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When the shoes of the person skilled in the art don't fit the court expert

Miquel Montaña (Clifford Chance) · Monday, April 18th, 2011

The so-called “person skilled in the art” is a fictitious character in charge of, among other functions, assessing whether or not an invention is obvious with respect to the state of the art. For the experts appointed by the parties to be able to illustrate to the Court what would have been the understanding of the person skilled in the art, they must be familiar with the technical field of the patent at hand. Otherwise, how on Earth could they give opinions as to whether this or that would have been an obvious thing to do? This thought led Commercial Court number 1 of Madrid, in its judgment of 30 December 2010, to dismiss a revocation action based on a lack of inventive step. The Court’s conclusion was mainly based on, among other aspects, the fact that the revocation action was supported by the opinion of an expert who acknowledged not being a formulation expert, which was the technical field of the patent.

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