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# Kluwer Patent Blog

## New Patent Bill for Brazil

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On July 14, a Brazilian Congressman Mr. Alexis Fonteyne presented a Patent Bill proposing key amendments to the Patent Statute (Law No. 9,279 of 1996). The proposal represents an important development for the IP community, especially when it comes to patent term compensation, which may become statutory if the bill is approved (click [here](#) for an English translation).

### Introduction of a Patent Term Compensation

Under the terms of a proposed new (Article 40-A), patent term compensation will be available – both administratively and judicially – whenever the BRPTO has violated its 60-day term to perform an act during the patent granting process. This term is directly based on the existing provision from the Federal Administrative Procedure Law (Law No. 9,784/99, Article 49) to which the BRPTO is bound. The bill also establishes a 5-year maximum term compensation, regardless of the circumstances. The procedure for requesting compensation administratively (before the BRPTO) would be subject of future regulation by the executive power.

Although it may still take several months, or more depending on the political scenario in the aftermath of the presidential elections later this year, for the bill to go through both the House of Representatives and the Senate and get before the President, this is surely a relevant step. The political motivation to incorporate a term compensation solution into the law may also have a positive effect with the Judges that have been deciding some lawsuits. The only potential drawback would be favorable judgments being limited to 5 years as proposed in the Bill, which, nonetheless is on par with most other term adjustment provisions in other countries.

### Preliminary Injunctions

The bill also seeks to strengthen the patentee's claim to a preliminary injunction (PI) against infringers via an ICT-like exclusion order in a TRO, as the paragraph 3 in Article 42 would assure a PI to stay infringing activity or acts that would enable it, such as customs clearance even before the defendant is summoned.

### Other proposed amendments

Bill proposed to introduce amendments that would impact patent examination, such as the clarification of the meaning of “end of the examination”. Currently, the BRPTO is very strict with timeline to make amendments and filing divisionals.

The new bill proposes a clarification of “end of the examination”, meaning as the moment when no other action is available to the applicant/patentee at the administrative sphere (rather than the understanding from BRPTO’s current regulations that the “end” is the publication of the rejection or allowance).

This article will be of major importance for patent attorneys handling cases in Brazil.

Article 31, paragraph 2, would directly affects divisional practice – which could be filed even after the application is allowed (Article 26, paragraph 1) – and amendments to the set of claims. That is because the wording from Article 32, which governs claim amendments, would also be changed to overcome the discussion on their time limit to expressly accommodate changes up until the “end of the examination” (as opposed to the date of the examination request).

The bill includes provisions seeking to allow for the BRPTO to have more control over its fees (currently controlled by the Federal Government), as well as encourage it to identify weaknesses and invest to address them, for example by increasing personnel and productivity.

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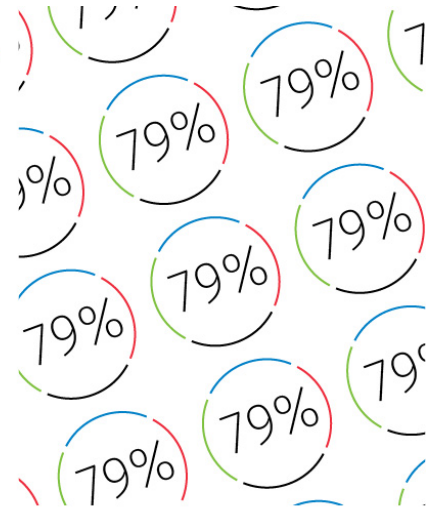
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