

Patent acceleration in Brazil

FACTSHEET

IMPORTANT ISSUES



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Patent backlog in Brazil is one of the main obstacles that European SMEs have to face to compete in Brazil. The problem is publicly known and the European Commission has also address this issue as one of the main trade barriers that European companies have to face when entering the Brazilian market. ([European Commission, DG Trade: Trade Barriers](#))

Current patent granting time (by technology field, 2014)	
Technology	Average time to grant (from filing date)
Pharmaceuticals	9-11 years
Mechanical	6-8 years
Electronics	9-11 years
Chemistry	8-10 years
Biotechnology	9-11 years

Source: [IPTechblog](#)

The main causes of such backlog obeys to the fact that Brazilian Patent and Trademark Office (INPI) reduced staff compared to the increasing number of patent applications filed in Brazil, this situation have been aggravated by:



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- + The entrance of Brazil to the Patent Cooperation Treaty system, which has increased the number of filed patents.
- + The transition to a paperless system, which has increased the workload and delayed the processing of applications not yet digitalized.

TIPS AND WATCH-OUTS

When designating Brazil in a PCT application is extremely important to fulfil all the formal requirements when entering the national phase, since irregularities in the application imply additional delays. Therefore it is highly recommended to contact an IPR expert to ascertain which requirements should be met in each case.

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The INPI is currently facing it by increasing the staff hired per year, improving the staff training and subcontracting the digitalization of files.

One of the initiatives which intends to reduce the backlog is the so-called "Promoted Withdraw" which will allow the applicants to abandon old pending patents and file it again, maintaining the application date, then the re-filed patent will ascend in the pending- patents queue. This measure aims to reduce the number of non-digital pending applications as well as to send to the end of the queue those de facto abandoned applications.

Apart from these efforts, the Brazilian law allows, under certain conditions to speed up the processing and formal examination phase, which represents around the 90% of the delay (the remaining 10% corresponds to substantive examination phase).

TIPS AND WATCH-OUTS

The number of examination-pending patents in Brazil exceed 150.000 in 2014



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Once the formal requirements have been met by the applicant, the patent goes into examination phase, where the INPI examiner evaluates if:

- + The application meets the patentability requirements;
- + The object is an invention (patent subject matter);
- + The application does not incur in any legal prohibition.

Patentability requirements

A patent application to be granted in a patent must meet three requirements: novelty, inventive step and industrial applicability.

- + Novelty: an invention is new if it not included within the state of the art which comprises everything made available to the public by means of a written or oral description, by use, or in any other way, before the filing date of the patent.
- + Inventive step: an invention has inventive step if taking into account the state of the art, it is not obvious to a person skilled in the field.
- + Industrial application: if it can be used in any kind of industry (Broadly understood)

Patent subject matter

Patents protect inventions (i.e technical solutions). Certain subject matters are not considered inventions, thus cannot be patented in Brazil:

- + Discoveries, scientific theories and mathematic models;
- + Abstract concepts;
- + Schemes, plans, principles or methods of commerce, accountancy, finance, education, advertising, lotteries or inspection;
- + Literary, architectural, artistic and scientific works or any aesthetic creation;
- + Computer programs;
- + Means to present information;
- + Rules for games;
- + Surgery or therapeutic or diagnostic methods practiced the human or animal body; and
- + All or part of natural living beings and biological materials found in nature, even if isolated therefrom, including the genome or germplasm of any natural living being or natural biological processes.

Exceptions to patentability

Contrary to morality, decency, or public safety, order and health;

- + Substances, materials, compounds, elements or products of any kind, when they result from the transformation of the atomic nucleus; and
- + Living beings, in whole or in part, except those organic microorganisms that meet the patentability requirements and do not are a mere discovery.

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Les douanes mexicaines ne fournissent aucun mécanisme WHAT is accelerated examination?

Created by resolution 68/2013, accelerated examination is a special procedure which allows a patent application to skip the processing and formal examination phase, substantially reducing the granting time.

Requests are evaluated by a board at the INPI and granted by the Patent Director. The final decision is published at the INPI Electronic Bulletin.

How LONG does the accelerated examination take?

The processing/formal examination phase lasts around 6-12 months (compared to 7-10 years in ordinary process). The substantive examination phase takes in average 6 to 18 months, which is the same that in case of ordinary process.

HOW can it be requested?

The accelerated examination is requested to the INPI via form FQ009. If either the applicant or its representative are authorized to manage the application electronically they can request it online, by using their personal password/token.

Which LANGUAGES can I use?

The accelerated examination request form and other relevant required documents must be submitted in Portuguese. How much does it COST? No additional fee is charged.

