



The End of Patent Linkage in Portugal?

The Government approved a draft of a Law establishing a new system for solving disputes involving industrial property rights, medicines of reference and generic medicines.

It is clearly stated that a Marketing Authorization (MA) has the single purpose of assessing the quality, safety, and efficacy of the medicine and therefore a request for a MA should not be refused, changed, suspended or revoked due to the pre-existence of any IP rights.

According to this proposed draft, a request for reimbursement or a request for retail price approval should not be refused due to the pre-existence of any IP rights. It is further added that the approval of reimbursement or retail prices do not harm patents or SPCs.

The Government also intends that any IP disputes related with medicines of reference and generic medicines will compulsorily become subject to arbitration. These proceedings will not aim to suspend or cancel MAs: such proceedings consist of regular patent enforcement proceedings where Infarmed is not a party, only the patentee and MA applicant are.

Once the Law is enacted, Infarmed will publish online some information about all MAs applications for generic medicines (name of the applicant, application date, substance, dosage and pharmaceutical form and medicines of reference). Within 15 days after the publication of the MA application, the

patentee should initiate the arbitration infringement procedure. The applicant for the MA should respond within 15 days. An appeal from the arbitration Court decision is possible to the second instance civil Court. The filing of such appeal will not suspend the decision from the arbitration Court.

A general rule is also established that any document which is submitted to Infarmed either by the MA applicant or by the EMA is presumed to be confidential.

By enacting this Law, the Government intends that it will be no longer possible for patentees to cancel or suspend MAs, retail prices or reimbursement decisions for generics medicines.

The Administrative Courts will no longer be competent for litigation related with IP rights. Any possible disputes related with medicines of reference and generics will become compulsorily subject to arbitration. Apparently, not even the civil Courts or the commercial Courts will be handling any patent enforcement matters related with medicines of reference and generics.

The Government seems to be aiming for getting the possible issues related with patent infringement solved before the MA is granted.

The final version of this Law is currently under discussion at the parliament.

Will this be the end of "patent linkage" in Portugal?

BMA wins the Corporate INTL' Global Award 2011 for "Patents Law Firm of the Year in Portugal".

We are pleased and proud to announce that, for the second consecutive year, BMA has been awarded the "Patents Law Firm of the Year in Portugal" by the magazine Corporate INTL' - Global Awards 2011.

This award recognizes the high level of expertise we offer on a daily basis to a wide range of clients who face a multitude of challenges when dealing with patent matters.



"First Electronic Filing in Portugal of Sound Mark with electronic audio file"

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First Electronic Filing in Portugal of Sound Mark with electronic audio file

For the first time in Portugal a sound trademark with an integrated electronic audio file was applied for. It is Portuguese trademark application No. 480308.



The electronic audio file can be accessed on the website of the Portuguese Industrial Property Office (INPI) and also on all digital certificates of registration so that anyone who accesses these digital files may have access to the melody of this trademark. One should expect that this tool will facilitate the enforcement of sound marks in Portugal.

Portugal in the top 10 list of countries with larger Customs seizures of counterfeit products

According to the Customs and IPR Report 2010 referring to all the activities held by Customs authorities in what concerns the enforcement of Intellectual Property Rights, Portugal appears in 9th place among the countries with more seizures of counterfeit and pirated goods in 2010.

Still according to the same report, 68% of all the seized goods come from China, and the brand most counterfeited was LOUIS VUITTON.

NIMED vs DRENIMED PTO refuses Portuguese trademark application

No. 479.866

DRENIMED

Helsinn Healthcare, S.A. filed an opposition against Portuguese trademark application No. 479.866 DRENIMED, for considering that this trademark is an imitation of its previously registered trademark NIMED, to cover services related to pharmaceutical products, in class 5 of the Nice Classification.

Furthermore, Helsinn Healthcare, S.A. invoked the well known character of its NIMED trademark to demonstrate the reputation that this trademark has achieved among the consumers' choices regarding the type of products concerned and their purpose.

The Portuguese Patent and Trademark Office (PTO) ruled in favor of Helsinn Healthcare, S.A. and delivered a decision of refusal, which considered that the trademark application for "DRENIMED" is a clear imitation of Portuguese trademark No.231.830 "NIMED" and also that the products covered by both trademarks are completely identical, as they circulate through the same channels and may be made available to the public in direct competition.

Additionally, the PTO confirmed the existence of strong graphic similarities between "NIMED" and "DRENIMED", which will make them hardly distinguishable and this may easily cause a risk of association in the mind of consumers.

Lastly, the PTO reached the conclusion that the legal concept of imitation was fulfilled and that the grant of the trademark registration for DRENIMED would lead to unfair competition.