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Are "Omnibus" Claims Enforceable in Spain?

Miquel Montaña (Clifford Chance) · Monday, September 27th, 2010

The last year has kept some Spanish Courts busy with a debate that already caught the attention of English Courts at the beginning of the XX century, that is, whether “omnibus” claims are enforceable. Article 100 of the “Estatuto de la Propiedad Industrial” of 1929 required that the last claim of the patent was an “omnibus” claim summarizing the core of the invention protected. According to the Seventh Transitional Provision of the 1986 Patents Act, the scope of protection of both “old” and “new” patents is governed by the new Patents Act. According to Article 60.1 of the new Patents Act, which mirrors Article 69 of the European Patent Convention, the scope of protection of patents is determined by the claims, interpreted in the context of the description. This has sparked off the debate as to whether “omnibus” claims are as good as any other claims after the new Patents Act came into force. To date, Commercial Courts number 6 and 8 of Barcelona have denied preliminary injunctions based on “omnibus” claims on the grounds that they would have been included in “old” patents for “formal” reasons. However, within the next few weeks the Court of Appeal of Barcelona is due to publish a judgment where it will decide whether this is correct or whether, as the English Courts noted in their judgment of 1960 in the *Surface Silos Ld v D.C.S. Beal* case, and other similar cases, “omnibus” claims must be interpreted as any other claim.

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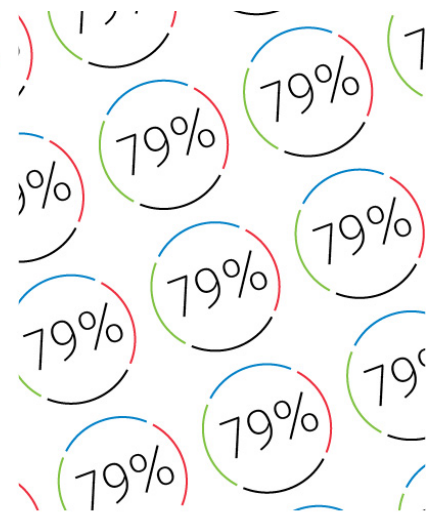
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