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Re: 2020 Special 301 Review Written Submission

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EXECUTIVE SUMMARY

The Brazilian National Confederation of Industry (“CNI”) and the American Chamber of Commerce for Brazil (“Amcham Brasil”) deeply appreciate the opportunity to comment on the Special 301 annual review of the global state of intellectual property rights (IPR) protection and enforcement.

CNI is an umbrella organization, which represents the manufacturing sector in Brazil. Established in 1938, the Confederation represents the 27 state-level federations of industries, and over 1,300 sectorial trade associations to which more than 700,000 companies are affiliated.

Amcham Brasil is the largest bi-national association in Latin America. Founded in 1919, the organization represents more than 5,000 companies, of various economic sectors and sizes, which are responsible for approximately 33% of Brazil’s GDP and for 3 million direct jobs. Amcham Brasil ranks as the largest American Chamber outside the U.S. among more than 100 in the world.

Given the considerable improvement of the IP system in Brazil in 2019, as a result of continuous work from the public and private sectors throughout the years in order to improve the intellectual property (IP) protection and innovation environment in the country, we would like to offer you detailed comments with a focus on the following:

- **Brazilian plan to fight patent backlog:** Brazil has launched in 2019 a comprehensive and ambitious federal plan to reduce the patent pendency by at least 80% in the course of the next two years, and to issue patent final office actions in less than two years from the examination request (on average). So far, the strategy has shown considerable results that indicate that Brazil’s National Institute for Industrial Property (INPI) will stand on equal footing with its foreign counterparts in the near future.
- **U.S. and Brazil implemented an expanded PPH agreement:** On December 1, 2019, the United States Patent and Trademark Office (USPTO) and Brazil’s INPI put into

effect a new Patent Prosecution Highway (PPH) agreement that significantly expands their prior agreement, allowing applications in all technological fields and with higher annual caps. Such an initiative will contribute to fostering innovation and to the reduction in backlog.

- **Brazilian Adhesion to the Madrid Protocol:** Brazil has joined the World Intellectual Property Organization (WIPO)-administered international trademark system. The Madrid Protocol has entered into force for Brazil on October 2, 2019, and will lead to cheaper, less bureaucratic and more agile procedures for trademark register in the country, with positive spillovers to the work conducted by INPI.
- **Piracy and specialized IPR enforcement units:** The fight against piracy and illicit trade was strengthened as a result of intensive cooperation among the enforcement units. The National Council for Combating Piracy and Crimes against Intellectual Property (CNCP) of the Ministry of Justice has spearheaded enforcement operations in partnership with several law enforcement units, resulting in massive shutdowns of IPR infringing websites, applications (apps) and facilities.
- **Pro-IPR Judicial Environment:** The Judicial Courts have clearly shown that Brazil is a Pro-IPR Environment country. On a leading case, the Brazilian Superior Court of Justice (STJ) has ruled in favor of agricultural innovation in Brazil, by acknowledging that genetic engineered products are protected by domestic patent law.

1. PATENTS

Brazilian plan to fight patent backlog

Brazil has launched a comprehensive and ambitious federal plan to reduce the patent backlog by at least 80% by 2021 and to issue patent final office actions in less than two years from the examination request (on average). So far, the strategy has shown considerable results that indicate that INPI will stand on equal footing with its foreign counterparts in the near future.

The plan was officially launched on July 3, 2019, under INPI Resolutions 240 and 241, which establish the framework for preliminary office actions and promote substantial changes in INPI's procedures in order to streamline patent examination and to enhance the productivity of its workforce. The plan was based on a 2018 pilot project successfully conducted by the INPI, which contributed to reducing the number of patent applications waiting for examination from 225,115 in late 2017 to 208,341 by late 2018.

At the time the plan entered into force, on August 1, 2019, there were nearly 149,920 patent applications waiting for examination. On January 29, 2020, the pendency was already reduced by 18% to 122,975 patent applications – a rate that signals that INPI's goals are likely to be achieved.

In order to allow the industry to follow the plan's preliminary results, INPI maintains an online patent backlog monitoring dashboard, which is constantly updated.

INPI also makes available detailed information and statistics regarding pharmaceutical patent applications subject to the INPI/ANVISA Interagency Ordinance No. 01/2017. The agreement between INPI and ANVISA continues helping expedite the examination process of pharmaceutical applications, reducing backlog, and increasing legal certainty for the pharmaceutical industries.

U.S. and Brazil implemented expanded PPH agreement

The results of phases I and II of the USPTO-INPI Patent Prosecution Highway Agreement are noteworthy: 94% of the US eligible patent applications filed were granted, and the average time from filing to granting patents was only 265 days.

The successful pilot phases, in addition to the close partnership between the two patent offices, were an incentive to broaden the bilateral cooperation.

On December 1, 2019, the USPTO and INPI put into effect a new Patent Prosecution Highway (PPH) agreement that significantly expanded on their prior agreement. Existing restrictions to applications in several technological fields were lifted and annual caps were increased. As consequence, more industries are likely to benefit from the new agreement, leading to faster patent protection and to further innovation in the bilateral relationship.

In addition to the agreement with the USPTO, the INPI has also recently signed expanded agreements with patent offices with nearly 20 countries/ regions, including Europe, Japan, England, Denmark, Sweden, Argentina, Chile, Colombia, Costa Rica, Ecuador, Paraguay, Peru and Uruguay. Such a comprehensive international effort reinforces the Brazilian government's commitment to increase the efficiency in the patent examination procedures, with overall gains to all (national and international) applicants in Brazil.

