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Supreme Court sheds light on scope of the Bolar Provision

Miquel Montaña (Clifford Chance) · Monday, July 19th, 2010

After the implementation of the “Bolar provision”, introduced into Spanish law through Directive 2004/27, the Courts of Appeal of Navarra, Madrid and Barcelona decided that the new provision should be applied retrospectively since, in their opinion, the law that incorporated the Directive simply “clarified” that the acts exempted from patent infringement by the “Bolar provision” were already exempted by the “Experimental use” exception.

In a judgment dated 30 June 2010, the Supreme Court has reversed this interpretation, and it has highlighted that the “Bolar provision” and the “Experimental use” exception are two different exceptions and have different rationales. This has led the Supreme Court to conclude that the “Bolar provision” only applied to acts carried out after 28 July 2006, the date when Directive 2004/27 was implemented into Spanish law. There is no doubt that this judgment will become a landmark decision, as it has finally settled a point that was hotly disputed when Directive 2004/27 was incorporated into Spanish law.

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