Kluwer Patent Blog

Wolters Kluwer publishes a Practitioner's Guide covering almost everything you need to know about SPCs

Miquel Montañá (Clifford Chance) · Tuesday, February 26th, 2019

One has to have a lot of courage to accept the task of coordinating a book on Supplementary Protection Certificates ("SPCs"). The immense variety of the facts discussed in the numerous cases that have historically sparked the need for preliminary questions to the Court of Justice of the European Union ("CJEU") on the interpretation of the SPC Regulation, coupled with the change of direction of the CJEU's case law over the years, have turned SPC' land into a high-risk minefield where any opinion expressed bears the risk of being blown-up by a hidden bomb. Against this background, one has to start this blog by congratulating Alexa von Uexküll and Oswin Ridderbusch for having had the courage to agree to coordinate the book *European SPCs Unravelled. A Practitioner's guide to Supplementary Protection Certificates in Europe*, recently published by Wolters Kluwer.

The book starts with a long chapter (113 pages) devoted to the case law of the CJEU, where all the issues confronted by practitioners over the years are carefully addressed. The first section of this chapter deals with the substantive requirements for obtaining an SPC and covers a wide spectrum of topics such as the types of products that can be protected, the interpretative challenges raised by the concepts "basic patent" and "marketing authorization", and the circumstances in which the granting of new SPCs may be precluded by an earlier SPC. Down the road, the authors visit interesting places such as: what is an active ingredient or combination of active ingredients that may form the basis for an SPC, both in the context of medicinal products and plants, fixed-dose versus loose combinations, or the protection of medical devices? Regarding the meaning of "basic patent", the contours of this concept are considered in a variety of different contexts (small molecules, polymers, antibodies, enzymes and other proteins, nucleic acids…). In relation to the concept of "marketing authorization", the key judgments of the CJEU are carefully reviewed. The remaining sections of chapter 1 address the extent of protection and the enforcement of SPCs, the determination of the SPC term, the procedure for filing an SPC application and the procedure for invalidating an SPC, plus a section dealing with unfair competition.

The robust analysis of the relevant EU law and case law set out in chapter 1 paves the way for the "national" perspectives, which cover Germany (chapter 2), the United Kingdom (chapter 3), France (chapter 4), the Netherlands (chapter 5), Belgium

(chapter 6), Italy (chapter 7), Spain (chapter 8), Portugal (chapter 9), Sweden (chapter 10), Iceland (chapter 11), and Switzerland (chapter 12). But this is not all. The book comes to an end with a sort of "miscellaneous" chapter (chapter 13, entitled "Further European Countries") where additional tips on Austria, Croatia, Cyprus, Czech Republic, Denmark, Greece, Hungary, Ireland, Malta, Poland, Romania, Slovakia, Slovenia, Norway, Albania and Macedonia are offered.

As one would expect in a practitioner's guide, the book comes with Appendices which include the relevant regulations, including excerpts of the so-called Paediatric Regulation, and a very helpful table of cases.

Other cases in the CJEU's pipeline (for example, cases C 650/17 and C 651/179) might bring additional elements for debate in the not too distant future.

In the meantime, the armamentarium of SPC practitioners will have been enriched by a practical guide that is a very valuable addition to the limited number of books that have dared to enter the ever-changing SPC territory since the SPC Regulation was published in 1992.

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