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PORTUGAL: An Introduction to Intellectual Property

Chambers Europe 2022: Practice Area Overview

Portugal: Intellectual Property *

Current economic conditions affecting clients or the legal profession.

The COVID-19 pandemic did not leave the Portuguese economy nor that of many other countries unscathed.

The recovery and growth of the Portuguese economy hinges on many political options, as well as on the effective implementation of the Recovery and Resilience Plan and on the efficient management of the EU funds.

Investing in innovation will certainly be key for Portuguese companies to become and remain competitive, which means that awareness needs to be further raised regarding the importance of intellectual property, actions must be taken to better protect innovation and creativity, and access to more effective ways to enforce intellectual property rights ensured.

The government and the relevant public entities are tasked with achieving these goals, but professionals working in the intellectual property field also have an important role to play. *

The level of activity, trends and developments in this area.

At this point, there is a noticeably growing perception of the importance of protecting intellectual property. Individuals and companies are increasingly realising that a strong intellectual property portfolio and strategy may be important for a successful business and a competitive advantage in the market.

According to the official data disclosed by the Portuguese Institute of Industrial Property (INPI) for 2021 (until October), trademarks are still the most registered industrial property right in Portugal.

In 2020, we had seen a decrease in applications to register trademarks and other distinctive signs of commerce, but 2021 saw a significant increase of registration applications and grants, which is a very positive sign.

The same cannot be said of national design registrations, whose number of applications and grants decreased. EU design registration applications increased in turn.

While the fight against the COVID-19 pandemic resulted in the development of new products and technologies worldwide, the number of national patent applications in Portugal dropped significantly when compared to 2020. The number of European patent validation requests also dropped somewhat. In contrast, there was a slight increase in the number of both Patent Cooperation Treaty (PTC) and European patent applications, with the INPI as the Receiving Office, which may indicate that Portuguese companies are going global.

The infringement of Intellectual Property rights on the internet and social media is on the rise and expected to keep growing.

Copyright and related rights, artificial intelligence, computer-implemented inventions, data protection, and trade secrets are other hot topics to keep an eye out for in Portugal. *

New legislation that will have an effect on clients.

There were no changes to the most important intellectual property legal instruments in 2021.

But as concerns the protection of copyright and related rights in Portugal, we should highlight Law 82/2021, of 30 November 2021, which entered into force on 29 January 2022 and grants the Inspectorate General for Cultural Activities (IGAC) significant powers of supervision, control, removal and prevention of access in the digital environment to protected content. This law may have a strong impact over those responsible for making available content protected by copyright and related rights and other intermediary service providers as they will now face new obligations. *

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

The Intellectual Property Court has been operating in Portugal since 30 March 2012 and has national jurisdiction to handle any form of action concerning intellectual property, pursuant to the law. This Court would certainly require more resources, like further investment in the panel of judges and in their specialisation in all fields of intellectual property law, and logistical means for a better delivery of justice.

The special legal system for enforcement of pharmaceutical patent rights is still posing many challenges. Arbitration has been the stage for a significant development of patent case law in Portugal. However, arbitration is no longer a way to generally enforce pharmaceutical patent rights against generic companies (contrary to what happened under the former version of Law 62/2011). The Intellectual Property Court is currently handling these cases. But the parties are still facing many procedural hurdles before this Court and many procedural issues are still being

debated in lower and appellate courts. Hopefully, the Intellectual Property Court will also play a relevant role in patent litigation in a near future.

The Unified Patent Court (UPC) System is expected to come into effect, although there are still many hurdles to overcome. Since the UPC is expected to have exclusive jurisdiction over European patents and European patents with unitary effect, it may have a major impact on patent protection and enforcement in Europe. It may also significantly affect Portuguese individuals and small and medium-sized companies without financial resources to dispute patent rights in the new system.

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

Non-traditional trademarks, copyright and related rights, technology transfer, emerging technologies such as artificial intelligence and software protection, namely in the field of computer-implemented inventions, are also likely to entail a great deal of development, which will result in corresponding litigation.

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 implementation challenges at a national level.

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