



## EXCO MEETING, CAPE TOWN 13 & 18 APRIL 2015

COUNTRY REPORT	
TITLE:	Country report for <i>PORTUGAL</i>
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TABLED TO:	FICPI delegates
PURPOSE:	For information and consideration
SNIPPET:	News from and activities of the FICPI national group in <i>Portugal</i> since the Barcelona ExCo in November 2014.

### SECTION A: ACTIVITIES OF FICPI ASSOCIATION/SECTION

The information supplied in Section A will remain confidential on FICPI's website after the ExCo (will require a password).

### SECTION B: CHANGES IN LAW

Information supplied under Sections B and C will be published on FICPI's website after the ExCo and will be available to the public.

#### B1. LEGISLATION

- Please provide details of any changes to IP legislation (patent, trade mark, design and other) in your country implemented or due to be implemented since you reported last in October 2014.  
*There were no changes in law neither are there any change foreseen.*

#### B2. MAJOR CASES

- Please provide brief details of any new case law in the field of patents, trademarks, design or other IP of general interest.

*Decision n. 123/2015 from the Constitutional Court declared unconstitutional the readings of Law 62/2011 in what concerns the deadline of 30 days, counted from the publication by the regulator of the application for a Marketing Authorization or register of the Marketing Authorization of a generic medicament, for an owner of a IP right to initiate the mandatory arbitration proceedings.*

#### B3. OFFICIAL PRACTICE

- Please provide details of any changes in official patent and trade mark office practice which would be of general interest to other members.

*Although IP Court has decided, in case 457/12.7YHLSB, concerning SPC 474, that the relevant date for the calculation of the duration of a SPC is the date of notification of the decision and not the date of decision itself, the Portuguese PTMO has decided not to follow said decision, position now supported by the referral to the CJEU of case C471/14 (Seattle Generics).*

#### B4. PROPOSALS FOR CHANGES

- Please provide details of any proposed changes in IP laws or practice and indicate if your National Association/Section is involved in providing comments to such changes.



Would it be of assistance to have input from the CET on any proposed changes?

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## SECTION C: OTHER INFORMATION

Please provide details of any other information pertaining to your country or region that would be of general interest to FICPI members and other IP practitioners browsing FICPI's website.

### C1. QUALIFICATION AND THE RIGHT TO REPRESENT CLIENTS BEFORE A COURT

1.1 Please describe the qualification process for becoming a patent attorney in your country/region.

An applicant for the quality of Official industrial property agent (AOPI) has to pass a written and an oral exam, elaborated by the PTMO and on the following matters:

- a) EPC;
- b) PCT;
- c) Paris Convention for the Protection of IP;
- d) Madrid Agreement and Madrid Protocol;
- e) Regulation (CE) n.º 6/2002 of the Council, concerning Community Designs;
- f) Regulation (CE) n.º 207/2009 of the Council on Community Trade Mark

The written exam is composed of five distinct parts:

- Drafting a patent application;
- Answer a substantive examination notification
- Filing an opposition
- Answer several questions on IP law (as cited above)
- Draft a note of an hypothetical appeal from a PTMO decision, to provide a lawyer with an AOPI insight.

A candidate will fail if he achieves less than 50% in any of the five written parts (all of them quoted to 100%).

1.2 Has the patent attorney qualification process changed in any way in the past 5 years?

No.

1.3 Does qualification as a patent attorney permit you any right of representation before any Court in your country?

No.

1.4 If so are there any special requirements or restrictions?

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1.5 Are qualified lawyers in your country permitted to work in the patent field without any further qualification?

Yes.

If so are there any restrictions on what they may do?

No.

If so, please describe those restrictions.

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1.6 Please describe what privilege attaches to patent attorney communications including any



restrictions.

[There is nothing in the law conferring privilege to patent and trademark attorney communications](#)

- 1.7 Please describe the qualification process for becoming a trade mark attorney in your country/region.

[There is no difference between patent and trademark attorneys.](#)

- 1.8 Has the trade mark attorney qualification process changed in any way in the past 5 years?

[See answer C. 1.2.](#)

- 1.9 Does qualification as a trade mark attorney permit you any right of representation before any Court in your country?

[See answer. C1.3.](#)

If so are there any special requirements or restrictions?

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- 1.10 Are qualified lawyers in your country permitted to work in the trade mark field without any further qualification?

[Yes.](#)

If so are there any restrictions on what they may do?

[No.](#)

If so, please describe those restrictions.

- 1.11 Please describe what privilege attaches to trade mark attorney client communications including any restrictions.

[There is nothing in the law conferring privilege to patent and trademark attorney communications.](#)

## C.2 CET AND PEC SPEAKERS

- 2.1 Would your National Section/Association be interested in obtaining assistance from FICPI, through either the CET Work and Study Group or the Professional Excellence Commission (PEC), in providing speakers for seminars organized by your national group in your county?

[Not foreseen.](#)

- 2.2 If your group does, or in the future might, require such assistance, please identify topics that might be of interest to your members, with a view to raising FICPI's profile and providing added value from membership of FICPI in your country.

[It is evident that there is an enormous difference between the value given to IP professional in Portugal and in other countries like Germany, United Kingdom and France. Any topic and any speaker that could be able to address this matter near the IP Authorities would be very welcome.](#)

## C.3 TOPICS OF INTEREST

- 3.1 Please list three IP topics that are of particular interest to you and/or your national section members.

[EU Trademark legislative package](#)

[European Patent with Unified Effect](#)

[Unified Patent Court](#)

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