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# Kluwer Patent Blog

## More on "omnibus" claims included in patents granted under the 1929 Patent Act

Miquel Montaña (Clifford Chance) · Tuesday, January 18th, 2011

One of the topics hotly discussed before the Spanish Commercial Courts over the past month is whether “omnibus” claims included in patents granted under the 1929 Patent Act are enforceable after TRIPS came into force on 1 January 1995. In a recent judgment of 16 December 2010 deciding an appeal against a decision that had lifted a preliminary injunction ordered on an “omnibus” claim, the Barcelona Court of Appeal (Section 15) has given a negative reply to this question. Although the Court accepted that the scope of protection of old patents granted under the 1929 Patent Act must be determined according to Article 60.1 of the Patent Act, which mirrors Article 69 of the European Patent Convention (i.e. claims in the context of the description), the Court found that this rule only applies to “real” claims, but not to claims included for formal reasons (such as “omnibus” claims). In the judgment to be handed down in due course in the main proceedings, the Court is expected to elaborate further on the legal grounds on which its conclusion is based, assuming that they maintain the same position as in the main proceedings.

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