2. TRADEMARKS

In 2019, Brazil concluded the accession process to the Madrid Protocol, the WIPO-administered international trademark system. The Madrid Protocol entered into force for Brazil on October 2, 2019, enabling Brazil to take advantage of cheaper, less bureaucratic and more agile procedures for trademark register in the country, with positive spillovers to the work conducted by INPI.

As a preparatory step for the Brazilian adhesion to the international treaty, the number of trademark applications awaiting examination was reduced by INPI as well as the average time from filing to granting trademarks. Afterwards, Brazil deposited the instrument of accession to the Protocol.

The first trademark office actions are being issued in 6 months for applications without third parties opposition to trademark registration, and in 9 months for applications with third parties opposition to trademark registration.

The initial Madrid Protocol results are promising and confirm the efficacy of the international cooperation system. So far, nearly 2,000 international trademark applications designated Brazil in the geographical scope of protection, approximately 700 of them are from the U.S.

In summary, INPI had an increase of 19.9% in trademark applications and 7.3% in trademark registrations when compared to 2018, along with a reduction of the decision period regarding trademark applications, appeals and oppositions.

3. IPR ENFORCEMENT

As victim of the international illicit trade, Brazil strongly fights against piracy and illicit trade¹.

This effort has increased as a result of efficient institutional development and intensive cooperation among the enforcement units. The National Council for Combating Piracy and Crimes against Intellectual Property (CNCP) of the Ministry of Justice has spearheaded enforcement operations in partnership with several law enforcement units, resulting in massive shutdowns of IPR infringing websites, apps and facilities. Some examples are:

¹ Organisation for Economic Co-Operation and Development (OECD). *Trends in Trade in Counterfeit and Pirated Goods*, page 60, 2019.

- Operation 404: In November, a joint operation between the CNCP and the Secretariat of Integrated Operations (SEOPI) against digital piracy resulted in 30 search warrants in 12 different Brazilian States; 210 infringing websites and 100 infringing apps taken down; and many arrests. Operation 404 was also supported by ANCINE, the Brazilian Film Agency.
- Operation Copyright: In January 2019, Brazilian federal authorities executed raids to seize computers and hardware from the administrators of notorious infringing service Speedshare and private server service SpeedboxBR. As a result of those raids, both services were shut down and another seven infringing private torrent forum sites voluntarily ceased operations. Combined, these sites attracted over 104 million annual visits and more than 400 thousand registered users. Criminal charges were presented against Speedshare operators in September 2019, totaling 21 individuals involved.
- Suspension and Cancellation of 106 Infringing Domains in São Paulo: Based on the “In Our Sites” framework originally applied by the City of London Police Intellectual Property Crime Unit (PIPCU) and Europol, São Paulo’s Public Prosecutor cybercrime unit, CyberGaeco, requested a court to suspend over 106 infringing domains throughout the year. Between the suspension request and final cancelation of each site, the prosecutor’s office asked all site administrators to present the necessary authorizations for content distribution. A total of 100 infringing domains were shut down – accessed over 23.3 million times every month (an estimated 367 million annual visits).

The fight against illicit trade goes beyond the digital environment. In 2019, the total value of seized counterfeit goods reached nearly 800 billion dollars, which endorses the OECD view of Brazil as a target² and puts the country together with the

² Organisation for Economic Co-Operation and Development (OECD). *Trends in Trade in Counterfeit and Pirated Goods*, page 60, 2019.

U.S. and European Union as the most active regions against illicit trade³. (tbm acho que nao esta claro).

4. PRO-IPR ENVIRONMENT

An effective intellectual property system is key for Brazil's economic development.

The plan to reduce the patent backlog, the international cooperation expansion, the adhesion to the Madrid Protocol, the actions against piracy and illicit trade, among many other public and private initiatives, are concrete and robust steps towards a world-class IPR system.

Besides those remarkable achievements, one must also note the re-establishment of the Intellectual Property Interministerial Group (GIPI), a high-level Interministerial group that seeks to propose and coordinate the Federal Government's activities regarding intellectual property protection and promotion. Among its duties, the GIPI is in charge of developing a National IPR Strategy for Brazil, with a set of long-term goals.

The Judicial Branch has clearly shown that Brazil is a Pro-IPR Judicial Environment country. On a leading case, the Brazilian Superior Court of Justice (STJ) has ruled in favor of agricultural innovation in Brazil, by acknowledging that genetic engineered products are protected by domestic patent law. The decision was considered aligned to the U.S. Courts.

Legislative activities also focused on guaranteeing the administrative and financial autonomy of INPI so that, the surplus resources generated by the services of the Institute can be reinvested in enhancing its structure, and expanding the provision of high-quality and more agile services in order to increase Brazil's competitiveness. Once

³ US Chamber of Commerce. Global Intellectual Property Center. *Measuring the magnitude of global counterfeiting*, page 27, 2016.

historical issues are successfully addressed by INPI, the next discussions shall focus on INPI financial structure.

We should also highlight the intensive and continuous cooperation between the Brazilian and U.S. Trademark and Patent Offices, which take place under several bilateral frameworks, including the U.S.–Brazil Commercial Dialogue, aiming at exchanging best practices to increase efficiency and improve patent and trademark review process, as well as building new work sharing arrangements, cooperating to increase efficiency.

5. CONCLUSION

Considering the relevant and successful efforts undertaken by the Brazilian public and business sectors in order to strengthen the promotion, protection and enforcement of IPR in Brazil, as well as the intensified cooperation in the bilateral level between the governments of Brazil and the United States in the area of IP, we respectfully request that Brazil be excluded from the Priority List on the next Special 301 report.