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Before 2003, all acts by authorities with jurisdiction over IP affairs in Mexico, specifically the Mexican Patent and Trademark Office (IMPI) and the Mexican Copyright Office (INDAUTOR), had to be challenged before Federal Courts, which did not have full capacity to review the cases on their merits. This caused many delays in trials, as appeal proceedings would merely result in instructions to the issuing authority, which could lead to new appeals.

Starting in 2003, the Federal Tax Court in Mexico was granted extended jurisdiction to include the review of challenges against the acts of most federal administrative authorities, including the IMPI and the INDAUTOR, among other authorities in the IP field. In 2006, a specific law was issued to regulate the proceedings before the FCTAA, the Federal Contentious Administrative Proceedings Law (FCAPL). According to this Law, the FCTAA has full jurisdiction to review the acts of administrative authorities, including in some cases studying *de novo* the original files, and deciding on their merits. Additionally, the FCTAA determined in 2008 to create a Specialized Section for Intellectual Property Matters, in order to improve the quality of the decisions in this area of Law. This Section began working on January 2009.

ONLINE APPEALS

Now, following international trends, the FCTAA has taken an initiative to improve access and timeframes in appeal proceedings, through the implementation of an online trial. This intention was made known through a recent amendment to the FCAPL and the Internal Law of the FCTAA, approved without objection by the Mexican Congress and published in the Official Federal Gazette on June 12 2009. According to these amendments, the FCTAA will implement an operating system called *Sistema de Justicia en Linea* (Online Justice System), through which plaintiffs will be able to promote and follow all stages of the nullity trial by internet, from the filing of the initial lawsuit to the issuance of a decision. This system is planned to be operational by December

2010.

The first main objective of this reform is to obtain a quicker prosecution of nullity trials, which are typically very slow and often delayed due to in-trial motions served on the litigating parties and the authorities. Presently, files are handled by a court secretary, and each court at the FCTAA has a separate area in charge of serving court communications. This area then forwards the communications to a general serving department, which sends out officers to the parties' domiciles and then gathers the serving certificate to be return through the same in-court department. The process can take weeks for each serving.

With the implementation of online trials, the head magistrates at the FCTAA have indicated in a press release published on June 15, 2009, that they seek to reduce trial timeframes from an average of two years, to six months as a maximum. The reforms did not address the lengthy periods afforded to parties and authorities to bring and respond to trials, which are currently set at 45 working days each.

The second main objective of online trials is to increase accessibility to Court records through document digitisation and password-sensitive access to the FCTAA's website, provided per-party and per file. For this purpose, e-files will be created, which will contain all the electronic and digital documents provided to the court, whether text, image, audio or video. The Mexican IP system should benefit from the implementation of this online trial, as quicker trial prosecution is always desirable. However, it is important to remain aware of the possible complications and consequences of the rules governing this online trial.

INITIATING LITIGATION

The online trial will be optional for individuals and corporations, but mandatory for authorities. Upon filing the initial claim, the plaintiff has the opportunity to choose whether to follow the trial online or physically before the court. Once an option is chosen it cannot be changed.

If the plaintiff chooses to pursue an online trial, the defending authority will be bound to this proceeding through online services and responses. The third interested party, who is commonly the counterpart in the initial proceeding before the authority, will have the opportunity to choose whether servings or file access applicable to them will be physical or online. If, upon filing the initial suit the plaintiff does not provide the court with an email address, the trial will

be prosecuted physically.

In the case that the parties choose different methods of prosecution, the court will form two parallel files, electronic and paper, both printing and digitising the corresponding documents. This situation will offset some of the benefits sought through the implementation of the online trial, as parties seeking to delay proceedings (such as declared IP infringers or holders of trade marks subject to cancellation) will not be forced to use the quicker online venue.

SYSTEM PRE-REQUISITES

In order to access and use the Online Justice System from the FCTAA, it will be necessary to obtain confirmation of electronic signature, username and password, according to the guidelines that the court will issue. Likewise, all Mexican authorities will have to register their institutional email address and the domicile of their representative offices to receive services. The ownership of these electronic items represents the express acceptance of the responsibility of their use, and the users will be responsible for acts carried out with them, except for system failures.

