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Are second thoughts usually better? Just in case, invoke all your nullity grounds in one go

Miquel Montaña (Clifford Chance) · Friday, March 18th, 2011

On 2 March 2011 the Barcelona Court of Appeal handed down a judgment reversing a decision from Commercial Court number 4 of Barcelona, which had rejected a “lis pendens” defence pleaded by the owner of patent EP 409.281 against a revocation action filed by L.A. et altri based on lack of inventive step. In its judgment of 2 March 2011, the Court of Appeal noted that L.A. et altri had previously filed a revocation action against the same patent invoking lack of novelty only. According to the Court of Appeal, Article 400 of the Civil Procedure Act now prevents them from challenging the validity of the same patent invoking a different nullity ground. For the benefit of the reader, it should be clarified that said Article 400 states that when a complaint may be based on different facts, legal grounds or legal titles, all must be invoked in the one complaint.

The teaching from the judgment is clear: complainants should really do their homework before going to Court and carefully examine all the legal titles that may be asserted against the defendant, and all the legal grounds on which the complaint may be based. It will not be legally possible to assert them at a later stage unless new facts arise.

It would seem that the proverb that second thoughts are wisest does not always apply...

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