Ritter IP Guide.

No. 2

RITTER ATTORNEYS INTELLECTUAL PROPERTY

THE GUIDE

a field guide to brazilian intellectual property legislations and procedures.

ABOUT US

Ritter Advogados was recognized as one of the most prestigious specialised firms in the South region of Brazil for 3 consecutive years; 2021, 2022, and 2023, and one of the most admired firms of the country for the years of 2023/2024.

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This guide provides a comprehensive overview of the procedures and best practices enforced by the National Institute of Industrial Property - INPI, pertaining to industrial property. It encompasses various aspects, including patent protection, trademark registration, industrial design registration, and more. The primary objective is to foster the legal safeguarding of technological innovations, which is indispensable for promoting technological advancement.

The safeguarding of industrial property plays a pivotal role in fostering innovation, attracting investment in new technologies, enhancing national competitiveness, stimulating research and development initiatives, and drawing in investments. It also underscores our nation's attractiveness and capacity to welcome foreign investments and collaborations.

Enjoy your reading!

Ritter Advogados Team

INTRODUCTION

In today's knowledge-based society, technology is emerging as a driving force in the creation of wealth and progress. Recognizing the benefits of protecting intellectual property and understanding the intrinsic importance of this tool as a differentiator plays a crucial role in ensuring competitiveness.

In Brazil, there is evidence of a remarkable effort to create new innovation scenarios by promoting research and facilitating investment in enabling technologies. The country's intention is to establish such technologies as key elements in the development and improvement of economic productivity.

This progress can be seen in the remarkable 2021 Global Innovation Index - GII report. In that edition, Brazil ranked 57th in the list of leading nations in promoting innovation. However, the 2022 GII report marks a historic milestone by revealing that Brazil now ranks 54th, placing it among the top three in the Latin American region.

Internally, according to the Management Report of the National Institute of Industrial Property - INPI, at the end of 2022, a significant reduction of more than 92% was achieved in the backlog of requests pending analysis, filed by the year 2016. The production of technical decisions on trademark applications had an increase of 06%, and the volume of technical decisions on industrial designs exceeded the results of the previous year by more than 10%, with an analysis period for users of less than 04 months.

In addition, according to the data presented in the Management Report of the National Institute of Industrial Property - INPI, in 2022, Brazil was in the process of technical preparation to accede to the Hague Agreement, formalizing this accession on 08/08/2023, with effect from 15/10/2023.

Therefore, we would like to point out that the purpose of this guide is to present a summary of the overview and good practices related to industrial property in general, but mainly to Brazilian jurisprudence in order to assist in the management and development of innovations, in the protection of existing assets, as well as the selection of the most appropriate protection for each type of intangible asset.

1. What is Intellectual Property?

When discussing the concept of "industrial property", it is important to recognize that it falls under the broader umbrella of "intellectual property." Therefore, "industrial property" doesn't refer to tangible elements. Instead, it encompasses intangible assets, often of considerable value.

That's why, according to the World Intellectual Property Organization – WIPO (WIPO, page 01, 1998), before going into the specific aspects of industrial property, it's wise to give an initial explanation of the term "intellectual property." It is a specific form of property. In a general sense, a fundamental characteristic of property is the prerogative of the owner or proprietor to use their property as they see fit, while preventing others from lawfully using it without authorization. There are, of course, universally accepted limits to the exercise of this right. For example, the owner of a plot of land doesn't have unrestricted freedom to construct a building of any size; compliance with the relevant legal and administrative regulations is mandatory.

Broadly speaking, WIPO affirms that three categories of property can be distinguished (WIPO, page 1, 1998). The first category is property consisting of moveable objects, such as a wristwatch or a car. Only the owner of the watch or the car has the right to use these objects. This situation is legally described as an exclusive right, meaning that the owner has the sole right to use their property. Of course, the owner may grant permission to others to use their property, but such permission is legally required and use without the owner's consent is considered unlawful. What's more, the right of use is not unlimited; it must respect the rights of others, as in cases where a road is privately owned, and obey administrative regulations, such as speed limits for vehicles.

Moving on to the second type of property—immovable property—which includes land and permanent structures such as buildings. An earlier example of the limitations inherent in this category was demonstrated by the requirements for constructing a building.

The third class of property is intellectual property. This includes creations of the human intellect, objects of the mind. This nomenclature, "intellectual" property, is thus derived. Put simply, intellectual property is information that can be incorporated into tangible objects, replicated in countless copies around the world. The property doesn't lie in these copies, but in the information they contain. As with movable and immovable property, intellectual property is subject to certain restrictions, such as the limited duration associated with copyrights and patents.

When it comes to "intellectual property" and its definition, WIPO identifies intellectual property as a creation of the mind that can be exploited commercially and therefore has legal rights that can be protected.

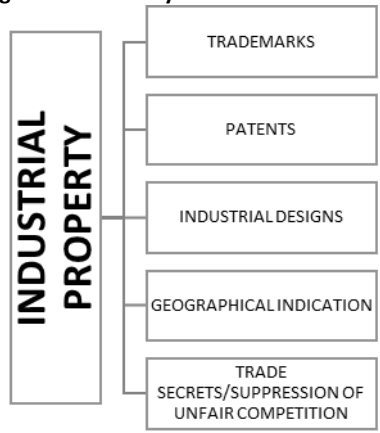
In fact, the Brazilian Civil Code (Law no. 10,406/2002) does not explicitly bring the definition of property. However, in its article 1,228, the Brazilian Civil Code brings the powers of the owner, thus helping in the definition of what is property.

Thus, it can be said that property is the ability guaranteed to the owner of the good to use, enjoy and dispose of it, as well as the right to recover it if a third party unlawfully holds or possesses it.

The term intellectual is an adjective referring to intelligence and, according to the Portuguese Michaelis dictionary, is defined as “relating to the intellect; mental”. Thus, the term “intellectual property” refers to different types of properties that result from the creation of the human mind, that is, from its intelligence.

The term “intellectual property” is used to refer to three main types, which are divided into categories: copyright, industrial property and sui generis. In the diagram below, we highlight industrial property – the topics covered in this booklet:

Figure 1 - Categories covered by the term “Industrial Property.”



The following topics will deal with the definition of each category protected by Industrial Property and its forms of protection in Brazil. Brief information will be given on copyright and sui generis protection.

2. Industrial Property

As emphasized above, the term "industrial property" covers a range of rights, including trademarks, patents, industrial designs, geographical indications, and trade secrets/unfair competition. In the Brazilian context, these rights are mainly regulated by the Law on Industrial Property (Law No. 9,279/1996).

It is important to note that the National Institute of Industrial Property (INPI) is responsible for registering trademarks, industrial designs, geographical indications, computer programs and topographies of integrated circuits, as well as granting patents and registering franchise agreements and various forms of technology transfer.

Founded in 1970, its mission is to promote innovation and technological progress in Brazil, by ensuring the effective protection of intellectual property (INPI, 2020, available at <http://www.inpi.gov.br/sobre/estrutura>).

2.1. Industrial Property: Trademarks

2.1.1. What are trademarks and what are their characteristics?

The term "trademarks" is defined as symbols that can be perceived visually and that have the specific purpose of distinguishing the origin of products or services associated with a particular owner. Thus, a "trademark" is an identifying symbol whose primary function is to indicate the origin and to distinguish products or services from others that are identical, similar, or related but come from different sources (INPI, 2022, item 2.1).

For example, in Brazil, unlike some other countries, only trademarks that can be perceived visually are considered valid, which excludes, therefore, trademarks of a sound, tactile, or olfactory nature, which are accepted in other countries.

In terms of type, trademarks can be of a product or service, collective or certification:

- Trademark of a product or service: the trademark used to distinguish a product or service from another identical, similar, or related to one of different origin (INPI, 2022, item 2.2).
- Collective Trademark: a mark intended to identify and distinguish products or services originating from members of a legal entity representing a collective group (association, cooperative, union, consortium, federation, confederation, etc.), from identical, similar, or related products or services of different origin (Article 123, Section III, of Law No. 9,279/1996). Thus, all the members of the entity holding the

registration may use the collective mark without requiring a license, provided that they comply with the conditions and prohibitions set out in the rules of usage. (INPI, 2022, item 2.2)

- Certification trademark: the mark used to certify the conformity of a product or service with certain norms, standards, or technical specifications, in particular with regard to quality, nature, materials used, and methods applied (Article 123, Section II, of Law No. 9,279/1996). Therefore, the certification mark may only be used by third parties authorized by the holder, as it assures the consumer that the product or service bearing the mark conforms to specific technical norms or standards. The right to use the certification mark is not a substitute for sanitary inspection seals or compliance with specific regulations or standards established by current legislation for the product or service. Furthermore, it does not exempt the supplier from the responsibility of guaranteeing the quality of the product or service, as defined in the Consumer Protection and Defense Code, pursuant to Law No. 8,078/90 (INPI, 2022, item 2.2).

In terms of presentation, trademarks may be nominative/word, composite, figurative, three-dimensional or positional, as illustrated below:

- Nominative: a sign consisting of one or more words in the broad sense of the Roman alphabet, including neologisms and combinations of Roman and/or Arabic letters and/or numbers, provided that these elements are not presented in an imaginative or figurative form (INPI, 2022, item 2.3).
  Example: "RITTER Attorneys Intellectual Property"

- Composite: a sign consisting of a combination of nominative and figurative elements, or even nominative elements alone with an imaginative or stylized spelling (INPI, 2022, item 2.3).

  Example: RITTER ADVOGADOS PROPRIEDADE INTELECTUAL

- Figurative: a sign consisting of a design, image, figure, and/or symbol; any fanciful or figurative form of a single letter or number, either alone or accompanied by a design, image, figure, or symbol; words composed of letters from alphabets other than the common language, such as Hebrew, Cyrillic, Arabic, etc.; ideograms, such as Japanese and Chinese (INPI, 2022, item 2.3).

