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"Petty" patents or "Pity" Patents?

Miquel Montañá (Clifford Chance) · Friday, October 22nd, 2010

Like other countries, such as Australia or Germany, a “petty” patent or “utility model” can be obtained in Spain for so-called minor inventions. They present a twofold distinction with regard to “full-fledged” patents, when it comes to examining their patentability: (i) only documents disclosed in Spain form part of the state of the art; (ii) for the invention to lack inventive step, it must be “very obvious” to the person skilled in the art. In principle, after granting a “petty” patent confers the same rights as a patent. However, the fact that they are granted without substantive examination leads Spanish Courts to be initially skeptical about their strength. The last example is a judgment of 13 October 2010 from Commercial Court number 2 of Barcelona, which denied a preliminary injunction on the grounds that the utility model at hand (like all utility models in Spain) had been granted without examination. The fact that the applicant had recently obtained one of the highest damages awards ever to be issued in this country (more than 10 million euros) on another utility model which was found to be valid by a Court-appointed expert (after having initially been denied another preliminary injunction for the same reason), was not sufficient to overcome the Court’s skepticism on the strength of the utility model. With this in mind, should we call them “petty” patents or “pity” patents?

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