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Brazilian government issues IP National Strategy guidelines for 2023-2025

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On October 24, 2023, the Brazilian government released an Action Plan aiming at fostering the National Intellectual Property (IP) Strategy. The plan was prepared by the Interministry IP Group (a group created in 2019 to coordinate the federal government activities in the field of intellectual property). Thirteen Ministries form part of GIPI, and the Brazilian PTO (INPI) is invited to participate in all the meetings. Civil society organizations can also take part in the group, with two-year mandates.

In 2021, GIPI produced its first Action Plan, contemplating 49 actions, the coordination of which fell upon 10 entities—8 Ministries, the Brazilian PTO, and one private association. The 2023-2025 Action Plan is more ambitious: it contemplates 63 actions subdivided into 161 deliverables. The implementation of these initiatives will be carried out by 16 government entities, 12 civil society organizations, and also the UKIPO, which has taken over responsibility for IP training for the riverside community in the Amazon.

The 2023-2025 Action Plan also identifies three concrete goals the government hopes to achieve by the end of 2025:

- Reduce the time which patent applications are pending in Brazil from 6.9 to 3 years;
- Improve Brazil's position in global rankings for trademark registrations (from 6th to 3rd) and industrial design filings (from 12th to 11th); and
- Benefit 450 innovation projects with mentorships and IP trainings.

There is a lot to unpack in the 2023-2025 Action Plan, marked by an overall concern with improving the efficiency and quality of the Brazilian IP system. However, below are five key takeaways that will impact patent owners.

1 – Promoting the growth and use of Intellectual Property Rights by Brazilian industry

A focal point of the 2023-2025 Action Plan is encouraging the strategic use of IP to promote national competitiveness and economic development. With that goal in sight, GIPI has organized programs aiming at raising awareness about the importance of IP rights, especially among small and medium-size companies. The group also drew up a list of measures to bring universities and research centers closer to the IP industry, thus promoting IP licensing. Furthermore, the Action Plan foresees the creation of incentives for companies that invest on innovation and have IP assets.

2 – Strengthening the IP culture locally

The Action Plan also gives a lot of importance to spreading knowledge about Intellectual Property across different audiences: high school students, managers and entrepreneurs, researchers, government agents. The purpose here is not only to raise awareness of the importance of investing in research and development, but also to lecture the population on why IP rights deserve respect and protection.

Since the protection of IP rights cannot be effective without the active participation of those responsible for enforcing said rights, GIPI has formulated initiatives directed at the Judiciary Branch and the inspection bodies that combat counterfeiting. The Nacional Council of Justice has been put in charge of preparing a study about IP litigation in Brazil, which shall include research on other countries' models of organization of the Judiciary in matters of IP, and an evaluation of the possibilities for the specialization of the Judiciary in Brazil. Other measures include the organization of workshops, annual meetings, and courses for judges and court-appointed experts.

3 – Focus on life sciences

Life sciences patents are in the spotlight in the Action Plan, with 11 exclusive deliverables, such as:

- The Ministry of Health will resume its coordination of the activities of the Articulation Group in Intellectual Property and Health;
- Two workshops, focused on pharma patents, will be offered for BRPTO examiners, one by ABIFINA (a Brazilian association of generic companies), and another by Interfarma (local association of the R&D pharma industry);
- ABIFINA will supply data for the Ministry of Health and the Ministry of Development, Industry, Commerce, and Services on pharma and biotech patent terms;
- The Ministry of Health will prepare an Intellectual Property Policy; and
- The Ministry of Development, Industry, Commerce, and Services will organize an event called “Dialogue on the regulation of biotechnology patents” and prepare a study about international benchmarking of biotech patent.

Nine of the life sciences focused initiatives will be coordinated by ABIFINA, two by Interfarma, and one by the FarmaBrasil Group (a Brazilian association of generic companies).

4 – Standard Essential Patents (SEPs) will be addressed

The plan contains one action targeting SEPs, which is described in very generic, open-ended terms: *“promote dialogue, study and dissemination of good practices regarding the adoption of solutions and conditions for licensing essential patents under FRAND terms, with the goal of improving in this area, identifying difficulties, options for conflict resolution and other relevant actions.”*

The only deliverable specified is a study by the Brazilian Antitrust Agency (CADE) on standard essential patents and their impacts on competition.

5 – Changes at the Brazilian PTO

Measures to improve the performance of the Brazilian PTO have also been included in the 2023-2025 Action Plan. A few of them are said to have the purpose of simplifying IPRs and

prosecution, such as outsourcing patent searches and restructuring how administrative appeals are processed by the Brazilian PTO. Others aim at simplifying the IP system and making it more user friendly—for instance, implementing a tool that automatically notifies patent owners of new developments in their applications, and adapting a system for the simplified filing of industrial design applications. The Action Plan further foresees the hiring of 40 examiners for telecoms and 40 for biotech, as well as the implementation of an intelligent filing system for patent applications that can automatically identify formal errors. Such measures will certainly contribute for reducing the patent office backlog.

Conclusion

The fact that the plan mentions pharma and SEP policy should make the IP community look at this document with extreme care. The good news is that we can expect improvements in the metrics of the Brazilian PTO, as well as an increase in discussions about IP rights— this could help local Brazilian companies to develop a strong strategic approach to protect their innovations with IP filings.

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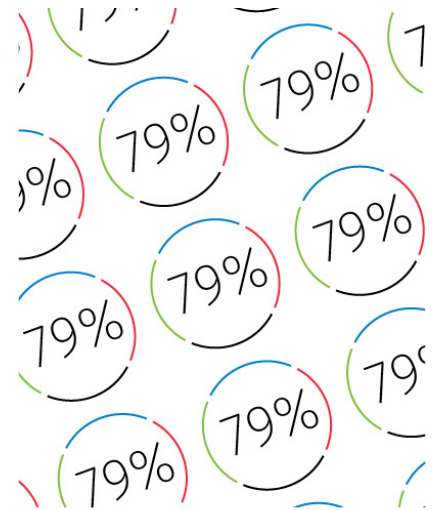
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