

BRAZILIAN PATENT OFFICE (BPTO) SPEEDS UP PROSECUTION, REDUCES ANALYSIS TIME FOR PATENTS

The Brazilian Patent and Trademark Office released its 2023 Management Report, encompassing the results of its operations throughout that year bearing in mind the goals defined in the Strategic Plan for the 2023-2026 term.

With respect to patent protection, the scenario was relatively stable. In 2023, 27,918 patent applications were filed, representing a 2,9% increase from the 27,139 patent applications filed in 2022.

Of the total patent applications, 7,435 (27%) were filed by Brazilian residents, while the remaining 20,483 (73%) applications were filed by non-residents. Although the total number of national applicants is less than the total of foreign applicants, the number of patent applications originating in Brazil is the second highest when compared individually with other countries, second only to the United States with 7,686 patent applications filed. Next are China, with 1,666 applications filed, Germany, with 1,635, and Switzerland, with 1,366.

On the other end of the patent application administrative procedure, 24,177 final decisions were issued, of which 17,103 were grants, 4,633 were rejections and 2,441 were definitive shelvings, in accordance with the 2023 Action Plan figures. Regarding the technical examination *per se*, the average time for a decision counted from the filing date of a patent application at the BPTO was 4,6 years. Said average not only falls below the 6.5-year goal proposed for 2023, but also decreased from the 6.9-year average in 2022. The reduction aligns with the Strategic Plan goal of obtaining a technical examination decision in 2 years by 2026.

Notwithstanding the BPTO's notable efforts to reduce the time taken to analyze patent applications, a few technical divisions are still experiencing substantial delays in issuing technical decisions. In the last quarter of 2023, a patent application in the biotechnology division waited an average of 5 years counted from the technical examination request for a decision. Furthermore, a patent application examined by the telecommunications division waited an average of 4.9 years for the same decision. For reference, in 2023, the overall average for a decision was 3.3 years counted from the examination request.

Regarding the second instance of patent application prosecution, which is responsible for analyzing appeals and administrative nullity requests, the wait is more significant. According to the Panel on Patent Applications Pending a Final Decision, the average time for a final decision counted from the filing of an appeal is around 1,288 days (approximately 3.5 years).

Similarly to the first instance, some technical divisions have longer delays in the appeals phase. The average time for a final decision in the above-mentioned biotechnology division is 1,869 days, or 5.2 years. On the other hand, the telecommunications division has an average time of 972 days, or 2.6 years, below the global average.

In order to provide faster prosecution for patent applicants, the BPTO offers fast-track examinations through a plurality of modalities, such as the nature of the applicant, the patent application technology, or the prosecution of an application of the same family in foreign patent offices (also known as Patent Prosecution Highway – PPH). In the fast-track procedure, the time for a final decision is significantly reduced. In accordance with the 2023

Management Report, the average time for a decision on fast-track patent applications, counted from the application filing date, was 10.1 months. Said average, however, was above the 8-month goal set for the year.

The BPTO's efforts to reduce patent examination in recent years have been successful, as can be seen in the latest published data. Nevertheless, there is still a long way to go to achieve the 2-year target set for 2026, as well as to reduce the delays in the second instance.

Sources:

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