Example: 

- Three-dimensional: a sign consisting of the distinctive plastic shape itself, capable of individualizing the goods or services to which it applies. To be eligible for registration, the distinctive three-dimensional shape of a product or service must be dissociated from any technical effect (INPI, 2022, item 2.3).

Example: 

- Positional: a positional mark is considered to be formed by the application of a sign in a unique and specific position on a particular substrate, resulting in a distinctive combination capable of identifying goods or services and distinguishing them from others that are identical, similar, or related, provided that the positioning of the sign in the specified position on the substrate can be dissociated from any technical or functional effect (INPI, 2022, item 2.3).

Example: 

The choice of trademark type depends on the type of protection sought by the trademark applicant and the availability of the trademark registration, i.e., whether the trademark is identical or similar to a previously registered trademark (a common reason for refusal of trademark applications). It is therefore advisable to conduct a trademark search prior to filing an application in order to avoid costs and infringement of third-party rights.

2.1.2. How are goods and services classified?

The National Institute of Industrial Property (INPI) adopts the Nice International Classification of Goods and Services (NCL), which is a list of 45 classes containing information about different types of goods and services and their corresponding classifications within each class.

The classification system is divided into goods, listed in classes 1 to 34, and services, listed in classes 35 to 45. It is important to note that the classes and

lists are not exhaustive, i.e., they do not cover all existing types of goods and services.

To supplement the original lists of the Nice International Classification, the National Institute of Industrial Property (INPI) has created auxiliary lists (INPI, 2023, available at <https://www.gov.br/inpi/pt-br/servicos/marcas/classificacao-marcas>).

For the time being, our country uses the single-class system, i.e., Brazilian proprietors who file their trademarks with the National Institute of Industrial Property (INPI) automatically file a single-class application (one application corresponds to one trademark in one class). However, since the implementation of the Madrid Protocol, the National Institute of Industrial Property (INPI) has accepted multi-class trademark applications. In other words, foreign applicants who designate their applications/registrations in Brazil, where the basic application/registration (the basic mark) is a multi-class procedure, will have their designation accepted under the multi-class system by the National Institute of Industrial Property (INPI).

2.1.3. How to obtain protection in Brazil?

In order to obtain protection in Brazil, the trademark should be filed directly with the National Institute of Industrial Property - INPI, or the owner can take advantage of international treaties to which Brazil is a party, such as the Paris Convention and the Madrid System.

It's also important to note that even if a trademark has been granted in another country, this does not necessarily guarantee automatic approval in Brazilian territory.

2.1.4. What is the basis for establishing the priority of a trademark in Brazil?

Brazil operates on the "first to file" principle, which grants trademark rights and priority to the first applicant to file a trademark application, regardless of the current commercial use of the trademark.

2.1.5. What cannot be registered as a trademark?

The Law on Industrial Property (Law No. 9,279/1996) defines in its Article 124 what cannot be registered as a trademark. However, the most common reasons for refusal of trademarks by the National Institute of Industrial Property (INPI) are as follows:

- Letters, numerals, and dates, which individually lack sufficient distinctive character;

- Signs contrary to morality and good customs;
- Slogans, namely, a sign or expression used solely as a means of advertising;
- Colors and their designations, unless they are arranged or combined in a distinctive and peculiar manner;
- Reproduction or imitation, in whole or in part, of another registered trademark for similar or related goods or services, which is likely to cause confusion;
- Technical terms used in industry, science, and art which are relevant to the product or service to be distinguished.

2.1.6. When can a trademark be registered?

For a trademark to be registrable, it must be distinctive, lawful/authorized, and available:

- Distinctive: in other words, the mark must fulfill its function of distinguishing the marked object from others of the same kind, nature, and type;
- Legitimate: this means that the trademark should not have an official or public character, nor should it be contrary to morals and good customs;
- Available: this means that the trademark must be available for registration without infringing any prior trademarks or rights.

2.1.7. What is a formal examination?

Formal examination is the stage at which the formal requirements for proceeding with the procedure are checked. If these conditions are met, the application is published in the Industrial Property Gazette. Everyone will be informed that the application has been filed, and from that date a period of 60 (sixty) days will begin for third parties to file oppositions, as provided for in Article 158 of the Law on Industrial Property No. 9,279/1996 (INPI, 2023, available at <http://manualdemarcas.inpi.gov.br/projects/manual/wiki/4%C2%B72_Procedimentos_de_exame_formal#42-Procedimentos-de-exame-formal>).

At this stage, the most relevant items verified are:

- Applicant's data: confirmation of name/company name and address (INPI, 2022, item 4.2.2);
- Attorney's data: confirmation of name/business name and address (INPI, 2022, item 4.2.3);
- Trademark data: confirmation that the presentation, nature, products, and services have been correctly described (INPI, 2022, item 4.2.4);

- Nice Classification: verification that the Nice Class number corresponds to what is presented in the form submitted by the applicant (INPI, 2022, item 4.2.5);
- Priority: it is checked whether the priority data and the trademark data correspond to the data in the attached priority documentation if this was provided at the time of filing. In the case of minor discrepancies between the priority data indicated in the form (number, country, and date) and those in the documentation, the data in the priority document will prevail and the necessary corrections will be made in the system (INPI, 2022, item 4.2.7);
- Documents filed: it is checked whether the documents attached, including the power of attorney, are legible and whether what the attorney declares in the form is actually attached in the system to file such an application (INPI, 2022, item 4.2.).

2.1.8. What is a substantive examination?

The substantive examination of an application for registration of a trademark is the stage at which it is verified that the sign for which registration is sought complies with the conditions laid down by the law, in accordance with the following criteria (INPI, 2022, http://manualdemarcas.inpi.gov.br/projects/manual/wiki/05_Exame_substantivo):

- the mark must consist of a visually perceptible sign;
- visually perceptible signs must have distinctiveness in order to be capable of identifying and distinguishing products or services from others of different origin;
- the proposed mark must not be subject to any legal prohibition, either because of its own nature, its lawful and truthful character or its availability;
- a detailed check of the mandatory documents and the deadlines will be carried out;
- a general data correction is carried out by the Brazilian Intellectual Property Law.

Once the examination has been completed in accordance with these conditions, a decision will be taken to grant, refuse, or suspend the application.

In particular, for the purposes of the examination of the power of attorney, the following information shall be considered mandatory pursuant to Article 654, § 1 of the Civil Code:

- information on the grantor(s) (applicant(s));
- information on the grantee/legal representative of the applicant(s);
- type(s) of authority(ies) granted;
- date, place, and signature of the grantor(s).

In the case of co-ownership trademark applications, if the application has been filed or submitted by a single representative, it will be checked that the legal representative is authorized to represent all applicants, who must sign the power of attorney as the grantor and provide proper identification.

Applicants and right holders domiciled abroad must appoint a duly qualified attorney domiciled in Brazil, as provided for in Article 217 of the Brazilian IP Law. It's worth noting that the power of attorney issued by a foreigner must include the authority to receive a judicial summons.

If a foreign-language power of attorney has been filed within the legal time limit, but without the corresponding translation, the action taken by the party will be accepted, based on the provisions of Article 220 of the Brazilian IP Law. An office action will be issued for the translation of the power of attorney.

As provided for in Article 20 of Law No. 11.419/06, a power of attorney may be digitally signed with a certificate issued by a certification authority accredited by the law. Consequently, powers of attorney containing digital signatures are accepted and there is no need to prove the legitimacy of the certificate.

In cases where the power of attorney has a validity period, it is checked whether the action was performed during the validity period of the POA. If not, an office action will be issued for the presentation of a new valid power of attorney at the time of the action or containing the ratification of the actions/measures already performed.

In the case of applications from applicants domiciled abroad, if the authorization has expired at the time of substantive examination, an office action will be taken to file a new valid authorization, in compliance with the provisions of Articles 142 and 217 of the IP Law.

If the power of attorney is not presented at the time of filing, the legal representative of the applicant(s) must present it through a separate request within a period of 60 (sixty) consecutive days from the filing date, under penalty

of permanent dismissal, as provided for in paragraph 2 of Article 216 of the IP Law.

2.1.9. What is the procedure for obtaining protection and what is the duration of protection?

The grant is made if the applicant pays the grant fees or the final fees related to the first decade of registration and the issuance of the certificate of registration within 60 (sixty) days from the date of the notice of grant. If the owner has not paid within the stipulated period, a grace period of 30 (thirty) days will be offered to pay the final fees with surcharges (INPI, 2022, item 6.1.).

The Law on Industrial Property (Law No. 9,279/1996) establishes in Article 133 that the term of protection of a trademark is 10 (ten) years, counted from the date of grant of registration, renewable for equal and successive periods. This means that a trademark can be valid indefinitely as long as the renewal fees are paid within the legal period.

If the rightholder does not submit the request for renewal during the last year of the registration's validity or during the 06 (six) months following the end of the decade, the trademark will expire, as provided for in item I of art. 142 of the LPI (INPI, 2022, item 6.6.).

2.1.10. Are the certificates issued in an electronic format?

Yes, all documents issued by the National Institute of Industrial Property - INPI are electronic. As established in Chapter X of the INPI Regulation No. 8/2022, the certificate of registration and the certificate of renewal, as well as its duplicates, as well as their duplicates, are issued exclusively in digital format. Both certificates are issued by means of electronic signatures provided by a certification authority by the standards established by the Brazilian Public Key Infrastructure (ICP-Brasil) (INPI, 2022, item 6.1.1.).

If, at any time and for any reason, it is necessary to obtain a new copy of the certificate of registration, it is possible to pay the appropriate fees to the National Institute of Industrial Property - INPI and request the issue of a duplicate document.

2.1.11. Once granted, is it possible to surrender the registration for any reason?

Yes, and it can be surrendered in whole or in part. The surrender of registration may be total or partial, with the right holder filing a specific request for such a procedure, accompanied, if necessary, by a power of attorney granting

specific powers to surrender the mark or part of the goods or services designated by it, as provided for in Article 142, Section II, of the Law on Industrial Property.

