



NEW EU CUSTOMS REGULATION

The European Parliament has just passed a new Customs Regulation (608/2013) that will replace the current Regulation 1353/2003 and will become effective on January 1st 2014. In a certain way, it is the first step in the reshaping of the European trademarks landscape that the European Commission is currently discussing under the so-called TM Legislative Package.

The new Regulation expands the powers of Custom Authorities so that they will be able to control and detain counterfeit goods at the borders of the first trading area of the world. The list of protected IP rights has been broadened as well to trade names, topographies of semiconductor products, utility models, devices to circumvent technological measures and non-agricultural geographical indications.

A simplified procedure for the destruction of goods infringing IPR has also been introduced, together with a specific procedure for seizing and destroying small quantities of counterfeits.

EUROPE LEADS GLOBAL INNOVATION

The latest edition of the *World Innovation Index* prepared by the World Intellectual Property Organization (WIPO), Cornell University (USA) and INSEAD (Institut Européen d'Administration des Affaires) confirms the clear leadership of the old continent in the ranking of the world's most innovative countries. Switzerland, Sweden, United Kingdom and The Netherlands account for the first four positions of the scale, followed only by the United States in the fifth place. Germany ranks 15th and Spain 26th.

The study analyzes in detail the dynamics of the innovation process worldwide (142 countries), taking into consideration up to 84 indicators related to innovation. One of the clearest conclusions drawn from the study is the effect caused by reaching the top spots. Accordingly, once a certain threshold in the innovative effort has been crossed, a leading position attracts further investment and consolidation in the Global Innovation Index.



EIC-2013

SESSION ON THE UNITARY PATENT

More than fifty people attended the session "Unitary patent. A new challenge for innovative companies" organized by Oficina Ponti, SLP and the Industrial Engineers Association of Catalonia (EIC) on 6 June 2013.

Our EPAs Josep Mumbrú and Pablo Blanch discussed the main points related to patent protection, the unitary patent and answered the participants' questions.

SPANISH IP ATTORNEYS EXAMINATION COURSE

Between July 16 and September 5, the practical modules of the course that the Spanish Chartered IP Attorneys Association (COAPI) organizes this year for those candidates sitting the official examination, are being held at Ponti's premises in Barcelona.

NEW SUCCESSFUL EQE CANDIDATE AT PONTI

Mercè Vidal, MSc in Agricultural Engineering, has happily and deservedly passed the examination to become a qualified European Patent Attorney (EPA). So far, Mercè is the only EPA specializing in this sector in Spain.

AGENDA / EVENTS:

02-05.10.2013

FICPI Forum-Sorrento, Italy

19-22.10.2013

Asian Patent Attorneys Association APAA-Hanoi, Vietnam

THE FUTURE WITHOUT GENE PATENTS



Rafael Moreno
European Patent Attorney

Last June the Supreme Court of the United States of America ruled that naturally occurring genes are no longer patentable. This decision was taken in view of the patents held by Myriad Genetics which claimed two genes associated with ovarian and breast cancer. Although this decision might be considered a victory by those against eventual patent monopolies, the truth is that the consequences are still unforeseeable.

On the one hand, opponents to this type of patents argue that a natural product such as DNA cannot be subject to a monopoly by a single company. Nobody can be the "owner" of the 20,000 genes comprising the human genome, even if isolated. According to a recent study carried out by Cornell University, around 41% of the human genome is covered by 40,000 patents. This monopoly can make it difficult for others to have access, for example in the case of Myriad Genetics, to alternative tests based on these DNA sequences. Therefore, by not allowing patents covering natural genes, the chances of having several marketed tests at a lower price are increased. The instant case is even more relevant after the announcement made by Angelina Jolie that she had been tested positive to one of the genes employed in these tests. Knowing that said tests cost around 2,500 euros, an obvious question then arises: Can everybody afford these tests? Will they be now available to more potential patients? Apparently it seems so, if more companies get involved in developing such tests. Moreover, synthetic genetic material such as cDNA (complementary DNA) and many other biotech products, such as proteins, antibodies, enzymes, microorganisms, etc. can still be patented and efforts could be made in this sense.

Nevertheless, there is the other side of the story. It is well known that Myriad Genetics and many other biotech companies invest lots of money in research and development which, in most of the cases, involve many people working on a particular issue along with time consuming researches. In order to compensate the investment in equipment, researchers and time, patent applications are usually a good way for recovering such high costs. Will companies like Myriad Genetics invest money in projects that can be helpful for humanity without an economic compensation?

Another question to bear in mind is that national patent laws, although based on identical patentability requirements (novelty, inventive step and industrial applicability) are each applied with certain differences even for objects of invention which can be protected by a patent. A well known example are the methods of treatment, which are patentable according to US patent law, but not under the European Patent Convention, where some drafting skills are needed to circumvent the situation. This decision about genes can be followed (or not) by other countries, and a worldwide scenario in which some countries will still allow to grant patent applications covering genes is perfectly possible. Accordingly, we may come across an opposite situation to "the methods of treatment". In this sense, isolated genes whose function is well known can still be patented under the European Patent Convention.

Taking all the above into consideration, it seems that the USPTO has tried to satisfy those against the idea that natural products cannot be patented, although many biotech products are still available as potential inventions. Note that, according to the *EPO statistics*, biotechnology is one of the technical fields with more applications, namely 5,309 European Patent applications in 2012. Most of them are focused on biotechnological products, including methods for obtaining them and their different uses, which are related to the prevention or treatment of diseases. Should this exception to patentability be extended to other biotech products, this could lead to a dangerous situation, since many biotech companies could reconsider their business model based on research with economic compensation through patents

Accordingly and to sum up, even if this decision can be regarded as ethically correct because the essence of our nature cannot be in the hands of just a few people in the world, it cannot be denied that the patent system has helped to increase the research and development of many of the advances we currently enjoy for the treatment and prevention of diseases. And not only in this area, but in many other technical fields in which discoveries and inventions protected by patents have contributed to a better daily life.

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