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Barcelona Court of Appeal considers that the “ex re ipsa” doctrine applies to patent matters

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Upon reading the title of this blog entry, readers may be wondering what the “ex re ipsa” doctrine involves. It therefore may be worth clarifying that it is a legal doctrine applied, for example, to cases dealing with damages, where the damage is presumed to have been caused (“causality”) when it is inherent to the activity that is the object of the complaint.

In Spain, there has been a long-standing debate as to whether or not this doctrine applies to cases where the damage has been caused by the infringement of intellectual property rights, such as patent cases. This debate has recently been revisited by a judgment handed down on 14 May 2018 by the Barcelona Court of Appeal (Section 15) which, among other aspects, examined how damages should be determined in a patent case. In paragraph 58, the Court took the view that “in the case of infringement of industrial property rights, the ex re ipsa doctrine applies, whereby the damage is inherent to the infringement […]”.

Another noteworthy aspect of this case is that the Court took into account the lack of cooperation on the part of the defendant (failure to provide information on costs, amounts of meters marketed, etc.) for the purpose of upholding the amount of damages alleged by the complainant. In the end, the Court ordered the defendant to pay 858.526,25 euros plus interest, which constituted the average profit obtained by the alleged infringer, according to the calculations made by an expert accountant.

All in all, the two main highlights of this interesting judgment are that the causality of damages may be presumed to be “ex re ipsa” in patent cases, and that if you are not willing to supply the documents needed to calculate the damages, then you should be prepared to pay the potential amount resulting from indirect means of evidence.

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