In the case of full withdrawal, the holder of the registration surrenders all the goods or services claimed in the specification. In the case of partial withdrawal, the holder surrenders part of the goods or services claimed in the specification (INPI, 2022, item 6.6.).

2.1.12. Do I have to prove use of the mark at any time?

At present, Brazilian law does not require proof of use, either during the proceedings or in order to obtain the grant of rights. However, if third parties are interested in extinguishing a trademark, they can file a request for cancellation, as provided for in the Law on Industrial Property (Law No. 9,279/1996) in Article 142, Section III.

Thus, the registration will lapse, at the request of any person with a legitimate interest, if the use of the trademark has not commenced in Brazil or if its use has been interrupted for more than 5 (five) consecutive years, or if, during the same period, the trademark has been used with modifications that alter its original distinctive character.

Therefore, if the mark is not being used or is being used in a manner different from that indicated in the certificate (such as a change in the logo), and if it has been registered for more than 5 (five) years, it may be subject to a request for cancellation by third parties. In this case, the owner must prove its use.

2.1.13. How does the cancellation procedure work and what are the deadlines?

In addition to the renewal of the registration, the owner is obliged to use the trademark as granted, or without altering its original distinctive character, to identify the goods or services for which it is registered, or to justify its non-use for legitimate reasons, under the penalty of having the registration cancelled as provided for in Article 142, Section III of the Law on Industrial Property No. 9,279/1996) (INPI, 2022, item 6.5.).

Law No. 9,279/1996 establishes that the registration may be subject to an examination of use only after 5 (five) years from the date of its grant, and it also establishes a maximum period of 5 (five) years for the interruption of its use (INPI, 2022, item 6.5.).

The person or company wishing to initiate the cancellation procedure must justify its legitimate interest, on pain of having its cancellation request

rejected. Among the conditions for establishing a legitimate interest, the following stand out (INPI, 2022, item 6.5.1.):

- Registration or application for registration of an identical or similar mark to identify identical, similar, or related goods or services;
- Registration or application for registration of a geographical indication, a well-known trademark, or an industrial design reproduced by the trademark subject to cancellation;
- Personal rights;
- Copyright;
- Other rights characterizing the applicant's interest or activity in a market segment identical or related to that of the goods and services designated by the mark to be cancelled.

If the cancellation of the registration is requested, the owner must respond within 60 (sixty) days from the notification of the cancellation, and it is their responsibility to prove that they have begun to use the trademark in Brazil or that they have not interrupted its use for more than 5 (five) consecutive years during the 5 (five) years preceding the date of the request for cancellation, or that they justify their non-use for legitimate reasons, as established in Article 143, Paragraph 2 of the Law on Industrial Property (INPI, 2022, item 6.5.).

2.1.14. How does the examination of a trademark cancellation action work?

Firstly, observing the provisions regarding timelines, the investigation period for the effective use of the trademark will encompass the 5 (five) years counted retrospectively from the date of the request for cancellation (INPI, 2022, item 6.53.).

Example (INPI, 2022, item 6.53.):

INVESTIGATION PERIOD	
Date of grant:	March 09, 2009
Petition Cancellation date:	August 29, 2022
Investigation period:	August 29, 2017 to August 29, 2022

The owner of the registration is exempted from proving the use of the mark or justifying the non-use of the mark during the period of investigation for cancellation, which falls within the first 5 (five) years from the grant of the trademark registration (INPI, 2022, item 6.53.).

During the period between the first 5 (five) years from the grant of the registration and the investigation period for cancellation, the owner of the mark is not obliged to prove the use of the mark, and the owner may choose to do so only if it is in their interest. If use of the registered mark is proved during this period, the cancellation may be avoided (INPI, 2022, item 6.53.).

However, it is mandatory to prove the use of the mark or justify the non-use of the mark during the period between the expiry of the first 5 (five) years after the grant of the registration and the end of the investigation period for cancellation (INPI, 2022, item 6.53.).

Example (INPI, 2022, item 6.53.):

INVESTIGATION PERIOD	
Grant date:	November 27, 2012
Petition cancellation date:	December 17, 2018
The first five years counted from the date of grant:	November 27, 2012 to November 27, 2017
Investigation period:	December 17, 2013 to December 17, 2018

2.1.15. What are the acceptable proofs of use in case of a cancellation action?

The owner of the registration must submit documents proving that, during the period of investigation, they have fulfilled the requirements of Article 143, Sections I and II of the Law on Industrial Property, i.e., that they have either commenced effective use of the trademark in Brazil (Section I) or have not interrupted the use of the trademark for more than 5 (five) consecutive years (Section II) (INPI, 2022, item 6.5.4.).

The use to be proved in a cancellation action must be consistent with the essential function of the trademark, which is to enable the consumer to identify the origin of a product or service and to distinguish that product or service from

those of different origin without any possibility of confusion (INPI, 2022, item 6.5.4.).

The use of the mark must relate to products or services offered to consumers or already marketed in the goods and services market. It's important to stress that mere preparation for the use of the trademark, such as printing labels, developing packaging, creating visual identities, etc., constitutes internal use and not use in commercial activities (INPI, 2022, item 6.5.4.).

A high level of proof of use is not necessarily required in the process of providing evidence, and a minimum level of use must be demonstrated. According to the rule, even a minimal use of the mark may be sufficient to establish the effective character of the use of the registered mark if it serves a commercial purpose, taking into account the goods and services and the market to which these goods and services are directed (INPI, 2022, item 6.5.4.).

In the case of co-ownership registrations, proof of use of the mark by at least one of the co-owners will prevent cancellation (INPI, 2022, item 6.5.4.).

The following documents and information may help to prove the use of the mark and prevent cancellation of the registration (INPI, 2022, item 6.5.4.):

- Fiscal documents: fiscal documents include product invoices, service invoices, fiscal receipts, invoices, contracts;
- Images of products, packaging, containers, labels, and stickers: images of products, packaging, containers, and labels and stickers affixed to products, provided that they contain dates of manufacture or expiry within the investigation period;
- Printed or digital documents: printed or scanned documents include catalogs, booklets, brochures, articles, flyers, banners, business proposals, correspondence exchanges, manuals, etc.;
- Use in advertising: The use of the mark in advertising is generally considered to be effective use if the volume of the advertising material presented is sufficient in terms of number and frequency, in accordance with the commercial characteristics of the designated goods or services;
- Use on the Internet: Images or pages displayed on the Internet must be properly dated within the examination period and clearly demonstrate the use of the trademark as granted to identify the goods or services specified in the certificate of registration. The registration of a domain name alone is not sufficient to prove effective use of the registered mark;
- Images from trade fairs, events, and conventions;

- Statements from third parties: statements from customers, consumers, suppliers, or business partners may add to the body of evidence, but are not in themselves considered sufficient to prove use of the trademark;
- Television commercials and programs such as soap operas, series, shows, etc.

2.1.16. In what situations can a trademark appeal be filed?

According to Article 212 of Law No. 9,279/1996, an appeal may be filed within 60 (sixty) days in the following cases (INPI, 2022, item 7.2.1.):

- Appeal against the refusal of a trademark application;
- Appeal against the partial grant of a trademark application;
- Appeal against the grant or refusal of a cancellation action;
- Appeal against the change of ownership;
- Appeals against the final shelving/cancellation (Article 135 of the Law on Industrial Property No. 9,279/1996);
- Appeal against the notice of grant or refusal of renewal of a trademark and;
- Appeal against the refusal of any other measure/action.

2.1.17. What are transfers of ownership and how can they be defined?

A trademark is an asset that can be transferred voluntarily or by court order. The annotation of the transfer of trademark rights can be made both in applications for registration and in granted registrations, as long as the conditions established by law are met, which vary according to the type of transfer (INPI, 2022, item 8.).

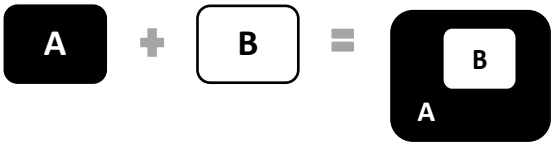
The transfer of an application or registration varies from country to country in terms of the terminology used and the situations that apply. Below, we outline the transfers made in Brazil and the terms applicable to each situation:

- Transfer by Assignment: this applies to cases where a natural or legal person, known as the assignor, transfers the rights to the trademarks to another natural or legal person, known as the assignee, by means of an assignment agreement;
- Transfer by Incorporation: an incorporation is an operation whereby one or more companies are absorbed by another which succeeds to all their rights and obligations, including rights to trademarks;
- Transfer by Merger: this is an operation whereby two or more companies merge to form a new company which also succeeds them in all rights and obligations;

- Transfer by Spin-off: this is the operation by which a company transfers part of its assets to one or more companies set up for this purpose or already in existence, with the spun-off company ceasing to exist if all its assets are transferred or its capital is divided if the spin-off is partial (Article 229 of Law 6.404/1976);
- Transfer by Legal or Testamentary Succession: this type of transfer occurs when the trademark is transferred as a result of a judicial decision on the division of assets. In this type of transfer, all applications or registrations containing identical or similar marks for related products or services must be transferred, with the penalty that, as per Article 135 of Law No. 9,279/1996), applications will be archived and registrations that are not transferred will be canceled;
- Transfer by Bankruptcy: Trademarks are assets that can form part of the assets of a bankruptcy estate and can be transferred by court order. All applications and existing registrations in the name of the bankruptcy estate must be transferred. Otherwise, all applications will be archived and registrations that have not been transferred will be canceled if the respective marks are identical or similar and the products or services are identical, similar, or related to those covered by the applications or registrations that have been effectively transferred, as provided for in Article 135 of Law No. 9,279/1996;
- Transfer by Court Order: The transfer of ownership can be made by court order, provided that the asset to be transferred is properly identified with the case number and trademark, and/or the owner is properly identified with the national registration number (in Brazil, it's the National Register of Legal Entities – CNPJ for companies or the Individual Taxpayer Identification Number – CPF for individuals) or the name and full address if it's a foreign company or entity.

