

PORTUGAL: An Introduction to Intellectual Property

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Portugal: Intellectual Property

Current economic conditions affecting clients or the legal profession

By the end of 2019, the Portuguese economy was growing at a consistent pace mainly driven by the domestic demand and by development in the services and real estate sectors. In particular, tourism was playing an important role in the Portuguese economy. This favourable background was enabling a growing awareness of the importance of intellectual property assets to a company's progress and its competitive advantage in the market.

However, the Covid-19 pandemic has severely affected the course of events with an unescapable impact on the Portuguese economy. It is still too early to fully assess how this will affect clients and the legal profession, but some impact on the search for intellectual property related services can be expected.

Level of activity, trends and developments

According to the official data disclosed by the Portuguese Institute of Industrial Property (INPI), it is already possible to see some uncertainty in the number of applications for registration of industrial property rights due to the Covid-19 pandemic.

Trademarks are still the most registered industrial property right. However, there has been a decrease in the demand for services in this field, not only in relation to national registrations but also in relation to the registration of European Union (EU) trademarks and international trademarks under the Madrid International Trademark System. The number of national patent, utility model and supplementary protection certificate registration applications seems to be growing though. Also design registrations seem not to be affected so far.

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 and entered into force in 2019) has been playing – and still plays – a decisive role in patent litigation and even in the 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 laws in Portugal.

There has been also a significant increase in the 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 issues such as artificial intelligence, computer-implemented inventions, fashion law, data protection, trade secrets and Brexit.

New legislation that will have an effect on clients

No noteworthy changes in law entered into force in Portugal in 2020. However, the 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), which entered into force in 2019, are still bringing a significant number of challenges to clients and intellectual property professionals.

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

1. The Intellectual Property Court, with jurisdiction at a national level, has been operating in Portugal since 30 March 2012 and is competent to handle all actions concerning intellectual property in all forms as provided in law. This Court certainly needs 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.

2. The special legal system for enforcement of pharmaceutical patent rights still raises many challenges (new and old ones). Arbitration is no longer a way to generally enforce pharmaceutical patent rights against generics (contrary to what happened under the former version of Law 62/2011) and it is likely that in the upcoming years these changes will strongly impact the current patent litigation landscape and the Intellectual Property Court's respective role.

3. 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 also have a significant impact on intellectual property protection and enforcement in Portugal. It may also significantly affect clients, leaving Portuguese individuals and small and medium-sized companies without the financial resources to dispute patent rights under the new system.

4. The transition period relating to the UK's exit from the EU has ended, and from 1 January 2021 all existing EU Trademarks, Registered Community Designs and International Registrations designating the EU no longer cover the UK. There are now new UK rights which will be treated as if they had been applied for and registered under UK law. Therefore, Brexit necessarily raises new challenges for clients in Portugal (common to all the remaining EU Member States). Special guidance is required from intellectual property professionals in relation to the new UK rights, the possibility of opting out, how to renew existing rights and how to define a global strategy in relation to the protection of intellectual property rights in Europe, amongst other questions.

5. New forms of infringement of intellectual property rights encompass growing challenges. In addition to the growing problem of counterfeiting, which is common to many economies, internet infringements are still increasing.

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 upon industrial property rights owners. It will be interesting to see whether these measures will grant a more effective protection to industrial property rights and trade secret owners in practice.

6. 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 realm, will certainly raise many challenges in relation to its implementation on a national level.

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