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Fast protection for green technologies in Brazil

Ana Paula Jardim and Andréa Granthon from Luiz Leonardos explore Brazilian patent examination and the ways in which the Brazilian PTO is dealing with the extensive backlog problems they previously encountered, looking closely at the pilot projects the Brazilian PTO are running.

The Brazilian Patent and Trademark Office (Brazilian PTO) is dealing with a serious backlog of pending applications, which results in long delays in the patent prosecution and, as a consequence, in the acquisition of patent rights. Such delays negatively affect the competitiveness of the national industry and render the country unattractive for foreign investments.

In an attempt to overcome, or at least minimize, the backlog problem, the Brazilian PTO has already implemented several fast-track examination programs.

This includes the Green Patent Program for patent applications relating to 'green' technologies of specific categories: alternative energy, transportation, energy conservation, waste management, and agriculture.

The other programs and measures are listed herein below:

– By means of Resolution No. 80 of April 9, 2013, the Brazilian PTO established rules to regulate the prioritization of examination for patent applications referring to:

- (i) products, processes, equipment or materials for health care related to public assistance policies and regarded to be strategic to the Unified Health System (SUS) existing in Brazil, and

- (ii) diagnosis, prophylaxis, and treatment of AIDS/HIV, Cancer, and neglected diseases listed in said Resolution, such as Chagas Disease, Malaria, Tuberculosis, and others.

– The 'Brazilian Priority Pilot Project' covers patent applications filed initially in Brazil and claimed as a priority for patent applications subsequently filed in other countries or directly as a Patent Cooperation Treaty application in Brazil.

– A 'Micro or Small Entities Examination Prioritization Pilot Project', for patent applications whose applicants qualify as micro or small entities in Brazil, has also been introduced.

– The Pilot Program for the acceleration of examination of patent applications filed by Technology and Science Institutions (ICTs), the so-called "ICTs Patents Pilot Project", in force since June 22, 2017 and valid for one year, aims to stimulate and facilitate the introduction on the market of innovative products and services developed by the ICTs.

The Brazilian PTO is also running three Patent Prosecution Highway Pilot Projects:

- 1) With the US Patent and Trademark Office for patent applications containing claims directed to oil, gas and petrochemical inventions;
- 2) With the Japan Patent Office for applications containing claims directed to IT inventions,
- 3) The most recent one with the Patent Offices of Argentina, Chile, Colombia, Costa Rica, Ecuador, Paraguay, Peru and Uruguay (PPH PROSUR) for patent applications of any technological field.

A pilot PPH program is also being discussed with the European Patent Office.

The latest initiative of the Brazilian PTO is a resolution proposal for a simplified granting procedure of patent applications without any substantive examination, which was opened to public consultation until August 31, 2017. The Brazilian Ministry of Industry, Foreign Trade, and Services (MDIC) and the Brazilian PTO will now analyze

Résumés

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When it comes to the protection of green technology inventions in Brazil, the use of the Green Patent Program is highly recommended to obtain a patent quickly as it significantly reduces the time frame for the issuance of a final decision (allowance or rejection) from many years (at present, over ten years from the filing date) to about two years from acceptance into the program.

Many Patent Offices have already adopted fast-track procedures to expedite the examination of patent applications related to green technology, including those of the UK, Australia, Israel, Japan, Korea, US, Canada, and China.

The numbers show the significant interest of companies, as well as inventors, in protecting technological innovations in this area. The protection of inventions by means of patents can be used not only as a competitive advantage when the product is introduced on the market but also for the development of partnerships and licensing.

Last December, priority examination of patent applications related to green technologies became a permanent service at the Brazilian PTO by means of Resolution No. 175/2016.

If the application contains subject matter obtained as a result of access to samples of Brazilian genetic heritage or associated traditional knowledge, the number of the corresponding access authorization granted by the Genetic Heritage Management Council must be listed for the green patent to be granted.

In contrast to other countries where the Green Patent Programs are not restricted to specific technologies (sometimes even encompassing all environmentally friendly technologies, or technologies that bring some environmental benefits), the Brazilian program is limited to alternative energy, transportation, energy conservation, waste management, and agriculture. The selection of such areas was based on WIPO's inventory of green technologies.

The presentation of technical arguments explaining why the invention relates to one of the listed green technologies upon the request for participation into the program could avoid a refusal decision and the need for a subsequent appeal, rendering the overall prosecution faster.

Apart from representing a valuable tool for those who use the patent system to safeguard their green inventions, the program contributes to the development and diffusion of innovative green technologies, which may be used sooner by society to protect our environment.



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