

Case comment on Judgment of 27/03/2009, Provincial Court Barcelona (Audiencia Provincial Barcelona), 27 March 2009

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The Provincial Court of Barcelona dismissed an appeal filed against a judgment from the Commercial Court number 4 of Barcelona, which had concluded that the product claims of the patent in suit were valid and enforceable in Spain under Articles 27.1 and 70.7 of TRIPS. The main interest of the judgment lies in the fact that it has further confirmed that, under Spanish law, Articles 27.1 and 70.7 of TRIPS are self-executing and that the fading effects of the Spanish Reservation to the European Patent Convention can no longer be invoked against patents falling within the scope of application of Articles 27.1 and 70 of TRIPS. In particular, the Court emphasized that since patent law has not been harmonised by the Community yet, it is up to national Courts to decide whether or not (some) TRIPS' provisions may be directly applied.