based on the profit achieved is to be regarded as being in accordance with equity.

53 c) However, it is not necessary to decide whether and under what conditions such an exception can be considered. From the findings of the Court of Appeal and the submissions of the plaintiff there are at any rate no circumstances which could lead to the affirmation of such an exception in the case in dispute.

54 aa) Contrary to the plaintiff's view, it is not sufficient for the affirmation

of an exceptional case if the defendant achieves a particularly high profit margin.

55 A high profit margin made possible by the use of the invention can regularly already be taken into account in an appropriate manner when assessing the license rate. An assessment of the compensation payment therefore generally requires that further circumstances exist which make an assessment on the basis of the license rate appear insufficient.

56 bb) Also incorrect is the view expressed by the plaintiff that the profit must always be taken into account so that the creditor can assess whether the prerequisites for a calculation of the compensation payment based on the profit exist in the individual case.

57 For the law on employee inventions, the Federal Court of Justice has rejected a general claim to an accounting of the profit, inter alia, on the grounds that extraordinarily high profits are regularly reflected in the sales, so that the employee is in principle sufficiently informed by an accounting of the sales to be able to quantify the appropriate compensation (Federal Court of Justice, judgment of 17 November 2009 - X ZR 137/07, BGHZ 183, 182 = GRUR 2010, 223 marginal no. 31 - Türinnenverstärkung). These considerations are transferable to the relationship between co-inventors.

58 cc) For the periods up to the grant of the patents in suit, the contested decision also proves to be correct in its result for other reasons.

59 As the Federal Court of Justice has already ruled, a co-inventor who asserts a claim for compensation against other co-owners cannot be in a better position than in relation to outside third parties. He can claim compensation from these third parties for use of the invention in the period prior to the grant of the patent pursuant to Sec. 33(1) Patent Act and Art. II Sec. 1(1) German Act on International Patent Conventions for use of the invention in the period prior to the grant of the patent. Therefore, compensation claims between co-owners are also limited in a corresponding manner (Federal Court of Justice, judgment of 27 September 2016 - X ZR 163/12, GRUR 2016, 1257 marginal no. 30 - Beschichtungsverfahren).

60 A claim for compensation under Sec. 33 Patent Act does not include the

surrender of the profit made by the user (Federal Court of Justice, judgment of 11 April 1989 X ZR 26/87, BGHZ 107, 161, 167 et seq. = GRUR 1989, 411, 413 - Offenendspinnmaschine). Therefore, a claim for compensation of the plaintiff based on this is also excluded.

61 2. The Court of Appeal was also correct in denying a claim for the submission of receipts.

62 a) According to the wording of Sec. 259(1) Civil Code, however, the claim to the submission of receipts does not depend on whether the submission of receipts is customary in the context of the accounting owed. Rather, the decisive factor is whether the provision of receipts is customary for the transaction that the receipt is to document.

63 A receipt is typically issued in connection with the transaction that it is intended to document. On the other hand, it must be presented in the context of accounting. For the question of customary practice, Sec. 259(1) Civil Code is only linked to the issuing process. Accordingly, the only decisive factor is whether receipts are usually issued for the documented transactions - in the present context for the business transactions arising in the context of the use of the property rights.

64 b) This interpretation is consistent with the purpose of Sec. 259(1) Civil Code.

65 Sec. 259(1) Civil Code presupposes the existence of a claim to the rendering of accounts and merely regulates the content of this claim. The provision applies irrespective of the basis of the claim. In particular, it also covers contractual claims to invoicing. At least in constellations in which it is certain from the outset that the debtor is obligated to render an account, it would not seem very reasonable to make the obligation to submit documents that are customarily issued in the underlying transactions additionally dependent on the fact that not only the issuance but also the submission is customary.

66 c) Nevertheless, the Court of Appeal was right to deny the plaintiff a claim for the submission of supporting documents in the final analysis, because the duty to submit invoices in the case in dispute arises from Sec. 242 Civil

Code.

67 In the case of claims for information and accounting based on Sec. 242 Civil Code, not only the existence but also the content of the claim is determined by the principles of good faith. In view of this, it is in principle appropriate to grant a claim for the submission of receipts in such cases only if receipts are usually submitted in comparable contractual relationships. The Court of Appeal denied the latter for license agreements, without the plaintiff challenging this in the appeal instance.

68 IV. Insofar as the Court of Appeal's judgment proves to be erroneous in law, the legal dispute is not ripe for decision.

69 The Court of Appeal will have to examine, taking into account the principles outlined above, whether it is equitable to award the plaintiff a claim for compensation. It will also have to examine, if necessary, at what point in time the plaintiff had the level of knowledge required under Sec. 199(1) No. 2 Civil Code.

Meier-Beck

Gröning

Grabinski

Bacher

Kober-Dehm

Previous instances:

Regional Court of Düsseldorf, judgment of 28 November 2013 – 4c O 16/13 –

Higher Regional Court of Düsseldorf, judgment of 7 August 2014 – I-2 U 91/13 –