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Implementing Regulations of new Patents Act almost finished

Miquel Montaña (Clifford Chance) · Monday, December 12th, 2016

As readers may know from previous blogs, a new Patents Act (“Law 24/2015, of 24 July, of Patents”) is due to come into force in Spain on 1 April 2017. So we are almost there. In a nutshell, the new Patents Act seeks to improve the prestige of Spanish patents by abandoning the possibility of granting “non-examined” patents. Once the new Act comes into force, all patents will be subject to substantive examination. This dramatic change has been somehow softened by the maintenance of utility models, which will become the natural alternative to former “non-examined” patents. However, certain inventions are not eligible for protection under the form of a utility model, such as processes, inventions on biological matter, and pharmaceutical substances and compositions.

The Spanish Government is now working on the completion of a “Royal Decree” which will approve the “Implementing Regulations” of the new Patents Act, the draft of which has received comments from the stakeholders concerned. For example, in late October, the “Consejo General del Poder Judicial” (“CGPJ”, the General Council for the Judiciary) published a rather exhaustive report quite rightly criticizing some provisions of the draft, such as the introduction of substantive procedural norms that could constrain the activities of civil courts. For example, article 40, which states that when an opposition is pending before the Spanish Patent and Trademark Office, the Court dealing with a judicial process relating to the validity of the same patent will stay the proceedings if the parties so agree, or a party so requests with the consent of the other party. As highlighted by the CGPJ, the Implementing Regulations of a Patents Act do not appear to be the right place to insert provisions that may constrain the judicial function, let alone the fact that the provision at hand is clearly unnecessary.

Hopefully, the constructive comments received from the CGPJ and other stakeholders concerned will cause the rather good text of the new Patents Act to be followed by an equally good text for the Implementing Regulations, although some additional fine-tuning will still be required.

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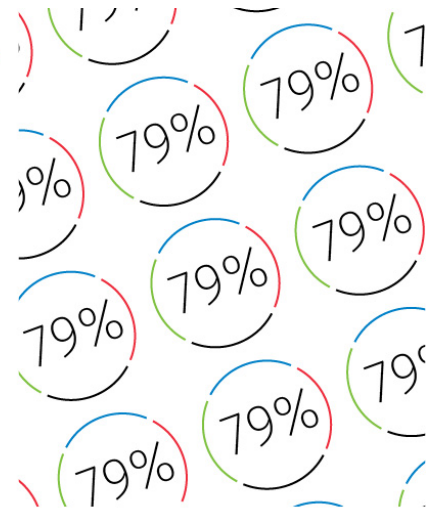
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