

Springboard effects in German patent litigation: post-expiry sales, consumables, and foreign profits

Recent German case law is making damages claims more attractive for patentees – and more complex for defendants – particularly where infringing products create long-term revenue streams beyond the initial sale. Dr Christian Meyer and Heike Röder-Hitschke of Maiwald explain how German courts are expanding patent damages to capture infringement-driven follow-on revenues.



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German patent litigation has traditionally been associated with fast injunctive relief rather than large damages awards. That perception is changing. In substance, recent German case law increasingly addresses effects that comparative lawyers might describe as a “springboard effect”: an infringing act may create commercial opportunities that continue to generate revenue even where the later transaction is not itself an act of infringement. The decisive issue is not whether each later transaction is itself infringing, but whether it has a sufficient causal and economic nexus to an infringing act committed within the patent’s temporal and territorial scope.

Recent decisions of the German Federal Court of Justice, the Higher Regional Court of Karlsruhe and the Munich Regional Court illustrate this shift. Damages may now reach beyond the first sale of an infringing product and extend to follow-on revenues from an installed base, consumables, leasing, maintenance, or service contracts. In suitable cases, even post-expiry revenues or profits

generated through foreign performance may become relevant.

This does not mean that German law has introduced punitive damages. Patent damages remain compensatory, and there is no general German equivalent to enhanced damages for willful infringement under US law. The change lies elsewhere: compensation is increasingly assessed by reference to the commercial reality of the infringement and the economic opportunities it created for the infringer.



Importantly, this development does not replace the traditional German damages framework; it reshapes how that framework is applied. German law continues to recognize three established methods of calculating patent damages: lost profits of the patentee, infringer's profits, and a reasonable royalty by license analogy. The recent springboard cases are most important for infringer's profits, but their reasoning also influences how courts and parties approach lost profits and reasonable royalties.

The doctrine: causation, not formal infringement

The springboard idea is straightforward. A patented product may do more than generate revenue from its initial sale. It may create an installed base, provide access to customers, support recurring revenue from consumables or service contracts, or allow the infringer to enter a market earlier than it otherwise could have done. In such cases, the infringement operates as a commercial springboard.

German courts do not necessarily use the term "springboard damages" as a doctrinal label, but recent Federal Court of Justice case law recognizes the substance of the concept. The question is whether later profits are sufficiently causally and economically linked to an infringing act committed within the patent's temporal and territorial scope.

This distinction between liability and quantum is important. The infringing act must still fall within the patent's territorial and temporal scope. But once liability has been established, the damages analysis may look at broader economic consequences. The subsequent profit may arise from a consumable, a service contract, a post-expiry transaction, or a foreign project. If the causal and value-based nexus is sufficient, it may become relevant.

Three dimensions of the new case law Subject-matter: consumables, leasing, and maintenance

The starting point is the Federal Court of Justice's decision in *Polsterumarbeitungsmaschine*.¹ The case concerned machines for converting paper into cushioning material. The defendant's business model was not limited to the supply of machines; it also generated revenues from leasing arrangements, maintenance, and paper consumables used with the machines.

The procedural background is worth noting. The Karlsruhe Higher Regional Court had already taken a broad view of accounting claims for leasing, maintenance, and consumables, including post-expiry revenues

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traceable to pre-expiry infringement in 2021 and 2023.² The Federal Court of Justice later upheld the core findings of this approach. The Court held that, when damages are calculated on the basis of the infringer's profits, all profits causally linked to the patent infringement must in principle be considered. This is not limited to profits made on the infringing product itself. Profits from additional transactions may also be relevant if (1) they are causally connected to the infringing act and (2) have a sufficient nexus to the infringing product.

This reasoning produces effects that resemble a springboard analysis: maintenance contracts, leasing arrangements, consumables, and potentially spare parts may fall within the damages analysis even if they are not themselves acts of infringement. Otherwise, an infringer could retain part of the market opportunity created by placing infringing machines in the market.

This does not mean that all follow-on revenue must automatically be surrendered in full. The attributable share must still be assessed, and revenues may also be influenced by service quality, customer relationships, pricing, or non-patented features. But such arguments usually belong to the damages quantum stage. They do not normally defeat the accounting claim, for which it is sufficient that the follow-on transaction may be relevant.

This is a key practical point. Defendants usually cannot avoid accounting for consumables, maintenance, or leasing revenues merely by asserting that those revenues were driven by factors other than the patented invention. Those arguments belong primarily to the damages quantum stage.

Time: post-expiry revenues

The same decision also clarified the temporal dimension. The Federal Court of Justice held that profits realized after patent expiry may be taken into account if they were caused by infringing acts committed during the patent term. The Court emphasized that this does not extend the patent monopoly beyond expiry. The legal anchor remains the pre-expiry infringement.

The practical effect is significant. If the infringement created an installed base during the patent term, later revenues from that installed base may remain relevant. Products placed on the market in infringement of the patent do not simply become economically "clean" when the patent expires.

This is particularly relevant for durable goods and equipment that generate after-market revenues. In such cases, the

commercial value of the infringement may lie not only in the initial sale or lease, but in the longer-term customer relationship created by the infringing placement of the product.

Territory: foreign performance

The Federal Court of Justice's decision in *Verdampfungstrockneranlage* adds the territorial dimension.³ The defendant had made an infringing offer from Germany for a plant to be built in Sweden, where no patent protection was in force. The Court held that profits from the foreign performance of that contract must not be excluded merely because the delivery and installation took place in a patent-free country.

The causal link was established because the delivered product was the subject of the infringing offer that led to the contract. This does not violate the territoriality principle: liability remains anchored in an infringing act within Germany, while recovery is limited to the part of the profit attributable to that act.

