

IP LITIGATION ON THE RISE - GRAU & ANGULO

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Since Spain established three dedicated Courts of Appeal to hear IP cases, the market has never been busier

Una década después de la instauración de los tres Tribunales de Apelación dedicados a casos de PI y el mercado sigue en plena efervescencia. Las demandas y litigios en Propiedad Intelectual siguen creciendo, especialmente en casos vinculados a patentes, marcas y derechos de autor, dice Alejandro Angulo de Grau & Angulo.

“IP litigation has continued to increase in recent years and there are plenty of cases involving patents, trademarks and copyrights going before the courts,” says Alejandro Angulo, Managing Partner at IP firm Grau & Angulo in Barcelona. “The economic turndown has made companies intent on enforcing their IP rights in order to retain market share.”

Angulo points to the high technology, electronics and pharmaceutical sectors as particularly active due to the high development costs and intense competition.

The point of such litigation has been for companies to prevent rivals from exploiting their IP rights, he adds.

Furthermore, in recent years, a greater emphasis is being put on getting damages. The levels of damages in IP were not

historically high, although this has changed as case law from the specialised Courts of Appeal has evolved.

As the judges in the specialist courts have a better understanding of the real costs of IP infringement, they have established better criteria for measuring damages. An alternative criteria is what the losing party would have had to pay to obtain a hypothetical licence to produce a product protected by the disputed IP, which has increased payouts.

This is having an effect on IP litigation. There is a greater need for specialised IP lawyers to handle cases, which in turn means the cost of litigation is increasing too, says Angulo. Whereas disputing parties would often follow the case to a final judgment, the appetite to settle cases out of court is also growing.

“The higher cost of bringing litigation and the higher awards of damages mean more defendants are assessing the risk of a case,” concludes Angulo. “In some cases, this has encouraged defendants to settle out of court rather than risk even higher costs should they lose.”