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Does a non-registered licensee have "locus standi"?

Miquel Montaña (Clifford Chance) · Tuesday, February 1st, 2011

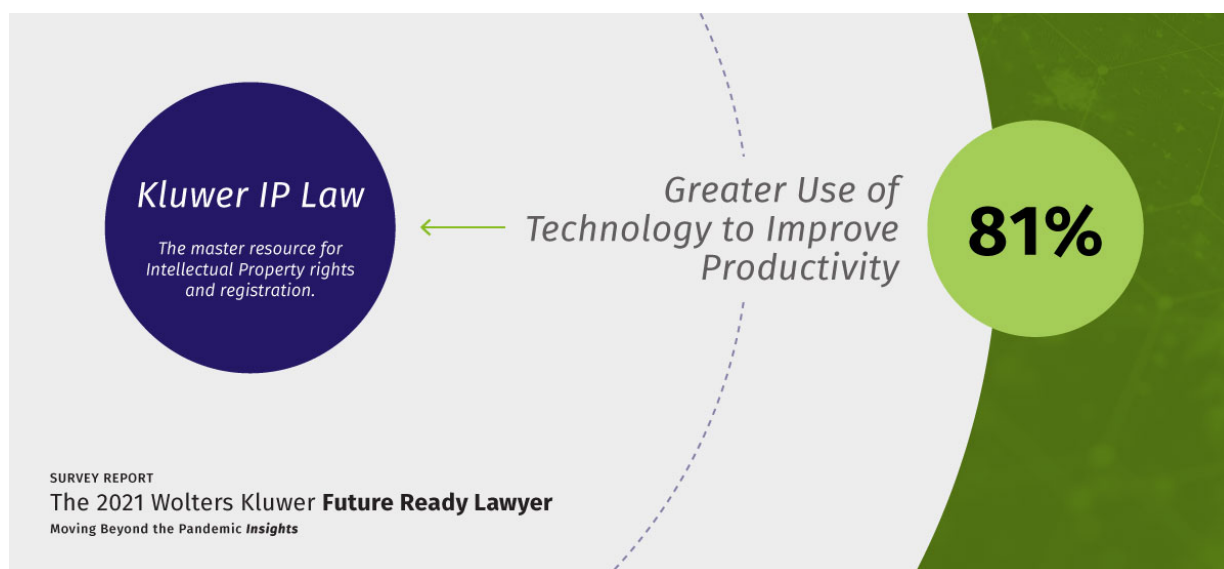
According to Article 79.3 of the 1986 Patents Act, patent rights not registered with the Patent Office may not be invoked against third parties. This article has sparked the debate as to whether a non-registered licensee may initiate patent infringement proceedings invoking a license agreement that has not yet been published. In its judgment dated 16 November 2009, the Court of Appeal of Barcelona (Section 15) gave a positive answer to this question, relying on their previous judgment of 12 June 2001. In the latter judgment, the Court highlighted that it would not be logical to prevent the licensee who filed the license agreement with the Patent Office from initiating legal proceedings before the license agreement is published, since the timing of the publication is beyond the licensee's control.

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