

Key considerations for notarizing a power of attorney in the USA for IP litigation in Mexico.

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When dealing with international litigious matters, especially related to intellectual property, the intricacies of notarial procedures can present significant challenges.

One such issue arises when a Power of Attorney (PoA) is granted by a company incorporated in jurisdictions where notaries cannot attest to facts, but only to declarations of people appearing before them.

For instance, in jurisdictions such as California and New York, notaries cannot certify the legal existence of a company or the authority of the person granting a PoA for litigious matters, which is required for said POA to be valid under Mexican law. Instead, their role is limited to confirming that an officer from grantor appeared before them to acknowledge those facts, which is not enough under Mexican law for a POA for litigious purposes to be valid.

This difference has led to complications with the Mexican Trademark Office (IMPI) and other Mexican authorities. Despite Mexican law allowing PoAs to be granted according to the rules of the jurisdiction where they are executed, IMPI and the courts have consistently ruled that for a PoA to be valid in Mexico, it must be notarized in a way that attests to the company's existence and the authority of the grantor. This requirement has posed serious challenges, thus resulting in PoAs granted in jurisdictions such as California or New York to be rejected by IMPI or contested by a counterparty in Mexico, potentially undermining legal actions.

To mitigate this risk, in jurisdictions where notaries cannot attest to facts, it becomes necessary to have the grantor's representative appear before the notary with supporting evidence of the company's incorporation and the representative's authority. Attaching certified copies of these documents to the notarial certificate provides additional assurance that the PoA will be accepted in Mexico, thus reducing the likelihood of objections and ensuring a smoother legal process.

Furthermore, recently a Circuit Court in Mexico has confirmed the validity of POA's granted under this proceeding, thus showing that this is the right path to avoid problems with the grant of POA's in countries or States as the ones described above.



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