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LATVIA: Major Changes in Industrial Property Regulation

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For nearly a decade the Latvian regulators have struggled with determining the future perspective for resolving intellectual property related disputes before the [Patent Office of the Republic of Latvia \(LPO\)](#). Already in 2007 the responsible authorities identified several shortcomings in domestic legislation: among others, it became apparent that the disputes concerning appeals and oppositions brought before the LPO are mostly civil in their nature, as a result the rules of the Latvian [Administrative Procedure Law](#) applicable to settle such disputes were often in conflict with the substance of the case.

Since then, the LPO together with various government bodies had worked purposefully to adopt a new law and fill the gaps in several grey areas of industrial property regulation in Latvia, *inter alia*, by crystallizing the status of the Industrial Property Board of Appeals (BoA) and patent attorneys. The final draft of the law was approved by the Latvian Parliament in early summer 2015, and the new [Law on the Industrial Property Institutions and Procedures](#) finally entered into force on 1 January 2016.

According to [International Survey on Specialized Intellectual Property Courts and Tribunals](#) conducted by the International Bar Association, most member states of the European Union have developed either specialized intellectual property courts or courts of general jurisdiction that exclusively hear intellectual property cases: those countries include Belgium, Denmark, Finland, France, Germany, Hungary, Italy, Romania, Slovakia, Slovenia, Spain, Sweden, the Netherlands and the United Kingdom. Latvia was not included in the survey because it does not have specialized intellectual property courts. Furthermore, contrary to countries having a separate civil court or specialized tribunal established to examine appeals against the decisions adopted by the respective patent offices, in Latvia, prior to 2016, the appeals and oppositions first examined by the BoA were subsequently scrutinized by the administrative courts in all three court instances, including on the points of law.

The reason as to why the jurisdiction of administrative courts was applicable for challenging the decisions on appeals and oppositions lies in the fact that the BoA was an integral part of the LPO, which, in its turn, is a state institution. Under the Latvian Administrative Procedure Law, the decisions adopted by state institutions can be challenged before the administrative courts. This resulted in fragmentation and ineffective utilization of the dispute settlement system because other claims typically related to intellectual property, for instance those regarding patent or trade mark infringement, are examined within the scope of civil procedure in the courts of general jurisdiction.

Therefore, the Law on the Industrial Property Institutions and Procedures now seeks to establish an independent status of the BoA. In this regard, the appointment procedure relating to the integrity of members of the BoA has been significantly improved: instead of being regular employees of the LPO as it was prior to 2016, the members of the BoA are now appointed directly by the Latvian government for a seven-year term after a recommendation of the Minister of Justice. Hence, the appellants are entitled to challenge the decisions of the BoA in cases concerning appeals and oppositions before the Riga Vidzeme District Court, a civil court of first instance.

In addition, the Law on the Industrial Property Institutions and Procedures provides two additional key features. First, the Latvian authorities have finally imposed a mandatory obligation for all patent attorneys operating in Latvia to have professional liability insurance. Such obligation has long been into force in other European countries (see, for instance, §§ 45 and 45a of the 1966 [German Patent Attorney Ordinance](#)). Second, the LPO has switched from being a state-funded budget institution to becoming a self-financed institution. Similarly as the [European Patent Office](#), the LPO now covers its operating and capital expenditure from the procedural fees.

As a result, upgraded e-services and searchable patent, trade mark and industrial design databases are expected soon to be launched, thus together with other improvements forming a highly-anticipated industrial property regulation which puts Latvia on the same page with the rest of Europe.

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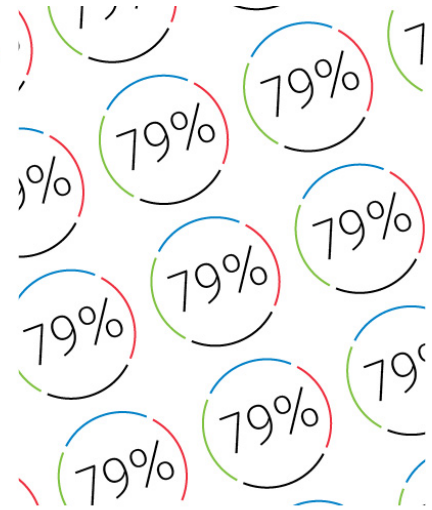
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