



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Observatory

Country Guide Brazil 2013

Version 0.3 – 16/01/2014

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Quality Criteria (to be used by reviewers)

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| Clear and precise language Information up to date |
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1. Introduction

This guide is written to provide basic assistance to intellectual property (IP) rights holders and their advisers, on the IP protection and enforcement system in Brazil.

The guide is intended to provide simple guidelines on how rights holders can protect their IP assets and what to do if their rights are infringed.

2. Background

Brazil has the largest economy in Latin America and may move into the top five in the world in coming years. It is the “B” in the acronym BRICs.

The Brazilian Government is committed to a more effective system of protection and enforcement of intellectual property. Resources and staffing levels have been raised within the national IP office (INPI) to speed up patent and trade mark examinations and further increases are planned in the near future. The public-private cooperation under the *National Council to Combat Piracy* is also ongoing and has carried out considerable training activities, organised seminars and workshops for enforcement authorities and the judiciary and set up awareness campaigns.

In December 2013 the National Directory Against Trademarks Counterfeit was created. This is a partnership between INPI and CNCP. This Directory consists of strategic information system, developed by and located at INPI’s headquarters. The Directory, managed by INPI¹, is for institutions which have policy power in Brazil and aims at optimizing fiscal and administrative procedures in cases of evidence of counterfeiting.

Brazil is a party to:

- The Paris Convention – which means that someone from another signatory state can apply for a patent or trade mark and expect the same rights as a national rights holder

http://www.wipo.int/treaties/en/remarks.jsp?cnty_id=199C

- The Patent Cooperation Treaty – which allows someone to obtain a set of patent applications in different countries through a single application

http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=6

- The Berne Convention – which ensures that parties to the convention give equal recognition to copyright holders from other convention member states

http://www.wipo.int/treaties/en/remarks.jsp?cnty_id=922C

- The Rome Convention – which extends copyright protection to performers, producers of phonograms and broadcasting organizations

http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=23C

1 For more information, <http://www.inpi.gov.br/portal/login/cedpi>

- The UPOV Convention – which lays down a harmonized system for plant breeders' rights.

http://www.wipo.int/treaties/en/notifications/upov/treaty_upov_74.html

Brazil is a member of the World Trade Organisation (WTO) and is a signatory to the TRIPS Agreement.

http://www.wto.org/english/thewto_e/countries_e/brazil_e.htm

3. Brazil's Legal Framework

There are few specialist courts exclusively dealing with IP-related cases. The ordinary civil courts deal with cases as appropriate. With the exception of trade name protection (dealt with by the Civil Code) all other areas of IP have their own specific legislation.

Actions against the infringement of all types of IP may be brought under Brazil's Penal Code and specific IP legislation, with the possibility of higher penalties for infringers including imprisonment and fines. A criminal complaint must be preceded by a search and seizure action, which aims to collect evidence rather than halt the infringement.

Specialist federal courts in Rio de Janeiro are available to hear actions, such as cancellations, coming from proceedings at the national office. E-filing systems have significantly improved the speed of decisions.

Specialised state courts are available in infringement actions in both Rio de Janeiro (first instance only) and Sao Paulo (second instance only).

The specific laws are:

Federative Republic of Brazil Constitution (Article. 5, XVII e XIX)

http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm

Law nº 9.279/96 (Industrial Property Law)

http://www.planalto.gov.br/ccivil_03/leis/19279.htm

Law nº 9.456/97 (Cultivated Plantes)

http://www.planalto.gov.br/ccivil_03/leis/L9456.htm

Law nº 9.609/98 (Softwares)

http://www.planalto.gov.br/ccivil_03/leis/19609.htm

Law nº 9.610/98 (Copyrights)

http://www.planalto.gov.br/ccivil_03/leis/19610.htm

Law nº10.753/03 (National Policy of Books)

http://www.planalto.gov.br/ccivil_03/leis/2003/110.753.htm

Law nº 11.105/05 (Law of Biosecurity /Steam Cells, Transgenics)

http://www.planalto.gov.br/ccivil_03/ato2004-2006/2005/lei/11105.htm

Law nº 11.484/07 (Integrated Circuits)

http://www.planalto.gov.br/ccivil_03/ato2007-2010/2007/lei/111484.htm

Law nº 12.853 (Collective Management of Copyrights)

http://www.planalto.gov.br/ccivil_03/Ato2011-2014/2013/Lei/L12853.htm

Decree nº 7.356/10 (that restructured INPI / created the Centre of Defense of Intellectual property of INPI)

http://www.planalto.gov.br/ccivil_03/Ato2007-2010/2010/Decreto/D7356.htm

Provisory Rule 2186-16/01 (Traditional Knowledge)

http://www.planalto.gov.br/ccivil_03/mpv/2186-16.htm

Normative Instruction nº 13/13 of the Brazilian National Institute of Industrial Property (Industrial Designs)

http://www.inpi.gov.br/images/docs/instrucao_normativa_13-2013.pdf

English versions of the laws can be found at: <http://wipo.int/wipolex/en/profile.jsp?code=BR>

The Office has announced plans to for accelerating the examination of patent and trade mark applications. It has also announced the launch of a mediation centre.

