

PORTUGAL: An Introduction to Intellectual Property

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Portugal – Overview – Intellectual Property

I. Economic conditions

The financial and economic situation in Portugal is quite stable, as recognised by European economic and political authorities.

Both national and foreign companies are continuing to invest in Portugal, with special emphasis on the technology, real estate and tourism sectors.

The Portuguese market provides stable conditions for the proficient protection and enforcement of IP rights. Patents, trade marks, designs and copyright represent a large percentage of the IP legal activities, with pharmaceutical patents being of particular relevance.

The IP assets from companies are still growing and the level of activity of law firms with IP departments, notably on provision of legal advice and enforcement of IP rights, is very reasonable.

There are no relevant economic conditions negatively affecting IP clients and the legal profession.

II. New legislation

The mandatory arbitration system, related to the enforcement of pharmaceutical patents against generic medicines, still exists, however the Portuguese Government intends to change this situation with a possible alternative resort to the State Court (the Intellectual Property Court).

The Industrial Property Code is under revision and the upcoming new legislation will change some legal provisions on IP rights, as well as conforming the national law with EU Directive 2015/2436 – relating to the reformulation and harmonisation of the trade mark law – and Directive 2016/943 – relating to trade secrets. These two new legal regimes will certainly impact IP clients, notably regarding the changes to trade mark prosecution and trade secrets legislation. In fact, the new set of rules on trade marks will create new opportunities for the protection of trade marks and the protection and enforcement of trade secrets. Consequently, there is a real expectation for new legal activities in Portugal on the advice and enforcement of trade marks and trade secrets.

III. Trends

Regarding the major IP trends in Portugal, they are related to the enforcement of implemented inventions and copyright. Other hot topics of note are those regarding trade secrets, technology transfer, software, nanotechnology and artificial intelligence.

The agreement on the Unified Patent Court, already ratified by the Portuguese State, is still one of the most discussed matters, particularly with regards to its possible impact on the national economy and business, and also on the legal profession.

IV. Opportunities and difficulties

The most important expected opportunities for IP clients and legal professionals arise out of the new set of rules on trade mark prosecution and the protection and enforcement of trade secrets, following the transposition of EU Directives to Portuguese law.

The main probable difficulties for the clients and legal professionals are in the possible change of the law on the mandatory arbitration system, if the enforcement of pharmaceutical patent rights is executed before the State Court (the IP Court). There are concerns that this Court will not necessarily have the capacity to deal with hundreds of patent cases, thus making an effective enforcement of those patent rights in Portugal very difficult.

Another expected difficulty for clients (particularly Portuguese SMEs) and legal professionals is the possible entering into force of the Unified Patent Court. There may be problems due to clients (such as SMEs) not possessing the financial capacity to dispute patent rights in this legal regime.

V. Conclusions

- The financial and economic situation in Portugal is fairly positive and there are no relevant economic conditions negatively affecting IP clients and the legal profession.
- The Industrial Property Code is under revision and, apart from changes in some legal provisions on IP rights, the new legislation will come into line with EU Directives on the reformulation and harmonisation of trade mark law and on trade secrets.
- There will be new opportunities for the protection of trade marks and the protection and enforcement of trade secrets.
- The major IP trends in Portugal are with respect to the enforcement of implemented inventions and copyright. Trade secrets, technology transfer, software, nanotechnology and artificial intelligence are also relevant trends.
- The main expected difficulties for IP clients and legal professionals are in the possible change of the law regarding the mandatory arbitration system for pharmaceutical patents and in the possible entering into force of the Unified Patent Court.