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Landmark legal reform confers Civil Provincial Courts jurisdiction to review Patent Office decisions

Miquel Montaña (Clifford Chance) · Friday, August 19th, 2022

To date, final decisions from the Spanish Patent and Trademark Office (“SPTO”) dealing with matters such as patents or supplementary protection certificates (“SPC”) may be appealed before the administrative law chamber of what are known as the *Tribunales Superiores de Justicia* (“High Courts of Justice”). Although these Courts are highly specialised in public law matters, they do not have the same level of experience in patent matters as the civil Provincial Courts, which have a specific section specialising in patent matters (among others).

Against this background, within Spain’s intellectual property (“IP”) circles (for example, some highly experienced IP judges and the Spanish group of AIPPI), the idea of conferring jurisdiction to civil Provincial Courts to review the SPTO’s decisions on patent and trademark matters gradually began to blossom. This blossom cherished by the IP community has finally fully flowered this summer in the form of Organic Act 7/2022, of 27 July. Although the main objective of this law is to implement a Directive dealing with insolvency matters (Directive (EU) 2019/1023), the Spanish Legislator has used this opportunity to also amend the competences (i.e. jurisdiction) of civil Provincial Courts so that, from 14 January 2023 on, they may also review SPTO decisions on trademark, patent and SPC matters. In particular, this will result in the amendment of articles 74.1 and 82 of Organic Act 6/1985, of 1 July (on the Judiciary), which is the main law that deals with the legal structure of Spain’s judicial system.

Also, this will result in the addition of a new paragraph 13 in article 52.1 of Act 1/2000, of 7 January (on Civil Procedure), which will read as follows:

“In appeals against those decisions that exhaust the administrative route issued in matters of IP by the Spanish Patent and Trademark Office, the sections specialising in commercial matters of the Provincial Court in whose district the seat of the High Court of Justice of the Autonomous Community of the plaintiff’s domicile or, failing that, of the domicile of the plaintiff’s representative in Spain authorised to act on his behalf is located will have competence, provided that the General Council of the Judiciary has agreed to attribute exclusive jurisdiction for the resolution of IP matters to the Commercial Courts of that location. The specialised sections of the Provincial Court in whose district the headquarters of the Spanish Patent and Trademark Office are located will also be competent, at the request of the plaintiff.”

So, in a nutshell, the territorial competence to review appeals against the SPTO’s decisions on

patent matters will correspond to the Provincial Court of the province where the party filing the appeal has its domicile or, failing that, the Provincial Court of the province where the plaintiff's representative has his or her domicile. It will be interesting to see whether this legal reform will influence procedures for the appointment of representatives, since, in the case of companies not having a domicile in Spain, as mentioned, the representative's domicile will determine which court has territorial jurisdiction to hear the appeal.

All in all, this landmark legal reform is just one more example of the little steps that, in recent decades, have raised the quality of the Spanish patent system to the same level as that of its European counterparts.

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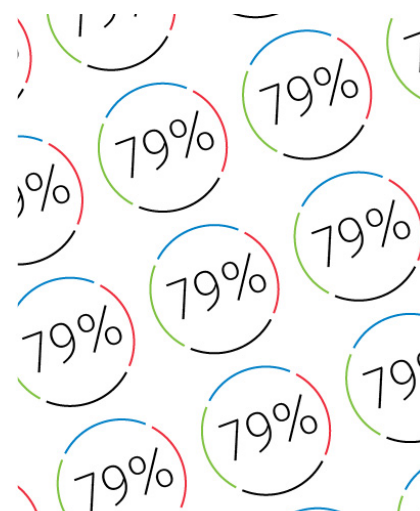
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This entry was posted on Friday, August 19th, 2022 at 10:25 am and is filed under [Patents](#), [Spain](#),

SPC

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