Regardless of the type of rights transfer to be carried out, all documents and acts of incorporation of the new company must be filed with the National Institute of Industrial Property (INPI). In the case of documents written in a foreign language, a simple translation of the documents is sufficient and consular legalization/apostille is not required.

Example: Transfer by incorporation



The following documents are required to be filed with the National Institute of Industrial Property - INPI (INPI, 2019, item 8.3.):

- Request for the transfer of ownership, duly completed with the details of the assignee;
- Documents proving the incorporation and the constituent documents of the new company;
- Power of attorney from the assignee; and
- Simple translation of the documents into a foreign language.

For ease of reference, we point out that constituent documents are often referred to as the "Articles of Association" or "Memorandum and Articles of Association".

2.1.18. Madrid Protocol

The Madrid Protocol, also known as the Madrid System, is an international treaty designed to simplify the process of registering trademarks in multiple countries. It is administered by the World Intellectual Property Organization – WIPO, a specialized agency of the United Nations. The Madrid Protocol provides a convenient and cost-efficient system that enables trademark holders to secure protection for their marks in several member countries by filing a single international trademark application.

The Madrid Protocol has greatly simplified and expedited the process of obtaining trademark protection on a global scale, making it a valuable tool for businesses and individuals with international trademark interests. Aware of the benefits and advancements that the agreement would provide, our country officially became a part of the Madrid Protocol when the President of the Republic signed the accession agreement on June 25, 2019, and then submitted it to WIPO on July 2, 2019. As per Article 14(4)(b) of the treaty, the Protocol became effective three months after this formal accession.

As a result, from October 2, 2019, Brazil acquired the capacity to act as both an Office of Origin and a designated Contracting Party. This enabled Brazil to send and receive international trademark applications under the provisions of the Protocol (INPI, 2019, pag. 02).

An analysis of the Madrid Protocol Dashboard, created by the National Institute of Industrial Property (INPI) to provide a concise overview of all data and statistics related to the Madrid Protocol, shows that in the first nine months after the Protocol entered into force, Brazil designated 73 international applications abroad, while Brazil received 5,704 applications from other countries. The panel

with data collected until 16 March 2023 shows a significant increase in the number of designations, with a total of 474 international applications sent abroad, while Brazil was designated in 34,257 international applications.

The top five destinations for trademarks originating in Brazil were the United States, the European Union (EUIPO), Mexico, the United Kingdom, and Colombia. As for the countries that have designated Brazil the most, we can mention the top five involved: the United States, the European Union (EUIPO), China, the United Kingdom, and France.

2.1.18.1. How to designate Brazil when filing an international application?

If Brazil is a country of interest, the designation of our country must be requested directly from the International Bureau of WIPO. If appropriate and for security purposes, it is highly recommended to search for the MM2 form (international application) on the WIPO website to be aware of the essential information that must be provided, or to contact our office to assist with any questions. Information on how to access WIPO forms can be found at <https://www.wipo.int/madrid/en/forms/>.

It should be noted that, at the time of designation, the first part of the individual fees according to the Madrid Fee Chart must be paid to the International Bureau of WIPO, whose fees can be calculated using the Madrid Fee Calculator, also available on the WIPO website at <https://madrid.wipo.int/feecalcapp/>.

The international application under the Madrid Protocol must cite all base applications and/or base registrations of interest, even if such base application(s) is (are) multiclass.

When designating Brazil for the territorial extension of the protection of the international registration, the applicant must declare that they are directly and lawfully carrying on the activity covered by the mark in Brazilian territory, either personally or through companies that they directly or indirectly control, under penalty of law, as per Article 128 §1 of Law No. 9,279/1996. This declaration will also appear in the footnotes of the WIPO designation form MM2 (INPI, 2019, item 11.3.1.).

Once the application has been filed with WIPO, and the appropriate fees have been paid, the international application form is received by the International Bureau and confirmation of the basic requirements of the application is carried out to ensure that the application becomes an international application designating the Contracting Parties – in this case, Brazil.

Thereafter, the designation received will be examined as a direct application and analyzed on the basis of Brazilian law, as provided for in art. 18 of INPI/PR Resolution No. 247/2019 (INPI, 2019, item 11.3.1.).

2.1.18.2. What classification of goods and services is used to prepare the application?

The National Institute of Industrial Property (INPI) adopts the Nice International Classification of Goods and Services (NCL) for Madrid applications and the Nice Classification comprises a list of 45 classes containing information about different types of goods and services and their corresponding allocation within each class.

The classification system is divided into goods, listed in classes 1 to 34, and services, listed in classes 35 to 45. The applicant can also use WIPO's specification classification tool, known as Madrid Goods and Services - MGS, to check the acceptance of the specification items in the country of interest. This allows the applicant to assess, even before filing the international application, which specification items will be accepted and which may require adaptation. For reference, MGS can be accessed at <https://webaccess.wipo.int/mgs/>.

2.1.18.3. Is a multi-class system accepted, as in other jurisdictions?

Yes, the multiclass system is accepted but only for Madrid applications. With Brazil's accession to the Madrid Protocol and the consequent harmonization of some trademark registration procedures resulting from the Agreement, designations for Brazil under the Madrid Protocol allow multiclass applications.

Internally, the multiclass system is not accepted for Brazilian or foreign trademark owners whose trademark application is filed directly at the National Institute of Industrial Property (INPI). Resolution no. 248/2019 of September 09, 2019, which disciplined the multiclass system was revoked by Resolution no. 257 of March 09, 2020. In this sense, this Resolution clarifies that Brazilian legislation does not yet provide for owners domiciled in Brazil to file a multiclass application with the National Institute of Industrial Property (INPI).

2.1.18.4. What documents need to be filed when filing an international application designating Brazil?

No documents or power of attorney are required for the filing of an international application by WIPO. However, in line with the practice of most legislations, the presentation of documents and a power of attorney will be

required when actions are taken before the National Institute of Industrial Property (INPI).

2.1.18.5. Which actions are carried out directly by INPI and which are attributed to WIPO?

In short, the holder of an international registration who is domiciled abroad must appoint and maintain a qualified attorney resident in the country to carry out actions directly at the National Institute of Industrial Property (INPI). The power of attorney must be filed within 60 (sixty) consecutive days from the date of the action, regardless of whether it is a notification or an office action, under penalty of archiving the application (INPI, 2019, item 11.3.2).

Applications for designations for Brazil filed directly with the National Institute of Industrial Property (INPI), as well as any accompanying documents, must be in Portuguese. Documents presented in a foreign language must be accompanied by a simple translation (INPI, 2019, item 11.3.2).

For easy reference, the following chart could be used:

ACTIONS CARRIED OUT BY	
NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY (INPI) *(In this case, a power of attorney or other documents may be required from the applicant).*	**WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**
-	Analysis of the trademark application
-	Carry out the formal examination
-	Grant of protection
Carry out the substantive examination	-
Receive and examine appeals	-
Analysis of administrative invalidity	-
Partial cancellation analysis	-
Full cancellation analysis	-

-	Change of name and/or address of the holder
-	Change of ownership
-	Analyze and consolidate a renewal application

2.1.18.6. What is the examination procedure and what are the deadlines?

We emphasize that the international application will have the same protection and treatment as a national application, according to INPI/PR Resolution No. 247/2019, of September 9, 2019, Article 17, which states that "the international registration designating Brazil shall have the same effects as a trademark registration application filed in the country, from the date of such designation, and the protection for the registration sought through the Protocol shall be identical to that granted to those filed directly with the INPI". In addition, Article 18 provides that "trademarks subject to designations for Brazil shall be examined in accordance with the provisions of Law No. 9,279 of May 14, 1996". This means that designations received in Brazil will be placed in the same queues as applications filed directly with the National Institute of Industrial Property - INPI (INPI, 2019, item 11.3.3.1).

As indicated earlier in this booklet, see *"2.1.7. What is a formal examination?"*, Brazil will conduct a formal examination to verify that the necessary formal requirements for the continuation of the application in the national territory are met in accordance with the local trademark law.

In accordance with the provisions of Legislative Decree No. 98 of 2019 and Article 5(2)(b) of the Madrid Protocol, the 18-month period for the Institute of Industrial Property - INPI to notify any refusal to protect the trademark subject of the international registration will be counted from the date of notification of the designation in Brazil (INPI, 2019, item 11.3.3.2).

If no refusal is notified in time, the extension of protection to Brazil will be granted, as provided for in Article 5(5) of the Madrid Protocol, upon payment of the second part of the individual fee for the designation in Brazil (INPI, 2019, item 11.3.3.2).

2.1.18.7. What is the procedure and timetable for substantive examination and publication?

After the formal examination, the designations are published in the Industrial Property Gazette – "RPI", opening a 60-day opposition period. If an opposition is filed, the applicant will be notified and may file a response to the opposition within 60 continuous days from the publication of the existence of the opposition in the Industrial Property Gazette (INPI, 2019, item 11.3.3.4).

It should be noted that notification of the existence of an opposition to a designation in Brazil is published only in the Industrial Property Gazette and no notification is sent to the holder of the international registration through the International Bureau. Therefore, it is recommended that the holder of the international registration monitor the publications in the Industrial Property Gazette in order to be aware of any opposition and to file a response, if desired (INPI, 2019, item 11.3.3.4). Another way to monitor RPI publications is to appoint a local attorney to monitor the application more closely and regularly.

The responses to the opposition(s) during the opposition phase should be submitted directly to the Institute of Industrial Property - INPI and are not mandatory, but will be evaluated during the examination of the registrability of the sign and, if found valid, may serve as legal grounds for provisional refusal (INPI, 2019, item 11.3.3.4).

