

## **Intellectual Property: How is regulated in Brazil**

The protection of industrial property in Brazil is regulated by the Law of Industrial Property, including patents for pharmaceuticals and chemicals, pharmaceuticals and food stuffs.

The National Institute of Industrial Property, established in 1970, is responsible for regulating and enforcing industrial property rights, including patents, trademarks and registration of intangibles.

Brazil is a signatory to major international agreements on industrial property, such as the Berne and Paris, the Patent Cooperation Treaty and the Agreement on Trade-Related Aspects of Intellectual Property Rights.

### **Trademarks: Learn more**

Trademarks are words, names, letters, symbols or devices used by manufacturers or merchants to identify its goods and distinguish them from those made elsewhere.

Trademark registration of the PTO is required to ensure the protection of property rights in Brazil.

### **Four types of trademarks are legally protected in Brazil:**

- Trademarks used by industrial manufacturers to differentiate their products.
- Trademarks used by merchants to identify their merchandise.
- Service Marks used to protect services or activities.
- Brands generally used to identify the source of a series of products or services that are individually distinguished by specific marks.

**Patents: Learn how they work**

To be protected by Intellectual Property Law, inventions, utility models and industrial designs must be patented in Brazil.

For the granting of patents are required absolute novelty, utility and non obviousness.

The PTO works to finalize the review process of patents within four years.

The patent is valid for the following periods: inventions - 20 years; utility models - 15 years, and industrial design - 10 years. The patentee should use it commercially within two years after registration with the INPI or authorize others to do so under penalty of compulsory licensing or patent expiry.

**We beg you to read carefully on the following items that can not be patented:**

- Products that violate public morals, safety, health and public order.
- Products processed from the atomic nucleus.
- living creatures, except micro-organisms.
- scientific theories and surgical techniques.
- Software for computers.
- A patent becomes public domain in the following cases:
  - Closure of its legal deadline.
  - Surrender of the patent owner.
  - Failure to use the patent law.
  - Non-payment of annual contributions.
  - Absence of attorney to represent the foreign owner in Brazil.
  - Cancellation administrative or judicial annulment.

Patents can be licensed or sold by their owners. The

manufacture of a product or using processes protected by patents, without permission from the owner, is considered patent infringement.

### **Technology transfer: how to proceed**

All acts or contracts involving technology transfer, licensing agreements and patents and trademarks and contracts for provision of technical and scientific, must be registered with INPI. Royalty payments and fees cannot be sent abroad unless their agreements are approved and registered by the PTO at the Central Bank of Brazil. The registration with the INPI is also required for the tax deduction of related expenses.

### **Copyright**

The Copyright Act governs copyright in Brazil. It protects works of creative inspiration expressed by any means intellectual property.

The registration of copyright is optional in the country.

Therefore, it is not necessary for the application to the copyright of third parties. The copyright infringement can be punished by imprisonment and payment of compensation to the author.

### **Software: how are they protected**

The legal protection of computer programs is regulated by Law 9.609/98 and the National Copyright Law. Software made outside the country can benefit from protection, regardless of registration. This item works only under the condition if the foreign country of origin grants similar rights to Brazilian software.

The registration of foreign programs prior to marketing is no longer necessary. However, it is recommended that the registration in the PTO to facilitate the underlying copyright protection in relation to others.

### **Franchise: get to know more**

Franchises in Brazil are regulated by Law 8.955/94. The franchise must be registered with INPI to be effective against third parties.

**Antitrust rule: how it works**

The Administrative Council for Economic Defense (Cade) is the Brazilian agency responsible for protecting the free market economy and fair competition.

Two other agencies give assistance for the analysis of the CADE administrative processes:

- Secretariat of Economic Law (SDE) - connected to the Ministry of Justice, is responsible for initiating investigations and advise on the legal aspects of a case.
  
- Secretariat for Economic Monitoring (Seae) - linked to the Ministry of Finance, opinions on economic issues of a case.

The final decision on the cases is the prerogative of Cade