Mexico: Open Litis Principle: An Ace Under The Sleeve
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Mexico's patent and trademark litigation systems are originally, and to the most, handled by an administrative authority, widely known by its acronym IMPI in Spanish, which stands for Mexican Institute of Industrial Property (MIIP). The IMPI's decisions are nonetheless subject to further review by either one of two Courts of appeal whose rulings are, on the opposite of the aforementioned, jurisdictional, notwithstanding whether the nature of the Court is formally administrative or judicial.

It is within this leap that occurs when a solely administrative decision is drawn into the jurisdictional field for its revisal, that an unexplored advantage arises: one which often goes unnoticed while choosing the most suitable course of action pursuable in the appeal scope.

Despite the fact that the Nullity Trial has been recently highlighted for its most remarkable attractiveness, which consists in the creation of a new and specialized bench within the Federal Court of Tax and Administrative Affairs (FCTAA) - that is exclusively handling Intellectual Property matters - there is a seemingly undermined feature that was wisely rescued from the Federal Tax Code (FTC) when abolishing its procedural content so as to create the new Federal Law of Contentious Administrative Procedure (FLCAP), the integration of the trial under the so-called "open litis principle".

According to this procedural law, when a decision issued within an administrative recourse does not satisfy the legal standing of the petitioner and he appeals it, it is to be understood that said appeal extends to the original decision and proceeding itself. Therefore, the plaintiff is allowed to formulate novel arguments as well as he is entitled to submit the appropriate evidence in order to sustain its claim, notwithstanding that such evidence was not originally offered within the administrative proceeding, being this last possibility amidst the foremost appealing features of the Nullity Trial.

The *ratio* of the aforementioned obeys to the fact that the administrative authority's revisal is, above all, an in-house defense mechanism for it is decided, or better said reconsidered, by the same administrative authority that rendered the original decision. This does not represent by any means a contention among the parties nor limits the plaintiff's prerogatives to exhaust its defenses on the jurisdictional level.

Under this scenario the FCTAA is compelled to indiscriminately analyze the arguments sustained by the plaintiff independently of whether they are against the reviewed decision or not and certainly disregarding its novelty opposite to what occurs within other appeal remedies, on which said arguments would immediately be qualified by the Court of appeal as ineffective or inoperative.

More importantly though, stands the fact that said Court of appeal is compelled to admit and evaluate evidence further brought to sustain such novel and/or reiterative arguments, granting the plaintiff a broader timeline to offer proof with no lesser probative value.

It is in spite of this "open litis principle" that the FCTAA has to rule a decision, which all in all may even be constitutive of rights, considering the fact that the principle of reference no longer circumscribes the legality study to the challenged decision, as it worked before the 1995 Amendments to the FTC. On the contrary, it embraces the administrative proceeding as a whole, entitling the FCTAA to even study the merits of the case (*in substitutior*

of the administrative authority), in an effort to render a just and expedite ruling that can ultimately lead the plaintiff into obtaining the greatest possible benefit.

Having the above in mind it is questionable if such principle benefits the IP litigation system when the parties involved have a new opportunity to offer evidence that was not filed within the first instance of litigation. Particularly, if it is considered that the lack of such evidence filed in due time might have had a direct impact in the maintenance, granting or cancellation of an IP right.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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