During the substantive examination of a designation in Brazil, the same decisions that apply to the examination of applications for registration of trademarks filed directly with the Institute of Industrial Property - INPI are published in the Industrial Property Gazette.

At the same time, the following notifications shall be sent to the International Bureau (INPI, 2019, item 11.3.3.5.):

- Notifications of total provisional refusal of protection under Rule 17(1) of the Common Regulations under the Madrid Agreement and Protocol are sent to communicate:
  - Formulation of requirements during the examination;
  - Suspension of examination due to legal action;
  - Suspension of examination;
  - Decision to refuse designation;
  - Decision of partial acceptance of designation; or
  - Archiving of the designation pending examination pursuant to Article 135 of the Law on Industrial Property.

- The total provisional refusal resulting from the partial acceptance of the designation will notify (INPI, 2019, item 11.3.3.5.):

- that the declaration granting protection will be issued only after any appeal to the second administrative instance has been decided; and
- that, if no appeal is filed, a declaration granting protection will be issued for the goods and services for which the sign is registrable.

The total provisional refusal sent to notify the suspension of the examination due to legal action or the suspension of the examination will specify a continuous period of 60 days for the holder of the international registration designating Brazil to file a response to the refusal (INPI, 2019, item 11.3.3.5.).

It is important to clarify that, according to art. 33 of the INPI Regulation No. 08/2022, the registrability of the mark is analyzed separately for each class in a multi-class system, and different legal grounds for refusal may be invoked in relation to each class, to be verified by the Brazilian examiner.

2.1.18.8. What is the procedure for the grant and renewal of an international mark?

When protection is granted to a designation in Brazil, it is identical to the protection granted to a trademark registration filed directly with the National Institute of Industrial Property – INPI (INPI, 2019, item 11.3.4.1.).

When a declaration of grant protection or a subsequent declaration of grant after provisional refusal is sent to the International Bureau, the National Institute of Industrial Property - INPI will send a notification for payment of the second part of the individual fee for the designation in Brazil, in accordance with Article 8(7) of the Madrid Protocol and Rule 34(3)(a) of the Common Regulations (INPI, 2019, item 11.3.4.1.).

This notification will inform the holder that the payment must be made within 60 consecutive days from the publication of the approval of the designation in the Industrial Property Gazette. If the payment is not made within the specified period, the designation will be definitively archived, subject to the possibility of further processing as provided for in the Common Regulations (INPI, 2019, item 11.3.4.1.).

In order to continue to produce effects in the country, the renewal of the international registration for Brazil should be requested by the holder through the International Bureau using Form MM11 (INPI, 2019, item 11.3.4.2.).

Designations of international registrations pending examination that are not renewed for Brazil at the end of their period of validity will be archived and those that have been granted will be cancelled. Payment of renewal fees may be made within 6 (six) months from the final expiry date of the international

registration, subject to an additional fee, as provided for in Rule 30(1)(a) of the Common Regulations (INPI, 2019, item 11.3.4.2.).

If the holder does not wish to renew the international registration in respect of a designated Contracting Party, the payment of fees should be accompanied by a declaration informing the International Bureau of this decision in accordance with Rule 30(2)(a) of the Common Regulations (INPI, 2019, item 11.3.4.2.).

2.1.18.9. Under what circumstances can a designation be extinguished?

According to the information provided in the Brazilian Trademark Manual, a designation may be extinguished in Brazil in whole or in part due to (INPI, 2019, item 11.3.4.3.):

- the expiration of the validity period of the international registration if it is not renewed in respect of the designation in Brazil;
- restriction of the list of goods and services in respect of the designation in Brazil;
- the surrender of the international registration in respect of the designation in Brazil;
- a total or partial cancellation of the international registration; or
- the lapse of the registration.

2.1.18.10. Does the law permit the replacement of a national registration by an international registration?

Yes, our jurisprudence allows substitution with the international registration. Pursuant to Article 4bis (2) of the Madrid Protocol, the holder of an international registration may request, in the designation for Brazil, that the national registration be replaced by the international registration. This request will be examined to ensure that (INPI, 2019, item 11.3.6):

- The national registration and the international registration are in the name of the same holder;
- The protection of the international registration extends to Brazil;
- All the goods and services listed in the national registration are also listed in the international registration for Brazil;
- The designation for Brazil takes effect from the date of the national registration; and
- The national registration is in force.

If the above conditions for substitution are met, the National Institute of Industrial Property - INPI will register the substitution in its database and inform the International Bureau. The decision on the substitution will be published in the Industrial Property Gazette (INPI, 2019, item 11.3.6).

The request will be rejected if the above conditions are not met. A decision denying the request of substitution may be appealed by the holder in accordance with Article 212 of the Law on Industrial Property within a continuous period of 60 (sixty) days from the publication of the denial in the Industrial Property Gazette (INPI, 2019, item 11.3.6).

2.1.18.11. Do Brazilian rules permit the transformation of an application or registration?

Yes, conversion is possible and the procedure follows the provisions of Article 9 *quinquies* of the Madrid Protocol, which states that if an international registration designating Brazil is cancelled in whole or in part at the request of the Office of Origin, the holder of the international registration may, within 3 (three) months from the date of cancellation in the International Register, request the National Institute of Industrial Property - INPI to convert the designation into a national application or registration for the same mark (INPI, 2019, 11.3.7.).

Transformation will only be processed for all cancelled goods and services where cancellation has been requested by the Office of Origin. In the transformation procedure, the filing date and, where applicable, the priority date of the designation will be maintained. If the designation has already been granted, the duration of the designation will also be maintained in the registration resulting from the transformation. If the designation has not yet been granted, its duration will start from the possible grant of the transformed application (INPI, 2019, 11.3.7.).

2.2. Industrial Property: Patents

According to WIPO, a patent is an exclusive right granted for an invention, which is a product or a process that generally provides a new way of doing something or a new technical solution to a problem. To obtain a patent, technical information about the invention must be disclosed to the public in a patent application (WIPO, 2023). In addition to WIPO's description, the National Institute of Industrial Property - INPI points out that a patent is a temporary property right granted by the State to the inventor, which allows them to exclude third parties from using their property without their consent. Therefore, the so-called "virtuous circle" of intellectual property is no different for patents, since

when a patent is granted by the National Institute of Industrial Property - INPI, the patent holder has the right to prevent others from manufacturing, using, selling, offering for sale, or importing a product that is the subject of their patent and/or a process or product obtained directly by a process patented by them (INPI, 2023).

The intention is that, during the patent's validity period, the holder will be rewarded for the effort and expenses involved in its creation. In this way, a patent can be seen as a way of promoting continuous technological innovation, encouraging companies to invest in the development of new technologies and the availability of new products to society (INPI, 2021, item 2.2).

Looking at the Preliminary Statistics Panel of the National Institute of Industrial Property - INPI, which aims to provide preliminary data obtained from patent applications filed with the Institute and some decisions published in the Industrial Property Gazette (INPI, 2023), we can observe the growing demand for patents in Brazil.

Specifically, between January and December 2023, Brazil filed a total of 4,973 applications of patent of invention and 2,373 applications of patent of utility model.

From another perspective, looking at the INPI statistics panel, we highlight the total number of patent applications by type of application and country of origin of the applicant in 2023:

2023 - PATENTS OF INVENTION IN BRAZIL (INPI)

CD	Country	Direct Filing	PCT Filing	Total
US	United States	545	7126	7671
BR	*Brazil*	*4834*	*139*	*4973*
CN	China	53	1595	1648
DE	Germany	161	1473	1634
JP	Japan	88	989	1077
CH	Switzerland	38	1326	1364
FR	France	68	804	872
GB	United Kingdom	33	715	748
IT	Italy	73	537	610
NL	Netherlands	12	514	526
KR	South Korea	14	446	460
SE	Sweden	11	550	561

2.2.1. What is the definition of a patent and utility model in Brazil?

According to Article 8 of the Law on Industrial Property (Law No. 9,279/1996), a patent for an invention is one that meets the requirements of novelty, inventive step, and industrial applicability. The patent in Brazil is divided into patents for inventions and utility models, and one of the best definitions we have for a patent is that it is a "technical solution to a technical problem".

On the other hand, a utility model, according to Article 9 of the Law on Industrial Property (Law No. 9,279/1996), is an object of practical use or a part thereof that is capable of industrial application. It represents a new form or arrangement involving an inventive step that results in a functional improvement in its use or manufacture.

Both types of patents, invention and utility model, are forms of recognition and protection of intellectual property for inventors and innovators who contribute to technological progress and industry in Brazil.

2.2.2. What does the certificate of addition apply to?

An addition to the invention is an improvement or development introduced into the subject matter of the invention, even if there is no inventive activity, as long as the subject matter falls within the same inventive concept. A certificate of addition of invention that does not present the same inventive concept as the application or patent from which it originates will be refused. The holder may, within the time limit for appealing against the refusal of the application for a certificate of addition, request its conversion into an application for a patent of invention or a utility model (INPI, 2021, item 2.5.2).