When can be applied for?

The accelerated examination can be applied for before the examination begins and after the examination was requested, in any of these cases:

I - by the applicant when proven:

- + Him or her is sixty (60) years old or more;
- + The object of the patent application is being reproduced by third parties without permission, or
- + The granting of the patent is a condition for obtaining financial resources from development agencies or national official credit institutions, released in the form of economic support, financing or equity interests, or originating in mutual funds for the operation of their product or process.

II - by third parties that are being accused by the applicant of patent infringement;

I.a – The applicant is sixty (60) years old or more

The applicant should submit a certified copy of his/her ID card or other relevant documents.

Note that the resolution does not mention the inventors, only the applicants.

I.b Risk of Infringement

This is the most usual option to request the accelerated examination. It is useful when a third party is using the invention without authorization from the application holder. Usually the applicant sends a Cease and Desist letter and after it request the accelerated examination.

TIPS AND WATCH-OUTS

Requesting a patent acceleration based on risk on infringement should be carefully planned since the rejection of such request may affect to future litigation and could be considered as bad faith evidence. Moreover, the request may probably trigger the applicant to oppose the patent application. Contact an IPR expert prior to apply for it.

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I.c – Funding/financing prior requirement

To request it the applicant shall submit a notarized copy of the request for financial resources for the development of the object of the patent to the funding agency or the credit institution; and a notarized copy of the instrument which condition the release of funds to the grant of the patent.

II – Potential infringement of a third party patent application

In this case, the communication (Cease and desist letter) from the patent application holder may suffice the requirement of evidence of accusation.

EXAMPLES of patents granted through accelerated-patent proceedings

PI 0412219-4 (BAYER HEALTHCARE LLC): This document was filed at 22/07/2004 and the accelerated examination requested at 21/06/2011. At 30/07/2013 it entered in the accelerated examination, being issued at 05/08/2014.

PI 0502833-7 (BDF NIVEA LTDA): the application was filed at 13/07/2005 and entered accelerated examination at 03/04/2007, which received a first Office Action at 11/09/2007 and was finally rejected at 26/05/2009.

PI 9915927-9 (ROCHE DIAGNOSTICS GMBH): the application was filed at 29/11/1999 and entered accelerated examination at 19/02/2008, receiving a final rejection at 06/05/2008.

PI 0417941-2 (BALANCED BODY): the application was filed at 09/12/2004 and entered accelerated examination at 13/07/2010. It then received an Office Action at 07/12/2010, which led to a lengthy process until granting at 26/12/2012.

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Other types of accelerated examination

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A | “PHARMA” ACCELERATED EXAMINATION

Under certain circumstances patents in the pharmaceutical sector, namely those that protect products, processes or equipment can also benefit from the accelerated proceeding. There are two cases:

- + The Health Ministry can request the accelerated examination of the patent applications that are consistent with health care public policies.
- + Interested parties can also request the accelerated examination for applications referred to the diagnosis, prevention and treatment of Acquired Immune Deficiency Syndrome (AIDS), cancer or neglected diseases as defined by the World Health Organization (WHO).

In both cases, the examination process is the same as the regular accelerated examination.

B | GREEN PATENT ACCELERATED EXAMINATION

The Green Patent program is a pilot program that aims to contribute to environmental care and aims to accelerate the examination of patent applications related to clean technologies.

The pilot program began in April 17, 2012 and is now in its 3rd phase, which will last until April 16, 2015 or until 500 new applications enter the program (recently have been extended until April 2016). In this new phase, applications via the Patent Cooperation Treaty Matters (PCT) could also benefit from this proceeding. The request must be done through the FQ013 form, available at the INPI website.

Patents processed under this modality are granted, in average, less than a year and a half after the accelerated examination request.

Requirements:

- + The application must relate to “green” technologies in some of the following fields: Alternative Energy, Transportation, Energy Conservation, Waste Management and Agriculture. (You can check here the expanded list – in Portuguese).
- + The application should be made before entering the formal examination phase.
- + Maximum of 3 independent claims (see glossary) and less than 15 claims in total.



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Glossary

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Claim: Part of a patent application or specification. Defines the matter for which protection is sought in terms of technical features.

Source: [European Patent Office](#)



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Related links and additional information

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<http://www.mercosur-iprhelpdesk.eu>

Check our related Factsheets:

[Brazil Country Factsheet](#)

[Software in Brazil](#)

[How to conduct a patent search: the basics](#)

[Identifying your IP assets](#)

Instituto Nacional de Propriedade Industrial INPI – National Institute for Industrial Property: <http://www.inpi.gov.br>



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