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ONLINE TRIALS FOR IP CASES

Mexico's Federal Court for Tax and Administrative Affairs (FCTAA) has gradually increased its competence in recent years and is now responsible for the administration of intellectual property appeals. This has caused the court some problems: the increasing number of cases under its jurisdiction has made efficiency difficult and there is now a considerable backlog of trials.

To improve the situation, in July 2009, the government put a decree in force through which it created the 'Online Trial'. This is intended to speed up trials before the FCTAA in order to provide prompt justice to the citizens, as demanded in Mexico's constitution.

The Online Trial is an innovation. Its implementation constitutes a legislative update that has introduced a major change into the Mexican Legal framework. It permits the prosecution of the entire trial from the initial brief to its electronic resolution via the Internet. Because of this, it was necessary to amend the Federal Law of Administrative Contentious Procedure (FLACP) and the country's organic law in order to adapt the relevant regulations and implement the system.

The most prominent aspects and advantages of the Online Trial are:

Optional: The plaintiff can choose whether to conduct the trial online or in the traditional manner.



MEXICO

“THE ONLINE TRIAL AIMS TO HOST AN ENTIRE PROSECUTION, FROM THE INITIAL BRIEF UNTIL RESOLUTION”

Evidence: Any evidence for an Online Trial shall be electronically filed and must be considered as valid as any other physical evidence.

Justice Online System: This system allows the registration, control, processing and notification of the entire procedure. It also facilitates integration of every trial record.

Filing: The initial brief and trial briefs can be electronically submitted at any time within a business day.

Notifications: The FCTAA will send personal acknowledgements by email and these should be considered 'legal' as soon as registered by the FCTAA's electronic system.

The Online Trial aims to host an entire prosecution, from the initial brief until resolution. As this trial is carried out on the Internet, it will save time and resources, as procedural filings can be made at anytime and from anywhere.

The Online Trial should considerably reduce trial length from two years to about six months. It will also allow the parties to review the official file electronically instead of going directly to the FCTAA. In addition, it will promote budget savings by replacing paper with digital media, which undoubtedly benefits the parties and the FCTAA.

However, although there are many advantages to the Online Trial, due to its novelty, there are also disadvantages. It may carry several risks because the system as a whole has not developed to the same degree as the technology.

Particular problems could arise with evidence, as parties could submit altered or forged documents, claiming that they are the originals. The Justice Online System could likewise experience problems, including hacking, which would result in possible modifications, alterations, destruction or loss of information from the official files.

In cases of this kind, the decree establishes, as a protection measure, that the prosecution of the corresponding trial will continue through the traditional system until its resolution.

Identification in Online Trials is another important issue since, currently, a person's signature is the main means of identification. Although the decree establishes the "advanced electronic signature" as well as the "digital signature" as valid identifications, to date, the definitions given to those terms are not clear enough for their application in such online trials.

Perhaps the most immediate concern, however, will be system failures that could prevent the filing of briefs in due time. Therefore, at least in the beginning, it will be best to submit these during normal court working hours.



“ FOR THE ONLINE TRIAL TO BE A SUCCESS, IT IS ESSENTIAL THAT BOTH PARTIES AND THE AUTHORITIES PARTICIPATE AS ACTIVELY AS POSSIBLE ”

In summary, the Online Trial is completely justified considering its potential benefits to Mexico. The current disadvantages will surely be resolved, and this will help to build confidence in its application and ensure that it complies with the main objective of the project.

For it to be a success, it is essential that both parties and the authorities participate as actively as possible. However, it is not enough simply to comply with the provisions of the law; the parties must act in good faith too. Otherwise, the initiative will fail.

The FCTAA faces challenges in implementing this project. It is the first court in Mexico to allow electronic trials. So the success of this project will depend on the court's commitment to achieve good results and build confidence.

In light of the foregoing, the success of this system is extremely important, especially, as it is expected to generate institutional experience that will contribute to the possible application of the Online Justice System in other kinds of trials as well as positioning Mexico in the world as a transformer of the administration of justice.

Finally, the FCTAA has 18 months to launch the Online Trial in operation, following the publication of the decree in the *Mexican Official Gazette*. Should it be successful, the trials will begin in December 2010.

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