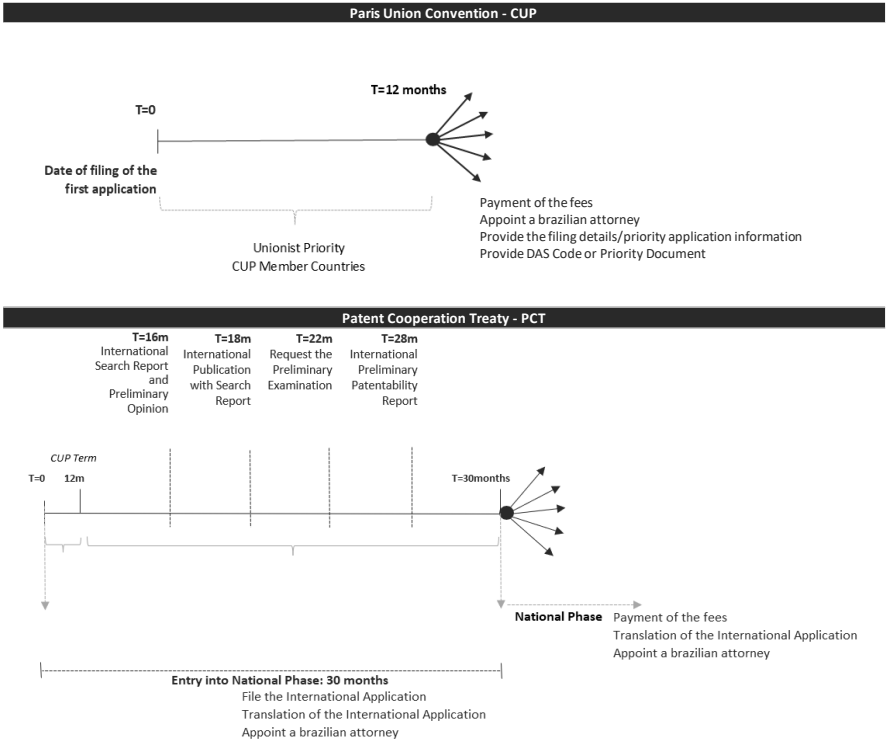
The Law on Industrial Property (LPI) also provides for the grant of a certificate of addition to the patent for the invention (Articles 76 and 77). The certificate of addition ceases to exist together with the original patent (INPI, 2021, item 2.5.).

2.2.3. How to obtain patent protection in Brazil and what are the deadlines?

To obtain protection in Brazil, a patent must be filed directly or through international treaties to which our country is a party, such as the Paris Convention for the Protection of Industrial Property or the Patent Cooperation Treaty (PCT). The term for extending protection is usually 12 (twelve) months from the priority date (the first filing date of the patent application).

It is important to note that even if a patent has been granted in another country, it doesn’t necessarily mean that it will be granted in Brazil. As far as

deadlines are concerned, as you may already be aware, the table below shows the deadlines and, in summary, the basic data and documents to be submitted:



2.2.4. What are the basic information and documents required to file a patent application or a certificate of addition?

In general, the following information and documents should be sent to the local attorney for filing with the National Institute of Industrial Property – INPI (INPI, 2021, item 4.):

- Descriptive report;
- Claims;
- Amendments, if any;
- Sequence listing, if any;
- Drawings, if any;
- Abstract;

- Priority document or DAS code;
- Inventor's information; and
- Applicant’s information.

With regard to the claims and drawings for an invention patent, it is essential to explain the following:

- Construction of the claim: the construction of the claim has its own specific rules. In order to better protect the rights of the holder, it is recommended to start with the title of the invention, followed by a preambular statement specifying the essential characteristics defining the claimed subject matter and already understood by the state of the art (INPI, 2021, item 4.4.1.).
- Indication of the term “characterized by”: the claim should contain a single expression "characterized by," followed by the essential and specific technical characteristics that, in combination with the aspects specified in the preamble, are intended to be protected. It is important to note that, as indicated in the Patent Manual, if the patent application is granted, the part of the subject matter following the expression "characterized by" will become the property of the holder. The words “in which” are not accepted and, according to the instructions and control of the local attorney, the term will be changed to “characterized by” in accordance with the normative Instructions and examination guideline (INPI, 2021, item 4.4.1.).
- Classification of claims: claims are classified as independent and dependent, and in the case of a patent of invention, there is no limit to the number of claims (dependent and/or independent) (INPI, 2021, item 4.4.1.).
- Drawings: they should be clear, in firm and uniform lines, in indelible ink, and there should be as many drawings as necessary for a full understanding of the subject matter of the patent, numbered consecutively (INPI, 2021, item 4.5.).

With regard to the claims and drawings for utility models, it is important to clarify that:

Classification of claims: in the case of a utility model, the object must be fully characterized in a single main and independent claim (INPI, 2021, item 4.4.1.).

- Indication of the term “characterized by”: in a utility model application, the term "characterized by" should be followed by a definition of all the elements which make it up, as well as their positions and relationships in relation to the whole (INPI, 2021, item 4.4.1.).
- Drawings: in utility model applications, it is compulsory to include one or more drawings, since the reading of the claims table is always linked to them, considering that they refer specifically to three-dimensional objects (INPI, 2021, item 4.5.).

Below is a summary table prepared by us based on our experience, which can be used as a guide when filing a patent application in Brazil:

Applicant:	COMPANY NAME FULL ADDRESS, CITY, PROVINCE/STATE, COUNTRY, ZIP CODE
Title:	COMPLETE TITLE AS PROVIDED IN PRIORITY or PCT TEXT.
Priority No.:	PCT FILING NUMBER or NATIONAL APPLICATION NUMBER
Priority Date:	PCT FILING DATE or NATIONAL APPLICATION FILING DATE
Inventor’s Information:	FULL NAME; FULLL ADDRESS, CITY, PROVINCE/STATE, COUNTRY, ZIP CODE; POSITION AND/OR ACADEMIC QUALIFICATIONS OF INVENTOR; NATIONALITY OF INVENTOR.
Documents required for the attorney’s preliminary analysis:	Descriptive report; Claims; Amendments; Drawings; Abstract; Priority document or DAS code.

2.2.5. What kind of content is excluded from protection, i.e., not patentable?

First of all, it's important to note that ideas are not patentable. Like abstract ideas, those that have not been “reduced to practice" cannot be patented. Article 10 of the Law on Industrial Property No. 9,279/1996 lists what is not considered patentable:

- Discoveries, scientific theories, and mathematical methods;
- Purely abstract concepts;
- Schemes, plans, principles, or methods of business, accounting, finance, education, advertising, gambling, and inspection;
- Literary, architectural, artistic, and scientific works or any aesthetic creations;
- Computer programs per se;
- Presentations of information;
- Rules for playing games;
- Techniques and methods for the performance of surgical, therapeutic, or diagnostic procedures on the human or animal body; and
- The whole or any part of natural living beings and biological materials found in nature, or even isolated from it, including the genome or germplasm of any natural living being and natural biological processes.

2.2.6. What is the patent protection cycle in Brazil, and what are the applicable deadlines?

In Brazil, the grant of a patent is a prerogative of the first to file the patent application, that is, the one with the earliest filing date, including the consideration of applications with claimed priority. The filing date is the date of presentation of the application to the National Institute of Industrial Property – INPI, where the applicant is the person who presents the documentation to the National Institute of Industrial Property – INPI, and the inventor takes this role. In general, the life cycle of a patent application includes the following phases (INPI, 2021, item 3.2.):

- Filing of the patent application (first phase): the application process includes verification of payment of the filing fee and submission of the required documents.
- Formal examination (second phase): the formal examination is carried out to check, among other things, the documents required for the examination and information about the applicant and the inventor, among other details. Where there are formal requirements to be met, a 30-day time limit is set for compliance.

- Application filed and confidentiality period (third phase): the application is accepted, and the filing date is the date of filing. It remains confidential for 18 months from the filing date. After the confidentiality period, the patent application documents become public and available.
- Examination request filed (fourth phase): the examination request must be filed within 36 months from the filing date, or the application may be archived.
- Substantive examination or examination procedure (fifth phase): in the substantive examination, any Office Action issued must be responded to within 60 days. If there is a refusal (i.e., a negative opinion on protection), the applicant has 90 days to file an appeal. Failure to meet the deadlines may result in the application being archived.
- Grant fee, in case of approval (sixth phase): the grant fee must be paid and certified to the National Institute of Industrial Property – INPI within 60 days of the notification of grant within the ordinary time limit and within 30 days of the ordinary time limit, duly paid and certified.
- Annual maintenance fee (final and continuous phase): the annual fee must be paid from the beginning of the third year after the filing date, within the first three months of each annual period or by paying an additional fee within the following six months.

2.2.7. What are the requirements for patentability in technical fields?

In Brazil, the requirements for the grant of a utility model patent are novelty, inventive step, and industrial application.

With regard to the novelty requirement, invention patents or utility model patents are considered new if they are not part of the so-called "prior art." In turn, according to Article 11, §1 of the Law on Industrial Property (Law No. 9,279/1996), the prior art includes everything that has become known to the public in Brazil or abroad before the date of filing of the patent application, through written or oral description, use, or any other means.

It is therefore understood that the novelty requirement is global. In other words, the inventor cannot have found an identical solution, product, or process in another country and then apply for a patent in Brazil just because they haven't seen that solution in Brazil before. Such a patent application is likely to be rejected for lack of novelty.

There are some exceptions to what is considered prior art. These exceptions are provided for in Article 12 of the Law on Industrial Property (Law No. 9,279/1996) and relate to cases in which the disclosure of the invention or

utility model was made up to 12 (twelve) months before the filing date or priority date of the patent application. This exception applies if the disclosure was made by the inventor themselves, by the National Institute of Industrial Property – INPI through the publication of the patent without the inventor's consent, or by third parties on the basis of information obtained directly or indirectly from the inventor or as a result of acts performed by the inventor.

According to Article 13 of the Law on Industrial Property (Law No. 9,279/1996), the requirement of inventive step for an invention patent is met if the invention is not obvious or obvious to a person skilled in the art from the prior art.

Similarly, the inventive step requirement for utility model patents follows the same reasoning. According to Article 14 of the Law on Industrial Property (Law No. 9,279/1996), a utility model is considered to have an inventive step if, for a person skilled in the art, it does not follow in a common or ordinary manner from the prior art.

Finally, according to Article 15 of the Law on Industrial Property (Law No. 9,279/1996), an invention and a utility model are considered to be capable of industrial application if they can be used or manufactured in any type of industry.

As we have seen, the requirements of inventive step and industrial applicability are more subjective and depend on the INPI examiner's analysis when comparing the identified prior art with the subject matter of the patent. It's important to note that, as with the novelty requirement, prior art includes sources from anywhere in the world. If the subject matter of the patent application is considered obvious or obvious to a person skilled in the art, it will not be patentable.

