

Conselho Directivo Only by email

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Sua referência:

Sua comunicação de:

Nossa referência:

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SUBJECT:

Circular C. 8481

In reference to the above-mentioned Circular related to the invitation to the SCP Member States to submit information on their experiences and case studies on the effectiveness of exceptions and limitations to patent rights, I have the pleasure to inform you that:

The Portuguese legislation (Industrial Property Code - Article 102 - Limitation of Rights Conferred by a Patent) defines that the rights conferred by a patent do not extend to:

- a) Acts performed in private and not for commercial purposes;
- b) The preparation of medicinal products performed at the time and for individual cases on the basis of a doctor's prescription at pharmaceutical laboratories or acts relating to the medicinal products prepared in this way;
- c) Acts performed exclusively for trial or experimental purposes, including experiments for the preparation of the administrative procedures required for the approval of products by the competent authorities, though industrial or commercial exploitation of those products may not start before the expiration of the relevant patent;
- d) Use on board ships from other countries belonging to the Union or WTO of a patented invention in the hull, machinery, rigging, gear or other accessories of the ship, if they temporarily or accidentally enter the waters of the country, provided that said invention is used exclusively to serve the ship's needs;

- e) The use of a patented invention in the construction or operation of aircraft or land vehicles of other countries belonging to the Union or WTO or their accessories, if they temporarily or accidentally enter national territory;
- f) The acts set forth in Article 27 of the Convention of 7 December 1944 concerning international civil aviation if they have regard to aircraft from another state to which the provisions of said article apply.

Concerning point c) of this Article, Portugal can give as example the creation of the Law 62/2011, of 12 December, which creates a composition scheme for disputes concerning industrial property rights, relating to reference medicines and generic drugs, including injunctive procedures. After this legislation, companies have to solve their disputes by mandatory arbitration, in arbitration courts.

After the submission of a marketing authorization by a generic company, the patent proprietor has 30 days to present an opposition before the arbitration court; after the communication of the opposition, the generic company has 30 days to reply. The arbitration decision may be appealed to the competent court of law.

The law clarifies that acts concerning the granting of marketing authorization, selling price to the public and reimbursement of medicines are not contrary to the rights relating to patents or supplementary protection certificates, and the law makes clear that marketing authorizations applications, selling price to the public and reimbursement of medicines cannot be rejected due to the existence of industrial property rights.

The referred Circular also invited Member States to send updated information on certain aspects of the applicable national and regional patent law.

In this regard, I have the pleasure to inform you that INPI PT, in answer to the Circular C. PCT 8436, informed that the Portuguese legislation (Industrial Property code) has not changed, so the information related with prior art, novelty, inventive step, grace period, sufficiency of disclosure, exclusions from patentable subject matter and exceptions and limitations of the rights available at the website was updated.



Conselho Directivo In that answer, INPI PT took the opportunity to make small amendments to the text concerning grace period, exclusions from patentable subject matter, and exceptions and limitations of the rights, in accordance to the English translation of our Industrial Property Code.

Yours sincerely,

Marco Dinis

Member of the Board

