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Patent litigation around the kitchen: from ancient Greece to Thermomix.®

Miquel Montaña (Clifford Chance) · Thursday, September 19th, 2013

Spanish Courts have recently decided two interesting cases that show that patent litigation is not the exclusive realm of big pharma or high tech. Patent litigation extends its tentacles to quotidian cooking tools that we and / or our most significant others use day after day in the kitchen.

The first judgment, handed down by the Supreme Court on 6 June 2013, put to an end the long-standing judicial battle between the manufacturer of the famous “Thermomix®” automatic cooking machine and a Spanish company that manufactures another automatic cooking machine under the trademark “MyCook®”.

The proceedings began in 2007, when the claimant filed a patent infringement action against the defendant alleging that the latter had infringed three European patents. The case was assigned to Commercial Court number 5 of Barcelona, one of the only three Barcelona Courts that at present have jurisdiction to decide patent cases. As is usually the case in patent litigation, the defendant filed a counterclaim requesting the revocation of the patents. On 30 December 2008, the Court handed down a judgment upholding the complaint in part, and dismissing the invalidity counterclaim. In particular, the Court considered that the defendant had infringed one of the patents.

Both parties filed an appeal before Section 15 of the Court of Appeal of Barcelona, which is the only section that deals with intellectual property cases since 1993. On 1 July 2010, the Court of Appeal handed down a judgment dismissing the appeal filed by the claimant and upholding in part the appeal filed by defendant. Among other aspects, the Court reversed the declaration of infringement, and declared the nullity of claims 1-18 and claims 20-24 of the patent that the Court of First Instance had found to be infringed.

The claimant filed an appeal before the Supreme Court based on two counts: breach of due process and breach of law. These appeals were dismissed by the Supreme Court in the aforementioned judgment of 6 June 2013.

Patent litigation around the kitchen seems to be here to stay. Or at least it would appear so, as indicated by another judgment handed down by Commercial Court number 6 of Barcelona, which ordered a Spanish company to pay 3.3 million euros to another Spanish company for having allegedly infringed a patent that protects cooking tools that may be use both in traditional and in induction kitchens.

Interestingly, these “patent litigation around the kitchen” cases have taken us back to the very origins of patents, or exclusive rights roughly similar to patents. For example, Chisum *et al*, in their *Principles of Patent Law*, quoting a manuscript from Rich (“*The Exclusive Right since Aristotele*”), wrote that “one of the earliest expressions of an incentive-based system can be found in Sybaris, a Greek colony in southern Italy that existed from 720 to 510 B.C. Known for their luxurious and decadent lifestyle, the Sybarites were said to have enacted a law that gave exclusive rights to those who created certain culinary delights.”

If Sybarites were to resurrect, perhaps they would be fascinated by wonderful cooking devices, such as “Thermomix”® and “MyCook.”® Or maybe they would prefer to continue relishing the joy of cooking by hand...

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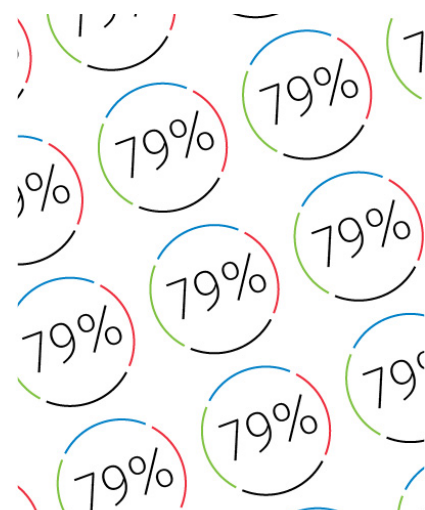
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