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# Kluwer Patent Blog

## Should the validity of the patent be examined in a preliminary injunction procedure?

Miquel Montaña (Clifford Chance) · Monday, August 2nd, 2010

One of the most contentious points discussed before Spanish Courts over the last few years is the question of whether or not Courts should examine the validity of the patent when this has been raised as a defence in the context of preliminary injunction proceedings. On 17 June 2010, the Court of Appeal of Barcelona handed down a judgment confirming the preliminary injunction ordered in the case *Eli Lilly v. Lesvi et altri*, where the Court set the following principles: first, the applicant for a preliminary injunction is not required to prove the validity of a patent that has been examined; second, the validity of an examined patent must be presumed; and third, for an invalidity defence to succeed in the context of preliminary injunction proceedings, the defendant must submit clear indicia showing that the validity attack may succeed in the main proceedings. This judgment, which is final, has shed some very helpful light on a point where Spanish Courts were following divergent criteria.

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