2.2.8. What are the obligations of the holder of a patent granted in Brazil?

Once a patent has been granted, the holder acquires rights to the technology, but also responsibilities. If the holder abuses its rights in a harmful manner or engages in proven anti-competitive practices that have been found by administrative or judicial decisions, it may be required to license the patent compulsorily.

Compulsory licenses can also be applied when the holder does not exploit the patent in Brazil due to lack of production or incomplete production of the product, or when they do not fully use the patented process, except in cases of economic infeasibility, which allows imports, or when commercialization does not meet market demand.

2.2.9. Who can perform acts at the INPI?

Natural persons or legal entities domiciled in the country may perform acts before the National Institute of Industrial Property – INPI, whether or not they have a representative. Applicants domiciled abroad must appoint a legal representative in Brazil by means of a power of attorney that includes the power to receive court summonses, as provided for in Article 217 of the LPI (INPI, 2021, item 2.8.4.).

This power of attorney must be in Portuguese, and if the original is in another language, the user must provide its translation, without the need for consular legalization, apostille or notarization. Further information on the power of attorney can be found in item 5.5.7 (INPI, 2021, item 2.8.4.).

Bilingual power of attorney documents are also accepted, i.e., one column with text in Portuguese and another in the language of the holder.

The power of attorney document must be presented at the time of or within 60 (sixty) days after the first act performed by the applicant in the proceedings, irrespective of any Office Action (INPI, 2021, item 2.8.4.).

2.2.10. What are the key aspects of patent restoration and patent reopening?

Unlike in other jurisdictions, if the patent holder fails to pay an annuity within the statutory period, the restoration fee is payable.

Consequently, if the payment is not made, the application or patent will be archived (Article 86 of the LPI). However, the patent holder may request the restoration of the application or patent within a period of 3 months from the date of publication of the archiving in the Industrial Property Gazette. To do so, they must provide the National Institute of Industrial Property (INPI) with proof of payment of the annuity covering the exceptional period and the restoration fee. Failure to request restoration within the legal time limit will result in the definitive archiving of the application.

Another reason for archiving in Brazil is the failure of the patent holder to request examination within the time limit prescribed by law. In this case, the applicant has a period of 60 (sixty) days from the publication of the notice of archiving in the Industrial Property Gazette to pay the re-opening fee together with the request for examination, under penalty of definitive archiving.

The request for reopening is subject to the INPI's technical assessment of the deadlines and amounts due and may require clarifications and/or additional payments. If the applicant does not respond to these requests within 90 (ninety) days, the application will be definitively archived.

2.2.11. Is it possible to disclose an invention? Is there a grace period in this situation?

When developing an invention or utility model that you intend to patent, it's ideal for the inventor to refrain from any disclosure that could jeopardize the patenting process. However, Article 12 of the Law on Industrial Property No. 9,279/1996 grants the inventor a period of 12 months from the date of disclosure of the invention or utility model to file a patent application with the National Institute of Industrial Property – INPI. This period is known as the grace period.

So, if someone has disclosed their invention or utility model in any way (internet, conference, journal article, thesis, dissertation, radio, etc.), they should file the patent application before the grace period expires.

If more than 12 months have elapsed since the publication of non-detailed information about what you wish to patent, the examiner may consider that this publication is not an obstacle to the grant of the patent, but there is a risk. Therefore, it's advisable to file the patent application within 12 months after the disclosure, as provided for in Article 12 of the Law on Industrial Property.

2.2.12. Finally, what is the duration of patent protection?

Pursuant to Article 40 of the Law on Industrial Property (Law No. 9,279/1996), a patent for an invention is valid for 20 (twenty) years and a utility model is valid for 15 (fifteen) years, both counted from the date of filing.

2.3. Industrial Property: Industrial Designs

2.3.1. What is the definition of an industrial design?

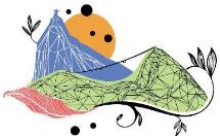
In the context of intellectual property law, industrial design covers only the ornamental or aesthetic elements applicable to a product, thus focusing on its external appearance. Although the industrial design of a product may incorporate technical and functional innovations, the registration of this design as a category of intellectual property relates to the aesthetic nature of the finished product, regardless of any technical or functional aspects it may have (INPI, 2013, p.13).

Therefore, according to the definition in the Law on Industrial Property (Law No. 9,279/1996), an industrial design may be registered as an ornamental plastic shape of an object or an ornamental combination of lines and colors which can be applied to a product, giving a new and original visual appearance to its external configuration and capable of serving as a type of industrial manufacture.

Industrial designs can be two-dimensional (ornamental patterns) or three-dimensional (applied configurations). The ornamental design consists of an

ornamental set of lines and colors that has only two dimensions: height and width. Examples of products to which the ornamental set of lines and colors can be applied are: prints, ornaments, graphic signs, surface patterns, typographic fonts, graphic user interfaces or any other type intended for surface ornamentation. (2023c, item 2.2).

Examples (INPI, 2023c, item 2.3):

	
Ref.: BR30 2021 00589-9 Industrial design of two-dimensional product. Ornamental pattern applied to/on bag.	Industrial design of a two-dimensional product with dynamic configuration.

Three-dimensional industrial design is the ornamental plastic form of an object that has height, width and depth. Furniture, footwear, jewelry, vehicles, and packaging, among others, are examples of products whose configuration is defined by three-dimensional industrial design. (INPI, 2023, item 2.2).

Examples: (INPI, 2023c, item 2.3):

		
Ref.: BR 30 2017 00142-1. Industrial Design of a Simple product	Ref.: BR 30 2018 00245-0. Industrial design of a complex product consisting of interconnected parts	Industrial design of a complex product consisting of parts without interconnection

2.3.2. Is Brazil a member of the Hague Agreement?

Yes, the World Intellectual Property Organization - WIPO announced on February 17, 2023, that our country has joined the Hague Agreement. The system came into effect on August 1, 2023, and internal adaptations are being made to accommodate and manage new industrial design applications.

Under the information provided by the National Institute of Industrial Property (INPI), the Hague Agreement for the International Registration of Industrial Designs offers a practical business solution for registering up to 100 industrial designs per application in up to 96 countries through the submission of a single international application (INPI, 2023).

Between November and December 2022, an analysis was conducted on the contributions received during the public consultation on the 2nd edition of the Industrial Design Manual. On September 12, 2023, the National Institute of Industrial Property (INPI) released the 2nd edition of the Industrial Design Manual, which came into effect on October 2, 2023 (INPI, 2023).

Among the most significant changes resulting from the modernization of the industrial design examination guidelines in the 2nd edition of the Manual are as follows (INPI, 2023):

- Possibility of protecting industrial designs of two-dimensional or three-dimensional ornamental configurations applied to electronic devices (e.g., sealed, or dynamic graphic interfaces, icons, typeface families, etc.);
- Possibility of protecting three-dimensional industrial designs consisting of parts without mechanical connection (e.g., a sound system composed of a receiver and two speakers);
- Possibility of protecting industrial designs that include trademark signs or the protection of industrial designs of logos;
- Possibility of protecting industrial designs that include textual elements of any nature in any language; and
- Expanded options for representing the registered object, particularly regarding the representation of unclaimed illustrative elements (e.g., using dashed lines to represent the waiver of illustrative elements not included in the claim);

- Publication of conditions for maintaining priority based on an analysis of correspondence between the claim and the claim in the Brazilian registration application;
- Possibility of submitting and examining priority documentation through the WIPO-DAS electronic access service;
- Publication of parameters for novelty and originality examinations (e.g., examination of the merit of industrial design registration); and
- Incorporation of processing guidelines for designations originating from the Hague Agreement.

2.3.3. How to obtain industrial design protection in Brazil and what are the deadlines?

To obtain protection in Brazil, a design patent can be filed directly with the National Institute of Industrial Property - INPI, either with or without an appointed attorney, but it's also possible to use international treaties such as the Paris Convention and the Hague Agreement. The time limit for extending protection is 6 (six) months from the priority date (first filing of the application).

In addition, it's important to note that even if a design patent has been registered in another country or locality, it doesn't necessarily mean that it will be registered in Brazil.

2.3.4. What are the basic documents required to file an industrial design?

- drawings or photographs: each drawing or photograph should be on a separate sheet, with appropriate dimensions, sharpness, and sufficient graphic resolution for a full understanding of the design patent applied for, with a minimum of 300 dpi. The figures should show only the external configuration of the assembled object, consistently shown in all views (front, back, sides, bottom, top, and perspective) (INPI, 2022, item 3.7.1);
- descriptive report: in cases where views are omitted or the presentation of purely illustrative figures are presented, the descriptive report is a mandatory document for the application. The report should contain statements clarifying the scope of protection to be granted by the design patent applied for (INPI, 2022, item 3.7.2);
- claims: in cases where views are omitted or purely illustrative figures are presented, the claim is a mandatory document for the application (INPI, 2022, item 3.7.3); and

- power of attorney: the time limit for filing a power of attorney is 60 (sixty) days from the date of filing, without notice or requirement. In order to be considered valid by the National Institute of Industrial Property - INPI, the power of attorney must contain the following information: i) the identity of the grantor and the grantee in the power of attorney; ii) the date of signature; iii) the signature; iv) the authorization to represent before the INPI; v) the authorization to receive court summonses (Article 217 of the LPI), which is mandatory for grantors domiciled abroad.

The power of attorney must be in Portuguese, and if the original is in another language, the user must provide a translation, without the need for consular legalization and notarization of the signatures (INPI, 2022, item 3.7.4). A two-column power of attorney is accepted, with one column in Portuguese and another in the local language.

2.3.5. What cannot be registered as a design?

Designs which are contrary to morals and good customs, or which offend against the honor or reputation of persons, or which infringe upon the freedom of conscience, religion or worship, or upon ideas and feelings worthy of respect and reverence, cannot be protected under the Law on Industrial Property (Law No. 9,279/96).

