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Give me the money

Miquel Montaña (Clifford Chance) · Monday, October 17th, 2016

A recent Ruling of 9 September 2016 from the Court of Appeal of Barcelona (Section 15) illustrates the risks of defendants taking a “wait and see” attitude in the context of proceedings aimed at liquidating damages.

This decision was handed down following an appeal filed by a patentee against a decision from Commercial Court number 2 of Barcelona which had ordered the defendant to pay 118,000 Euros for having infringed a patent. In the appeal, the patentee alleged that for the purpose of liquidating the damages, the Court of First Instance had failed to consider the total number of units marketed by the defendant. In its opposition, the defendant alleged that the “additional” units mentioned by the patentee corresponded to a product with modified characteristics and which, therefore, would not fall within the scope of the judgment declaring the infringement of the patent. To prove this, the defendant filed an e-mail where the director of the factory had given instructions to modify the characteristics of the product.

In its Ruling of 9 September 2016, the Court of Appeal of Barcelona (Section 15) found that this evidence was very weak and that the defendant should have proved when the product was modified to fall outside the judgment declaring infringement. So the amount of damages pending to be liquidated was increased to 520,261 Euros.

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