Quantification: the Munich Regional Court's *Glätteverfahren* judgment

Most recently, the Munich Regional Court's 2026 first-instance judgment in *Glätteverfahren* illustrates how these principles may operate in practice. The decision is likely to attract attention, as it translates the Federal Court of Justice's "springboard" reasoning into numeric terms.⁴

The patent concerned a smoothing process for 3D-printed objects. The defendant sold machines suitable for performing the patented process and solvents used in those machines. The Court awarded more than EUR 1 million based on the infringer's profits, applying an attribution factor of 50% for the machines and 70% for the solvents due to their closer functional connection to the patented process.

The case is also important because the patent was a process patent. The Court considered follow-on sales of consumables relevant where the machines were effectively dedicated to carrying out the patented process and no realistic non-infringing use had been shown.

The judgment also addressed post-expiry sales. For sales of formerly infringing products made within three months after patent expiry, the Court accepted a rebuttable presumption that those sales were based on offers made during the patent term. For post-expiry consumables and supporting services, the Court considered unlimited participation difficult to reconcile with the limited term of patent protection. As a pragmatic, case-specific approach to quantification, it considered a 10-year period after patent

expiry, with the attributable share decreasing linearly by 10 percentage points per year. This should not be understood as an established 10-year rule under German patent law. The Munich Court referred to this as a "blurry factor", reflecting the decreasing causal force of the original infringement over time.

This approach is new and will likely be debated. Defendants may argue that a fixed 10-year model is too mechanical and that causation must be assessed individually. Patentees, however, will welcome the model as a workable way to value long-term installed-base effects.

The decision is also notable for its comments on reasonable royalties.⁵ Although the case was decided on infringer's profits, the Court indicated that a damages royalty rate may, in appropriate circumstances, be increased up to three times the market rate. The reasoning was not punitive: a hypothetical negotiation after judicial confirmation of infringement is not the same as an ordinary pre-dispute licensing negotiation.

Any such uplift will likely remain controversial, but if followed by other courts, it could make the reasonable royalty method more attractive for patentees.

The Munich Court also confirmed a patentee-friendly approach to deductible costs, being in line with Federal Court of Justice case law,⁶ and lost profit substantiation, but those issues go beyond the springboard focus of this article.

Whether appellate courts will endorse the 10-year model, the blurry factor, or the royalty uplift remains to be seen. Still, the judgment has clear signal value: German courts are prepared to engage with the economic reality of installed-base business models and to develop practical tools for quantifying springboard effects.

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Strategic takeaways

For patentees, the accounting claim is the gateway to meaningful damages. It should not stop at sales of the infringing product where the business model suggests recurring revenue. Already in the first infringement action, patentees should consider requesting accounts for the entire commercial ecosystem surrounding the infringement:

- consumables, spare parts, and replacement components;
- leasing, rental, or usage income;
- maintenance, service, and support contracts;
- post-expiry transactions linked to pre-expiry infringement; and
- foreign revenues resulting from an infringing act in Germany.

If follow-on transactions are not included in the accounting request, the patentee may face limitation issues or may need to bring a separate action for supplementary accounting. The defendant's business model should therefore be analyzed early.

For defendants, the strategic focus shifts to causation and the break of the causal chain. Arguments that follow-on revenues were driven by customer relationships, service quality, price, brand reputation, or non-patented technical features usually matter only at the damages quantum stage. They do not normally reduce the scope of the accounting obligation.

Defendants should therefore build evidence early, in particular on:

- realistic non-infringing uses of the accused product,
- independent reasons for consumable or service purchases,
- customer-specific procurement decisions,
- the timing of offers, orders, deliveries, and follow-on contracts, and
- detailed direct cost documentation.

Most importantly, defendants should consider workarounds early, potentially already in first-instance infringement proceedings. A genuine redesign, conversion, or replacement may help break, or at least reduce, the causal nexus to later revenues.

Outlook

The risk area for companies active in Germany has expanded. Profits generated abroad, after patent expiry, or through formally non-infringing consumables or services may all become relevant if they can be traced back to an infringing act within the German patent's scope.

German patent damages remain compensatory, not punitive. But compensation is now being assessed with greater attention to commercial reality. Where an infringement acts as a springboard for later revenue streams, those revenues may become part of the damages analysis. Damages in German patent litigation are therefore no longer merely an afterthought after the injunction.

Footnotes

1. Federal Court of Justice, judgment of 14 November 2023 – X ZR 30/21, GRUR 2024, 273 – *Polsterumarbeitungsmaschine*.
2. Karlsruhe Higher Regional Court, judgment of 10 March 2021 – 6 U 9/16, GRUR 2022, 641 – *Polsterumarbeitungsmaschine*; Karlsruhe Higher Regional Court, judgment of 22 February 2023 – 6 U 245/21, GRUR-RS 2023, 26668 – *Polsterumarbeitungsmaschine II*.
3. Federal Court of Justice, judgment of 7

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May 2024 – X ZR 104/22, GRUR 2024, 1201 – *Verdampfungstrockneranlage*.

4. Munich Regional Court I, judgment of 16 April 2026 – 7 O 8367/25, GRUR-RS 2026, 11822 – *Glätteverfahren*.

5. See also Munich Regional Court I, judgment of 25 March 2010 – 7 O 17716/09, NJOZ 2011, 1318 – *Gülleausbringungsvorrichtung*.

6. Federal Court of Justice, judgment of 2 November 2000 – I ZR 246/98, GRUR 2001, 329; Federal Court of Justice, judgment of 24 July 2012 – X ZR 51/11, GRUR 2012, 1226 – *Flaschenträger*.

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