Examining the United States – Mexico – Canada Agreement (USMCA): A Closer Look at Patent Term Adjustment and Test Data Exclusivity

Marina Hurtado Cruz (Mexico), Class of 2008/09

Marina Hurtado Cruz leads the Patent Practice in Baker McKenzie, Mexico. With more than a decade of experience handling sophisticated intellectual property matters, she advises on a broad range of areas including licensing, prosecution and litigation of patents, utility models, industrial designs and trademarks. In addition to this, she practices in the area of health law and regularly advises clients on advertising and promotion law.

Having the experience of working with national and international pharmaceutical corporations of the generic and innovator drugs industry, Marina has specialist insight into how the industry will be influenced by the new trade agreement.

Marina is an alumna of the Munich Intellectual Property Law Center (class of 2008/09). She also holds a Diploma in Sanitary Regulation for the Pharmaceutical Industry.

Abstract

On 30 September 2018, after thirteen months of negotiations, the Trump Administration published the proposed text of the United States-Mexico-Canada Agreement (USMCA) that will replace the North American Free Trade Agreement (NAFTA). The USMCA was signed in November 2018 during the G20 Buenos Aires Summit and is in the process of being ratified by the Congress of each country. USMCA represents substantial changes with respect to NAFTA, in different areas, including intellectual property.

The USMCA includes chapters geared towards strong protection and enforcement of intellectual property rights that will impact a number of sectors, healthcare being just one of many. The USMCA will enhance the data protection term for biologics to ten years, which exceeds the currently available protection under both Canada and Mexico regimes. Additionally, the new agreement could potentially mean the adoption of measures to grant patent term adjustment in Mexico.

In her talk Marina will present the scope and content of the substantive and procedural rules of the patent regime of the pharmaceutical industry that will result from USMCA, especially with regard to patent term adjustment and test data exclusivity.