

Brazilian Patent Office and changes to patenting deadlines

Eduardo Mercadante and Ken Shadlen discuss the potential negative effects of the recent proposals from the Brazilian Patent Office to change the deadlines for the prosecution of patent applications.

The Brazilian Patent Office (INPI) has been exploring several strategies to reduce the amount of time from when patent applications are filed in Brazil to when final decisions of whether or not to grant are made, since, globally, it is historically one of the offices with the slowest and longest periods of prosecution. To that end, and to its credit, the INPI has invested in improving the office's infrastructure and hiring new examiners, both of which are measures that can strengthen examination capacity. Regrettably, however, the INPI has also implemented and proposed policies to expedite prosecution that could have harmful consequences for the Brazilian patent system. In September of 2023 the INPI made one such [proposal](#), regarding new deadlines for applicants in their engagement with the patent office. Our analysis of the INPI's proposed adjustments, seemingly minor issues but ones that can have significant effects, prompted us to publish [a commentary in JOTA](#),* a journal in Brazil.

While the INPI's proposed changes that we analyse are technical, and deep in the weeds of patent office practices, we alert to four negative consequences. First, they create a competitive disadvantage for Brazilian inventors, by depriving them of options in pursuing patents that are available to foreign applicants. Second, they waste resources of Brazil's already overburdened and resource-starved patent office, by requiring them to dedicate energies toward examining applications that the inventors themselves often decide are not worth pursuing. Third, they compromise the functioning of the safeguards in the patent system against examination errors, increasing the risk of granting patents to application that should be rejected. Finally, they may lead to disincentives to innovative investments in Brazil.

Ultimately, we praise the INPI for putting the proposals to public consultation, but we recommend they be abandoned in their specific form. Instead, we suggest an alternative approach that the INPI might consider, one that can go some way toward achieving the

goal of reducing prosecution times, but in a way that is less vulnerable to the negative effects that our analysis warns about.

* The article in Portuguese is free but registration is required.

The views expressed in this post are those of the author and do not reflect those of the International Development LSE blog or the London School of Economics and Political Science.

Image credit: Patent Law, Nick Youngson via [The Blue Diamond Gallery](#).