

# Kluwer Patent Blog

## Spanish Supreme Court clarifies that damages may be claimed from the date when the EPO published the grant of the patent

Miquel Montaña (Clifford Chance) · Friday, November 2nd, 2012

According to Article 65 of the European Patent Convention (“EPC”), when the European patent granted is not drafted in one of the official languages of the EPC, any contracting state may require that the patent owner file a translation of the patent with the national patent service within 3 months of the publication of the patent by the EPO.

Spain is one of the countries that made use of the optional clause enshrined in Article 65 of the EPC. Thus, Article 7 et sequitur of Royal Decree 2424/1986, of 10 October 1986, which approved the transposition of some aspects of the EPC into Spanish law, requires the owner of a European patent to file a Spanish translation at the Spanish Patent and Trademark Office (“SPTO”) within 3 months of the publication of the announcement that the patent has been granted by the EPO. If a Spanish translation is not filed before this deadline, the European patent will not have any effects in Spain. According to Article 9 of said Royal Decree, the SPTO must publish the translation within 1 month. This means that, in practice, the Spanish translation is normally published approximately 4-5 months after the granting of the European patent has been published by the EPO.

Over the last few years, the Spanish Courts have struggled to decide as from which date the patent owner should be entitled to claim damages (except in cases where the patent owner can benefit from the provisional protection governed by Article 67 of the EPC, in which case the debate raised in this blog becomes, to some extent, a moot point). In a recent interesting case, Barcelona Commercial Court number 3 decided that the relevant date was the date when the patent owner filed the Spanish translation at the SPTO. This judgment was reversed by the Barcelona Court of Appeal (Section 15), which took the view that the relevant date was the date when the Spanish translation was published in the “Official Intellectual Property Gazette” (“Boletín Oficial de la Propiedad Industrial”).

And lastly, the Supreme Court, in an interesting judgment handed down on 11 July 2012, has decided that the relevant date is the date when the announcement of the granting of the patent was published by the EPO. The fact that, in this case, 3 different Courts embraced 3 different interpretations shows that the point is debatable and that each interpretation is reasonable. Only time will tell whether or not the Supreme Court’s interpretation is here to stay.

---

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please [subscribe here](#).

## Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

---

79% of the lawyers think that the importance of legal technology will increase for next year.

**Drive change with Kluwer IP Law.**

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT  
The Wolters Kluwer Future Ready Lawyer  
Leading change

This entry was posted on Friday, November 2nd, 2012 at 1:58 pm and is filed under [Damages](#), [Procedure](#), [Spain](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.