

PORTUGAL: An Introduction to Intellectual Property

Portugal – Overview – Intellectual Property

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I. Economic conditions

The financial and economic situation in Portugal is still 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 related to the enforcement of pharmaceutical patents against generic medicines was recently substituted by a voluntary arbitration system, which implies the agreement of the parties on this route. If no agreement is reached on this, the patent holders have 30 days to enforce the patent rights before the Intellectual Property Court by means of a full statement of case.

The new Industrial Property Code was approved and published. EU Directive 2015/2436 – relating to the reformulation and harmonisation of the trade mark law – and Directive 2016/943 – relating to trade secrets – were transposed to the national law in said Code.

III. Trends

Regarding the major IP trends in Portugal, they are still related to the enforcement of implemented inventions and copyright. Other important topics 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 major opportunities derive from the aforementioned transposition of EU Directive 2015/2436 and Directive 2016/943 into Portuguese law. Particularly, the new trade secrets regime creates broader chances to protect and enforce trade secrets in Portugal.

The enforcement of pharmaceutical patents before the IP Court in a 30-day period after the publication of marketing authorisations applications for generic medicines will certainly generate serious difficulties for the effective enforcement of those patents.

Another expected difficulty for clients (particularly Portuguese SMEs) and legal professionals is the possible entering into force of the agreement on the Unified Patent Court, as those companies may not have the financial capacity to dispute patent rights under this new regime.

V. Conclusions

- The financial and economic situation in Portugal is still positive and there are no relevant economic conditions negatively affecting IP clients and the legal profession.
- The new Industrial Property Code, which transposed EU Directive 2015/2436 and Directive 2016/943 into the national law, may increase better conditions for the protection and enforcement of IP rights and trade secrets.
- The key IP trends in Portugal relate 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 likely to occur in the enforcement of pharmaceutical patents before the Intellectual Property Court in a very short deadline and in the possible entering into force of the agreement on the Unified Patent Court.

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