

# KEEP TALKING



For an industry based around the protection and communication of ideas, the IP profession in Mexico can be poor at communicating. Enrique Morineau urges everyone to keep talking.

Bad communication is never good for anyone. It leads to more problems than solutions to situations that may arise. This is a foreword to the contents of this article since it will be the backbone of the issues mentioned.

Industrial property is part of the legal universe and, as such, both suffers and benefits from the subjectivity and interpretation of the laws, treaties and other instruments involved in its regulation—by the owners of the rights derived from it, by the IP practitioners that represent them, and by the authorities.

A lack of proper communication often means that any interpretation is applied unilaterally, resulting in situations in which IP rights may be lost, overlooked or not informed in due time. The following are examples of such instances.

Among its many functions, the Mexican Institute of Industrial Property is obliged to provide legal and formal assistance to its users. The institute does perform this task, but it cannot give the time needed to dedicate itself to this role fully due to the amount of work that such an entity has to cope with.

Also, in the trademark area, we have to consider that, since there is no opposition procedure in our country, the authority decides which trademarks will be cited as anticipations. Communicating to the owner of the ongoing application the necessary arguments to overcome such obstacles would be unfair behaviour by the authority.

The lack of proper advice from the Mexican authorities could lead a company to file an application without the necessary information to



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defend it. Therefore, it is always recommended that the future trademark owners keep in contact with an industrial property practitioner, in order to increase their chance of obtaining registrations.

Notwithstanding which side of the fence we sit on, whether we are authorities or practitioners, we all work for the protection of consumers and IP rights owners by applying our technical and legal knowledge within the framework of the law.

Remembering that we share the same goals might make it easier to improve the communication between both acting parties. This would result in better and faster achievement of our common goals.

The authorities need to understand that the direct link between deputies and users of the trademark office places them in a privileged and a difficult position. It is privileged because the information they come into contact with via the client allows them to have a broader perspective of the market, in order to issue adequate criteria to enforce the owner's rights in a better way.

This gives all the parties involved a great insight into the IP practice and the laws and regulations surrounding it. The authorities should keep an open mind and accommodate some of the opinions and ideas that our profession communicates to them. This would provide the possibility of adapting and moulding their concepts of the law, and would give them more tools for its application. In a difficult position, it is the responsibility of the authority to adequately process the given information in order to respect and protect the rights of the individual who has the better right.

It is necessary that the authorities fully communicate their criteria and the thoughts and ideas that gave birth to them. A lack of understanding of the reasons why the authorities act in a certain way can result in practitioners misinterpreting their actions. This frequently

causes problems between practitioners and the authorities in their efforts to successfully carry out their mutual clients' needs.

We need to understand our clients' needs with regard to their personal situations and to advise them accordingly. It is difficult to do this if we do not understand the situation ourselves.

These are things that, due to the position of the authorities, are very difficult for them to see, unless any of their staff members have previously worked as practitioners. Those who have done so benefit from this alternative perspective and generally apply it to the way they examine the IP rights cases brought before them.

As practitioners, we also need to remind ourselves that there are necessary differences between us and the authorities, and that they must apply a fair balance between the rights of consumers and IP rights owners.

Even when we do not agree with their application of the law or their criteria in certain circumstances, we need to believe that the good of society is always put first by the authorities and institutions.

We must always take this into account when exchanging our arguments and thoughts with the examiners and different officers of the patent and trademarks office.

Our practice is based on the protection of ideas, and to achieve our clients' goals, we need to effectively communicate our interests and thoughts to the authorities. And if we accept that this is true, we IP practitioners must also communicate effectively with each other.

In daily life, we are competitors, but first and foremost, we are representatives of the interests, needs and future of our clients. This fact should always come before any differences that we may have.

The aforementioned situations must be used by all IP practitioners to achieve the changes in the law that we seek and in the way we all provide our services: firstly, for the completion of our duties to IP rights owners who entrust their interests to us and, secondly, to increase the economic strength of our country.

As IP practitioners, we need to keep communicating through the different IP associations in order to spread our ideas and opinions, and to maintain a united front in the defence of the best way to practise our profession to our mutual benefit. Keep talking!

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