Arbitration is available for disputes over .br domain names.

4. How to protect your IPR through registration (patent, trade mark, designs, others)

Requests for registration of trade marks, designs and patents need to be filed with the Brazilian National Institute for Industrial Property (INPI):

INPI
Rua São Bento 1
CEP 20090-010
Rio de Janeiro, RJ
Brazil
<http://www.inpi.gov.br/portal/>

Applications for trade marks and patents can also be filed electronically.

Note: The INPI website is not yet available in English.

Applicants from countries outside Brazil should take note that unless they have a place of business in Brazil they must file their applications through a Brazilian attorney or agent.

“Any individual or company may present a trademark application online in our website or by a printed form presented directly in one of our receptions in Brazil. Nevertheless, in case of applicants living abroad, according to the Brazilian Industrial Property law, available in our website (<http://www.inpi.gov.br/images/stories/Lei9279-ingles.pdf>), it is mandatory to appoint a legal representative domiciled in Brazil with powers of attorney, including specific powers for receiving judicial summons (Article 217). Moreover, companies can only request the registration of a mark relating to the activity they perform directly or through another companies under their control. (Article 128 § 1)”.

The UK Office has recently produced a useful guide:
<http://www.ipo.gov.uk/ipbrazil.pdf>

5. General criminal and civil law that can apply to IPR issues

Injunctive relief can provide a quicker avenue for action for the holder of an infringed IPR than a full action. The Brazilian Civil Code allows for the granting of injunctions where there is a high probability that the requesting party would succeed at the full trial and that in the absence of an injunction serious or irreparable damage would be done to the interests of the right holder.

Search and seizure of infringing products can be carried out in civil and criminal proceedings where the court issues such a warrant. This can be done even before the infringer is aware of the court action.

6. Weak points in IPR enforcement legislation, administration systems etc.

As DG trade of the European Commission has indicated.², despite visible reform and activity, concrete improvements on the ground for IP right holders have not fully materialised yet. Judicial proceedings remain slow in some courts and sanctions do not for the most part act as a deterrent. Internet piracy is rife and registration of trade marks and patents still take too long. Although Brazil promotes innovation and is interested in technology transfer, it appears that Brazilian taxation of licensing contracts and royalty payments can act as a disincentive to foreign companies. The role of Brazilian Health Surveillance Agency (ANVISA) in the patent examination remains an area of concern

7. Basic Advice

- Protect your rights through registration where this is possible and by applying to customs. Contact: <http://www.receita.fazenda.gov.br/>
- Seek advance professional advice from lawyers and investigators on how to protect supply chains and secure evidence
- Ensure colleagues, employees and business partners have substantial knowledge about your products and can easily identify counterfeits.
- Put protective measures in place in respect of confidential information and trade secrets
- Engage lawyers and enforcement as quickly as possible and take appropriate action

8. Statistics

- Statistics on registration of IPRs can be found at:

http://www.wipo.int/ipstats/en/statistics/country_profile/countries/br.html

² Commission of the European Union Staff Working Paper
http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150789.pdf

9. Contact information (online and otherwise)

- Registration of trade marks, patents and designs

INPI
Rua São Bento 1
CEP 20090-010
Rio de Janeiro, RJ
Brazil
<http://www.inpi.gov.br/portal/>

- Copyright

Ministry of Culture
SCS - Quadra 09 - Lote C - Torre B
Ed. Parque Cidade - 10º Andar
CEP: 70.308-200
Brasília, DF
direito.autoral@cultura.gov.br
<http://www.cultura.gov.br/>

- Domain names' Registrar: www.registro.br
- Customs authorities: <http://www.receita.fazenda.gov.br/>
- Attorneys: Local firms in Brazil can offer you legal advice and services specific to your business. The Chambers and Partners website offers a search facility listing local law firms.
<http://www.chambersandpartners.com/Latin-America/Editorial/71794>
- European Union delegation to Brazil: http://eeas.europa.eu/delegations/brazil/index_en.htm