

A SUBTLE PUSH TOWARDS IP ARBITRATION - ABBC

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César Bessa Monteiro

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The Portuguese Government's attempts to promote the use of mediation and arbitration in intellectual and industrial property (IP) disputes are being driven by the continuing inefficiency of the country's Commercial Courts, says César Bessa Monteiro, Head of IP at Lisbon's ABBC.

'Even a preliminary injunction in a patent infringement case, for example, can take between eight months to one year to be decided in the Courts.

Consequently it is the aim of addressing such delays that prompted the Government to last year agree to establish dedicated IP courts and the opening of specialist arbitration courts – Arbitrare – that will also hear domain name and corporate name disputes.'

Since September 2009 parties in an IP dispute can also agree to assign Arbitrare jurisdiction to

decide on appeals filed from Portugal's National Institute of Industrial Property. Nonetheless hurdles remain before such initiatives can be called a success, says Bessa Monteiro.

'There is no tradition of mediation and arbitration in IP disputes in Portugal and I am not aware of any important case that has to-date been referred by the parties to arbitration, not even to the dedicated Arbitration Court of the Portuguese Association of Intellectual Property Law (APDI).'

Los intentos del gobierno portugués para promocionar el uso de la mediación y el arbitraje en las disputas de IP están siendo forzadas por la ineficacia permanente de los tribunales del país, dice César Bessa Monteiro de ABBC.

This is primarily because of concerns surrounding the perceived suitability of major patent and trademark disputes to arbitration, he believes, as well as the inevitable reluctance of alleged infringers to submit to the process.

'But measures are being taken to change this and the establishment of Arbitrare may constitute a significant step – its constitution is based on the WIPO Arbitration Court and the Arbitration Court of Prague on EU Domain name disputes, it operates with a single arbitrator, the procedure is executed online, a decision must be reached within 10 days and the costs are significantly lower than those paid to the Courts,' he says.

Success may ultimately however depend on lawyers own trust of mediation and arbitration, believes Bessa Monteiro, as well as the ability of the institutions to deliver a valid service.

'At the end of the day it is the lawyers who will induce their clients to accept such processes, and they will clearly be influenced by the credibility, prestige and respect of the people running the relevant bodies.'