OPERATION

If an online trial is followed, the communications and decisions will be electronically signed and authorised, and then added to the e-file by the court. Likewise, the system will issue an electronic receipt, recording the date, for any promotion filed online by the parties.

Contrary to the common practice of filing briefs at the court's reception office, which is only open from 9:00 am to 3:00 pm, it will be possible to file briefs online on a 24-hour basis, during the days that the Court is open to the public. Promotions filed on non-working days, will be considered as filed on the following working day.

EVIDENCE

The parties will be allowed to offer documentary evidence as attachments at the FCTAA's website, which will have the same value as the original document.

It is important to highlight that it will be necessary to state under oath whether the evidence corresponds to a photocopy, authorised copy, or the original document with or without hand-written signature, otherwise, they will be considered as photocopy. As the brief and attached evidence can be filed online, it will not be necessary to submit additional copies for serving purposes, except when there is a third interested party that has chosen to physically prosecute the trial.

SERVICE AND BULLETIN

Service of documents will be made through the court's system, according to the following steps:

- 1) The FCTAA will send the parties an e-mail official letter requesting them to access the e-file in order to receive the electronic service, granting each one a term of three working days to comply.
- 2) When parties access the e-file, the Online Justice System will record and add an electronic acknowledgment of receipt into the e-file, with which the service will be completed.
- 3) If this term lapses without compliance, the service to the corresponding party will be made four days after it has lapsed, via listing and the Court Gazette, the latter of which can be accessed on the FCTAA web site.
- 4) The plaintiffs may request serving to the third interested party by listing and Court Gazette when they state under oath that the address of the third interested party is unknown.

FURTHER RECOURSE

Appeals against decisions issued by the FCTAA must be filed on paper, as the online trial will only be available at the FCTAA. In this way, the FCTAA will have to print and authenticate the challenged decisions or communications, including the entire e-file if is necessary, in order to send them to the corresponding District or Circuit Court.

SYSTEM FAILURES

In case of alterations in the operating system or loss of data caused by any person, the trial will be followed on paper and the FCTAA will take the necessary measures for data protection. In addition to possible criminal sanctions, the guilty party or attorney will be fined and banned from further accessing nullity trial files online.

If deadlines cannot be observed due to system operation interruptions caused by technical failure, or unforeseen and unavoidable circumstances, these situations can be made known to the court by the parties, who will analyse them and reinstate compliance times for those deadlines.

STATUS

At the time of this article, the court has initiated partial implementation of the online system by asking parties to provide email addresses in trials and informing them through email that serving of communication is pending. This allows the party representatives to obtain those services at the court instead of waiting for the documents to arrive at their domicile, which hastens the process.

After the e-mail is sent and receipt is confirmed, the court grants the party a term of five working days to appear before the court to receive the service. Once a third email has been sent after this term has lapsed without compliance, the service will be executed through the court's listing. Additionally, the FCTAA has issued a press release informing of the advances in the hiring of the service providers to implement this system and will hold a general meeting to determine details and strategies for personnel training.

POSSIBLE PROBLEMS

1. This is the first attempt of an online trial at the Federal Level. It is possible that users will be wary of this system until it proves to be functional.
2. Document authenticity. The possibility to file scanned versions of documents without the court verifying their authenticity may allow for some users to abuse the system.

3. Lack of backup files. The regulation does not indicate the court's obligation to keep backups of each file to prevent data loss.

4. Only partial online access for IP holders. The process before the FCTAA is only an appeal against acts of IMPI or INDAUTOR, which can in turn be appealed before Federal Circuit courts. Neither the initial nor the final stage will be available online.

A POSITIVE TREND

Internet access to official records has been increasing in Mexico, and this trend has included IP, beginning with the possibility of reviewing documents in patent and trade mark files through the internet. The FCTAA's online trial will be the continuation of these trends. If this proceeding proves to be useful and effective in reducing time frames and improving access and transparency, it will of course be desirable to implement similar systems before IMPI, INDAUTOR, and even in the Federal Court System.

Additionally, the online trial can be a helpful tool for the FCTAA to improve the attention provided to the increasing amount of cases under their jurisdiction, as it should allow for officers and magistrates to focus on the merits of these cases, reducing the load of administrative work. Nevertheless, the problems mentioned in this article will have to be taken into account.