In addition, designs which represent the necessary common or ordinary shape of an object or which are essentially determined by technical or functional considerations are not registrable.

Purely artistic objects or patterns cannot be registered as designs.

2.3.6. What are their requirements?

As provided for in Article 95 of the Law on Industrial Property (Law No. 9,279/1996), the requirements for obtaining a design registration are as follows: having an ornamental aspect, novelty, originality, external configuration, and serving as a type of industrial manufacture.

Thus, according to the Industrial Designs Manual (INPI, 2023b, item 2.4), the requirements can be summarized as follows:

- ornamental aspect: the ornamental aspect should be understood as the aesthetic, decorative, and ornamental aspect, which does not protect the functional and technical aspects of the object;

- novelty: as with patents, this requirement presupposes that the subject-matter of the design registration application is new anywhere in the world;
- originality: this is the most subjective requirement. An original object is one that "results from a creative act which distinguishes the object or design from others in the prior art and gives it an individual, distinctive character" (INPI, 2023b, item 2.4).
- external configuration: this means that the object to be protected by the design patent registration protects only the external aspect and does not protect internal components that are not visible.
- type of industrial manufacture: it is understood that the subject-matter of the design registration must be reproducible, i.e., capable of being reproduced on an industrial scale in a uniform manner.

2.3.7. Is it possible to disclose an industrial design? Is there a grace period?

For industrial designs, the grace period (i.e., the exception to what is considered prior art) is 180 (one hundred and eighty) days, i.e., in cases where the disclosure of the subject-matter of the industrial design application has taken place within 180 (one hundred and eighty) days before the filing date or the priority date of the industrial design, if promoted by the author, by the INPI, by publication of the object of the design without the author's consent, or by third parties on the basis of information obtained directly or indirectly from the author or as a result of acts performed by the author.

2.3.8. What is the term of protection for industrial designs?

Pursuant to Article 108 of the Law on Industrial Property (Law No. 9,279/96), the registration of an industrial design is valid for a period of up to 25 (twenty-five) years from the date of filing. After this period, the registration expires.

2.4. Industrial Property: Geographical Indications

2.4.1. What is the definition of a geographical indication?

As we know, over the years, certain places become famous for their products or services, attracting large numbers of consumers and the curious. Therefore, it is only fair that they receive adequate protection, including against consumer fraud.

According to the Geographical Indications Manual (INPI, 2023d) and the Law on Industrial Property (Law No. 9,279/1996), a geographical indication, as the name suggests, aims to identify the geographical origin of a specific product or service.

Furthermore, there are two forms of geographical indications: indications of source and appellations of origin, which are registered with the National Institute of Industrial Property (INPI). The main differences are:

- Indication of origin: "protects the geographical name that has become known through a product or service" (INPI, 2023d);
- Designation of Origin: "presupposes that the qualities or characteristics of a specific geographical area, including natural and human factors, exclusively or essentially influence a product or service, and are characteristic of it" (INPI, 2023d).

2.4.2. What are the conditions for requesting a geographical indication?

According to Article 8 of the National Institute of Industrial Property - INPI Regulation No. 4/22, the registration of a geographical indication is declaratory. This means that the granting of a geographical indication is the recognition of a pre-existing situation.

For an indication of origin, it is therefore necessary that "a specific geographical area has a proven reputation as a center for the extraction, production, or manufacture of a particular product or the provision of a particular service" (INPI, 2023d, item 2.2).

In accordance with the provisions of Article 9, §4, of the National Institute of Industrial Property - INPI Regulation No. 4/22, the geographical name must be well known, i.e., it must be expressly mentioned in various sources as the center of extraction, production, or manufacture of the product or service in question.

With regard to the registration of a designation of origin, Article 9, § 5, of INPI Regulation No. 4/22 states that "the qualities or characteristics of the product or service covered by the geographical indication must be exclusively or essentially due to the characteristics of the geographical environment, including natural and human factors" (INPI, 2023d, item 2.3).

Therefore, in the case of an indication of origin, the applicant must prove that the geographical area has become known for the declared service or product. For a designation of origin, the applicant must demonstrate that the geographical environment, including human and natural factors, has a decisive

influence on the service provided or the quality of the product, thereby making it known (INPI, 2023d, items 2.5 and 2.6).

2.4.3. Where and for how long is the geographical indication protected?

The protection of geographical indications is territorial and, once declared, has no expiry date. To obtain protection in Brazil, Article 124 of the Law on Industrial Property (Law No. 9,279/1996) mentions the non-registrability of a geographical indication or its imitation that may cause confusion.

2.5. Industrial Property: Trade Secrets and suppression of Unfair Competition

2.5.1. What are the requirements and the reference legal text?

Unlike other industrial property assets that can be registered, such as trademarks and industrial designs, the term "industrial secret," "business secret," "trade secret," among many other definitions, here understood as the genus "trade secret" and its species "industrial secret" and "commercial secret" (FEKETE, 2003, p.17), does not have a registration and results from a factual market situation.

Thus, for example, even if there is no exclusive right to that business method, there is suppression of unfair competition if such a secret has been improperly obtained. On this point, Moreti and Caetano (2023, p.292) explain it well:

> Following this line of reasoning and for illustrative purposes, the development of an innovative business model and its introduction to the market does not guarantee exclusivity. This is because traditional intellectual property tools do not protect business models. Take the example of Uber, an urban mobility platform that revolutionized the transportation market with its business model. Subsequently, other companies emerged offering the same business model to consumers (such as 99Taxi, Cabify, Lift), without infringing on the pioneering Uber's property.

> On the other hand, if an Uber employee were to break the confidentiality of improvements being developed in the app and pass on such information to competitors, we would be facing unfair behavior that deprived Uber of the advantage it held over others. Therefore, there is no exclusive right, but a situation in which a certain position, which creates a competitive advantage, is unfairly undermined by its competitors.

Therefore, the means of protecting secrets against unfair competition do not rely on exclusivity but on the action and proactivity of the entrepreneur in protecting confidential information through non-disclosure agreements and other typical contracts, together with various techniques related to information technology, data protection, and confidential file management, all in an attempt to keep such information limited.

Another important point to remember is that not all information can be considered a secret. Information that is obvious, readily accessible, and generally known cannot be considered secret.

Consequently, under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), enacted by Decree No. 1,355 of December 30, 1994, certain elements are required for information to be considered confidential. In other words, the information must be secret (confidential and non-obvious), have commercial value, be subject to precautions to maintain its secrecy, and have been lawfully obtained:

> ARTICLE 39
> 2. Individuals and legal entities shall have the possibility to prevent information lawfully under their control from being disclosed, acquired, or used by third parties without their consent in a manner contrary to honest commercial practices, provided that such information:
>
> (a) is secret in the sense that it is not generally known or easily accessible to persons within circles that normally deal with the type of information in question, either as a whole or in the specific configuration and assembly of its components;
> (b) has commercial value because it is secret; and
> (c) has been subject to reasonable steps, under the circumstances, by the person lawfully in control of the information, to keep it secret.

As a result, many companies opt for trade secrecy, which limits their competitive advantage, rather than applying for a patent. In some cases, the innovation may not meet the requirements for patentability, but it can still be kept secret and scarce. Moreover, one of the advantages of secrecy is that it has no borders, unlike, for example, a patent, whose protection is territorial.

Thus, the suppression of unfair competition and the maintenance of secrecy can be viable options for protecting a company's knowledge. The protection of trade secrets is governed by the Law on Industrial Property (Law No. 9,279/1996), in particular by Article 195, which provides for the suppression of unfair competition acts in its various forms.

> Article 195. Engages in unfair competition those who:
> I - publish, by any means, false statements to the detriment of a competitor, with the intent to gain an advantage;
> II - provide or disseminate false information about a competitor with the intent to gain an advantage;
> III - use fraudulent means to divert, for their own or another's benefit, someone else's clientele;
> IV - use someone else's advertising expression or sign or imitate them in a way that creates confusion between products or establishments;
> V - improperly use someone else's trade name, establishment title, or insignia or sell, exhibit, offer for sale, or have in stock products with these references;
> VI - replace, without their consent, in someone else's product, the other person's name or business name with their own;
> VII - attribute to themselves, as a means of advertising, a reward or distinction they did not receive;
> VIII - sell, exhibit, offer for sale, or use someone else's adulterated or counterfeit product in someone else's container or packaging, or use it to trade with a product of the same kind, even if not adulterated or counterfeit, if the act does not constitute a more serious crime;
> IX - give or promise money or other benefits to a competitor's employee so that the employee, failing in their duty, provides them with an advantage;
> X - receive money or other benefits or accept the promise of payment or reward to provide an advantage to a competitor of the employer by failing in their duty as an employee;

XI - disclose, exploit, or use, without authorization, confidential knowledge, information, or data usable in industry, commerce, or the provision of services, excluding those that are publicly known or evident to an expert in the field, to which they had access through a contractual or employment relationship, even after the termination of the contract;
XII - disclose, exploit, or use, without authorization, knowledge or information referred to in the previous item, obtained by illicit means or to which they had access through fraud; or
XIII - sell, exhibit, or offer for sale a product, declaring it to be the subject of a deposited or granted patent or a registered industrial design when it is not or mention it in an advertisement or commercial paper as deposited or patented or registered, when it is not.
XIV - Disclose, exploit, or use, without authorization, undisclosed test results or other data whose preparation involves considerable effort and which have been submitted to government entities as a condition for approving the marketing of products.
Penalty - detention from 3 (three) months to 1 (one) year, or a fine.
§ 1. The scenarios referred to in items XI and XII also include the employer, partner, or administrator of the company who falls within the typification established in the mentioned provisions.
§ 2. The provisions of item XIV do not apply to the disclosure by the competent government agency to authorize the marketing of a product when necessary to protect the public.

Thank you for reading!

▪

INNOVATE. DARE TO INVENT. CHOOSE GROWTH.
WE ARE AT YOUR SIDE. FEEL FREE TO CREATE AND SUCCEED.

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