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# Kluwer Patent Blog

## Forum shopping or Forum choosing?

Miquel Montaña (Clifford Chance) · Tuesday, April 5th, 2011

On 2 March 2011, the Court of Appeal of Barcelona (Section 15) handed down a judgment that has helped to clarify the scope of Article 125.2 of the Spanish Patent Act, which had been interpreted in different ways by some Courts of First Instance since its modification in 2001. Article 125.2 establishes that *“the judge of first instance in the seat of the Higher Court of Justice of the Autonomous Community corresponding to the domicile of the plaintiff shall be competent and, where there are several, one may be permanently designated by the competent legal body”*. However, the third paragraph of the same article adds that *““In the case of actions claiming the infringement of a patent right, competence shall also fall, at the claimant’s discretion, to the court authority referred to in the previous paragraph in the Autonomous Region in which the infringement has been committed or its effects have been noted”*.

In the aforementioned judgment of 2 March 2011, the Court of Appeal of Barcelona (Section 15) upheld the judgment of 13 June 2008 issued by Commercial Court Number 4 of Barcelona, which had found that the Commercial Courts of Barcelona have territorial competence to hear patent infringement cases even in cases where the defendants have their domicile in a different Autonomous Community. In the case at hand, the complainant, a company whose domicile is in Barcelona, had filed a patent infringement action before the Commercial Courts of Barcelona against a company that has its domicile in Pamplona (Navarra), in the North of Spain.

In its judgment, the Court of Appeal of Barcelona (Section 15) explicitly rejected that choosing the forum of the Commercial Courts where the acts of infringement have or may cause effects may be labeled “forum shopping”. According to the Court, the modification of Article 125 introduced in 2001 now allows the complainant to choose either of the criteria mentioned in the new text of this article, including the Courts of the place where the acts of infringement have or may cause effects. All in all, the Court concluded that selecting this venue is not an arbitrary act of “forum shopping”, but a legitimate exercise of “forum choosing”.

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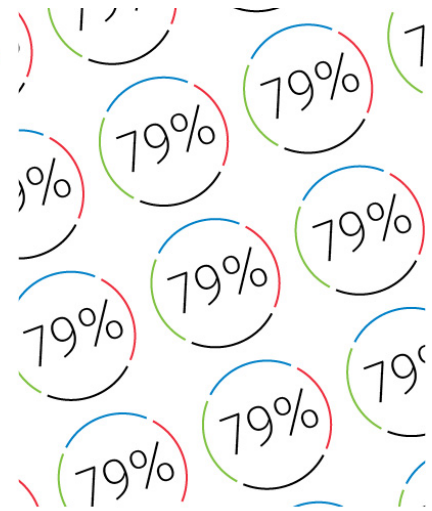
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