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QUALITY ENGINEERING

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im großen Sonderteil

Liability Areas of Additive Manufacturing

Still many open questions

The possibilities and areas of application of additive manufacturing are increasing steadily, the need for the use of these technologies is growing, as all observers agree. Often, however, the participants do not or at least not sufficiently take into account, which product-related liability risks they are facing here.



Laws in additive manufacturing are often still behind, many things have to be interpreted in a relationship-oriented way. Bild: wladimir1804/Fotolia

Marked on the final product. The same applies to the importer of third-country products into the European economic area.

For the manufacturer's liability according to § 823 BGB as a fault-dependent liability, the entire product life cycle is relevant: (planning) construction, fabrication, instruction and market observation. The affected manufacturer must be able to prove that he has fulfilled his duty of care in the aforementioned areas and that the damage that nevertheless occurred is ultimately an unavoidable „outlier“.

The Product Liability Act, in contrast, is a fault-independent liability and applies when the product has a defect that causes a specific damage. Possibilities to be released from liability, however, are only few, so for example when the damage is caused by a defect that the manufacturer in the order of another party's construction specifications has implemented.

In the area of additive manufacturing, there are still many open questions, such as the question of the manufacturer: What is the actual product and who is the manufacturer?

For this, few examples: The manufacturer concept (cf. § 4 ProdHaftG) is generally left to the concretization of literature and practice. Adjusted is the „responsible“ activity, which influences the product design or -property.

Is it, for example, about the person who provides the 3D printer for the product to be produced, without influencing the design and the material used, and without the possibility of improving the product, is this person more a service provider than a manufacturer.

Also, the German legal science (still) has a problem with the understanding of software as a product: Products must be tangible, software is not. One often resorts to the personification of software at the moment of storage, „clean“ is not, and is not up-to-date.

In the framework of the legal responsibility can in principle be distinguished between contractual and extra-contractual liability. Legal questions of contractual liability can be answered by the legal situation in connection with the contractual agreements.

One must be clear about this, however, that the legal structures of the technology of additive manufacturing are often not known, one must therefore often „interpret“ and weigh. Therefore, it is recommended to reach clear agreements with the contractual partners.

Regardless of whether a liability in connection with the contractual standards is in question, the (extra-contractual) product and manufacturer liability systems are of great importance. In addition to the provider of the original design, the CAD creator and the 3D printer are also liable.

To define the (possible) liability addressees, it is case-specific and especially depends on the function and activity of the respective partner. It is important to understand that not only the „classic“ self-manufacturing producer as manufacturer in the sense of these liability systems is in question, but also the so-called quasi-manufacturer, who has the product made by a third party and his

Der Referent



Daniel Wuhrmann
Rechtsanwalt
Reusch Rechtsanwaltsge-
sellschaft
www.reuschlaw.de