

abpi BRAZILIAN
INTELLECTUAL
PROPERTY
ASSOCIATION

MANIFEST IN FAVOR OF INNOVATION AND OF THE MAINTENANCE OF THE TERM OF PATENTS IN BRAZIL

ABPI – Brazilian Intellectual Property Association, a non-partisan study entity founded in 1963, dedicated to the promotion and proper functioning of the intellectual property protection system, as the same results in investments in innovation that are essential for the Brazilian economic and social development, defends the maintenance of the validity of sole paragraph of art. 40, of the Industrial Property Law - LPI (Law 9279/96), which ensures a minimum term of 10 years of validity of patents, after their grant by the INPI - National Institute of Industrial Property.

The issue, currently under examination by the Federal Supreme Court through ADI 5529, has no constitutional nature whatsoever, and the rule contained in the law stems from a legitimate option made by the democratically elected Legislative Power in the course of extensive debates (for more than 5 years) that led to the promulgation of the LPI. Indeed, it is worth recalling that in our country, the validity of patents from the grant has already existed in law in the past (art. 29 of Decree-Law 1005/69), when the constitutional text was virtually identical to the current one.

The norm that ensures minimum protection for granted patents guarantees predictability and legal certainty for companies that invest in the most varied segments, including the production of generic drugs, inasmuch as all market players are informed, with ample advance notice, of 10 years, the moment when the patents will lapse.

Sole paragraph of article 40 of the LPI implements an international norm to which Brazil and other countries freely adhered (art. 62, 2, of the TRIPs Agreement), being essential for innovative companies to enjoy the exclusive exploitation of their invention by a minimum (and short) period of 10 years, which allows them to obtain a return on their investments in creation.

In an ideal scenario, the commented norm should hardly ever be applied, whereas our law determines that the term of patents must be of 20 years counted from filing, being only guaranteed at least 10 years after the grant. Well, it is enough that the examination of patent applications, by the INPI, is completed in less than 10 years and it will not be necessary to count the validity from the grant. This is an aim that should unite the country and, in fact, since August 2019, the INPI is already carrying out an extraordinary and meritorious effort to reduce this examination term, in such a way that, we believe, soon there will only exceptionally be a patent granted after more than 10 years from its filing.

Without a minimum legal guarantee, investments in research and development will certainly be reduced due to the lack of adequate patent protection.

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