



Europe Guide

# INTELLECTUAL PROPERTY — PORTUGAL

## Overview

PORTUGAL: An Introduction to Portugal

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### I. Introduction

Whilst doing business in general, and of course also in Portugal, one must take into consideration *prima facie* the appropriate protection of intellectual property, i.e. the granting of IP rights that attribute to the holders the exclusive use and exploitation of a distinctive sign or an invention.

Portugal is part of all the major international treaties on intellectual property, notably concerning trademarks, patents, designs and copyright (e.g. the Paris Convention, Madrid agreement and protocol, PCT, EPC, TRIPS, Enforcement Directive, EU trademark and design regulations, Berne Convention). This means that the prosecution of those rights but also the respective enforcement are duly assured under those international treaties and national IP law.

In this sense, doing business in Portugal is very safe from the perspective of the existence of an efficient IP system which guarantees a loyal and fair competition amongst the companies.

The market conditions in Portugal are also stable for a proficient protection and enforcement of IP rights. Trademarks, patents and copyright represent a large percentage of the market environment, with particular relevance for pharmaceutical patents.

### II. The mandatory arbitration system for the enforcement of pharmaceutical patents

There is a unique situation in Portugal (at least concerning the EU) regarding the enforcement of pharmaceutical patents which deserves particular attention here.

In late 2011, a special law – Law 62/2011, of 12th December – established a mandatory arbitration system related to pharmaceutical patents and generic medicines which basically determined that upon the publication of a generic product marketing authorisation (with the correspondent indication of a reference medicine), the patent holders must initiate an arbitration action within a period of 30 days of the enforcement of their patent rights, otherwise they may be unable, or even barred, to enforce the same rights at a later stage.

This law created a massive patent litigation de facto situation in Portugal which, at least in the EU, is a singular case.

Patent holders and generic companies are well aware of this landscape and a significant number of arbitral actions are pending and continuously being initiated, although hundreds of settlement agreements were concluded between those parties following the initiation of those mandatory proceedings.

Despite this unusual enforcement system, the stakeholders have rapidly adjusted their economic strategies in Portugal and business is running without any major concerns.

### **III. Developments and trends**

Apart from the aforementioned exception in relation to the enforcement of pharmaceutical patents in mandatory arbitration actions, in Portugal there is an Intellectual Property Court which is responsible for the enforcement of all IP rights, including copyright and also actions based on unfair competition.

This development – in terms of an existing IP specialised court – is one important aspect for the companies' strategies in doing business in Portugal, as the protection and enforcement of IP rights are well-established.

As regards the tangible trends, copyright, trade secrets, technology transfer, software implemented inventions and nanotechnology matters are some of the hot topics in this business, which continue to resonate in Portugal's IP scene.

There are exciting expectations of the national transposition of the Trade Secrets Directive, notably regarding the new and effective opportunities on the level of their enforcement. Also, stakeholders are keen to see developments on the revision of the Enforcement Directive.

Nonetheless, the most important matter is still the agreement on the Unified Patent Court, already ratified by the Portuguese State. Despite BREXIT, the UPC will apparently start operating in late 2017 and there are a significant number of issues and concerns as regards the practical consequences derived from that court, notably in the national business of SMEs.

In fact, the majority of stakeholders believe that the UPC will not be favourable to SMEs' business strategies and financial interests, and the discussions on these matters are ongoing.

Another hot topic is the impact of the UPC on the mandatory arbitration system currently in place in Portugal.

### **IV. Conclusions / General Remarks**

- The economic conditions in Portugal are stable and the IP system is functioning normally without any major concerns.
- Despite the recent financial recession, the business climate is quite positive with significant developments in the real estate, technology and tourism sectors.
- The legal market in Portugal is very sophisticated and is definitely prepared and used to dealing with all the matters related to the prosecution and enforcement of IP rights.
- Portugal is a safe country for doing business, following on from previous precautions regarding intellectual property.
- There is a unique, mandatory arbitration system regarding the enforcement of pharmaceutical patents in relation to generic medicines; the stakeholders have rapidly adjusted their economic strategies in Portugal to that system and business is running without difficulties.
- Copyright, trade secrets, technology transfer, software implemented inventions and nanotechnology matters are some of the hot topics in this business, with the necessary implications in the IP landscape in Portugal.
- There are exciting expectations of the national transposition of the Trade Secrets Directive, notably regarding the new and effective opportunities on the level of their enforcement.
- Stakeholders are also keen to see developments on the revision of the Enforcement Directive.
- The most important matter is still the agreement on the Unified Patent Court, already ratified by the Portuguese State, namely the issues and concerns as regards the practical consequences derived from that court, notably in the national business of SMEs.

Source: <http://www.chambersandpartners.com/174/34/editorial/7/1>