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PORTUGAL: An Introduction to Intellectual Property

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* **Current economic conditions affecting clients or the legal profession.**

The economy seems to have grown at a moderate pace, mainly driven by domestic demand and by development in the services and real estate sectors. Both national and foreign companies continue to invest in Portugal. Tourism in particular has been playing an important role in the Portuguese economy.

In this context, the awareness of the role of Intellectual Property assets in a company's progress and their competitive advantage in the market also seems to be growing.

These factors lead to a higher demand of legal services in all Intellectual Property domains, particularly in relation to trademarks, patents and designs.

* **The level of activity, trends and developments in your area.**

According to the official data disclosed by the Portuguese Institute of Industrial Property (INPI), trademarks are still the most registered industrial property right and the number of applications for EU trademarks is significantly increasing.

Moreover, the number of European Patent validation requests and EU design applications seems to be winning over national registration applications.

In the field of pharmaceutical patents, special attention must be given to the patent enforcement system in force in Portugal. This unique pharmaceutical patent enforcement system, which was significantly amended, has been playing – and still plays – a decisive role in the patent and even Intellectual Property litigation landscape in Portugal, as it has provided, and is expected to continue to provide, a stage for the most relevant patent case law in Portugal.

There has been also a significant increase of infringement of Intellectual Property rights on the internet and social networks, which is expected to keep growing.

Other hot topics in Portugal in relation to intellectual property are related to copyright and related rights, artificial intelligence, computer-implemented inventions, fashion law, trade secrets and Brexit.

* **New legislation that will have an effect on clients.**

Significant changes entered into force in the Portuguese legal framework this year, including major changes to Law 62/2011 (disputes over patent rights involving reference medicinal products and generic medicinal products) and the approval of a new Industrial Property Code (IPC).

As expected, the new IPC transposed to the national legal framework the content of EU Directive 2015/2436, relating to trademarks, as well as EU Directive 2016/943, on the protection of undisclosed know-how and business information (trade

secrets) against their unlawful acquisition, use and disclosure.

This new Code aims at being more efficient and reliable, in terms of swiftness of the administrative procedures, predictability and costs. It also aims at creating better conditions for the protection and enforcement of Intellectual Property rights and trade secrets.

INPI has now competence to assess and decide, not only on the registration of trademark rights and opposition proceedings related to any national trademark registration, but also the requests for the declaration of nullity or annulment of said registrations.

Furthermore, the amendments to Law 62/2011 came also into force (on 1 July 2019). This Law originally established a mandatory arbitration regime for the settlement of disputes arising from industrial property rights whenever reference medicinal products (corresponding to patent rights) and generic medicinal products were at stake. After almost 7 years in force, the pharmaceutical patent special enforcement system was maintained but the nature of the arbitration changed from mandatory to voluntary. In case the parties do not agree to submit the dispute to voluntary arbitration, it is now established that the enforcement action shall be brought before the Intellectual Property Court.

*** Potential hurdles or difficulties faced by clients and how these can be overcome.**

The Intellectual Property Court (IPC), with jurisdiction at a national level, has been operating in Portugal since 30 March 2012 and it is competent to handle all actions concerning industrial property in all forms as provided in law. This Court would certainly need to be endowed with additional support, notably in the number of judges allocated to the Court, their specialisation in all fields of Intellectual Property law and the logistical means for a better and more expeditious delivery of justice.

The special legal system for enforcement of pharmaceutical patent rights still raises many challenges (new and old ones). In this new scenario, arbitration is no longer an expectable way to generally enforce pharmaceutical patent rights against generics and is likely that in the upcoming years these changes will strongly impact on the current patent litigation landscape and on the Intellectual Property Court's respective role.

Moreover, the future of the Unified Patent Court (UPC) System is still uncertain. However, since the UPC is expected to have exclusive competence in respect of European patents and European patents with unitary effect, as it is designed, future developments in this field may have also significant impact on Intellectual Property protection and enforcement in Portugal. It may also significantly affect clients, in particular, Portuguese individuals and small and medium companies, without financial resources to dispute patent rights in the new system.

In addition to the growing problem of counterfeiting, which is common to many economies, internet infringements are still increasing, which encompasses growing challenges. Copyright, technology transfer, emerging technologies and software protection, namely in the field of computer-implemented inventions, are also likely to encompass a great deal of development, which will be accompanied by corresponding litigation.

The new IPC foresees new criminal and civil offences and new means of reaction against infringement, which, in principle, confer greater protection to industrial property rights owners. It will be interesting to see whether those measures will grant more effective protection to industrial property rights and trade secret owners, in practice.

Moreover, the approval of the Directive on copyright in the Digital Single Market, aimed at harmonising copyright law across the EU and adapting the legal framework to the digital, will certainly raise many challenges in relation to its implementation on a national level.

By Marta Alves Vieira

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