

World Intellectual Property Organization warns of the need to protect IP assets of SMEs

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On April 26, the World Intellectual Property Organization (WIPO) will destinate its campaign in celebration of the World Intellectual Property Day to small and medium-sized enterprises (SMEs). The choice of this year's theme is a recognition of the significant increase in companies focused on innovation and creativity across the planet. Although the number of companies with such profile has grown, many have become vulnerable and unprotected with regard to their intellectual property assets, such as the registration of their trademarks and the protection of their technologies by patents.

According to information from the World Bank, cited by WIPO, SMEs represent about 90% of the total companies in the world, employ 50% of the global workforce and generate 40% of national income in several emerging economies. Data from the Technological Radar of the Brazilian Patent and Trademark Office (BPTO) reveal that amongst the 2,478 companies registered with the Brazilian Industrial Development Agency and the Brazilian Startup Association (ABStartups), only 973 were holders of trademark rights in course or granted by BPTO and only 64 are companies that hold computer program registrations. Regarding patent protection, that number is even lower - just 48 patents.

For Ricardo Vieira Mello, lawyer and partner at Montauray Pimenta, Machado & Vieira de Mello, with regard to trademarks, in addition to analyzing the registrability of the intended trademark, the first step to be taken is to carry out a trademark availability search on the BPTO database. Nowadays, even a general search on the internet must be carried out, in order to identify the existence of possible applications in course, thus preventing the entrepreneur from spending unnecessarily in the registration and promotion of a trademark that is already in use or in the process of registration by a third party.

In the case of patents, which aim to protect innovative and novel technologies on the market, it is essential that these innovations are not disclosed to the public before the patent application is filed with the BPTO. This is because one of the patentability requirements is absolute novelty, that is, there may be no prior disclosure of what the applicant intends to protect.

“As with trademarks, with patents it is highly recommended that a prior art search be carried out in international databases (and not only in the BPTO database) before filing the patent application, in order to ascertain the existence of documents that may prevent the patenting of the technology of interest. The practice of patent protection is fundamental in SMEs with a disruptive and innovative character, which is the case of most startups. However, the guidance of patent specialists is what guarantees its success, since the participation of a professional from the technological area to which the invention belongs is necessary for an adequate and efficient protection strategy” states Gabriela Salerno, patent counsel at Montauray Pimenta, Machado & Vieira de Mello.

“Taking into account the speed involved in information spread and the access by different audiences, the protection of such assets is essential to avoid misappropriation by third parties of technological innovations or of the fame and success that a trademark can achieve. Even though it is an accessible procedure, in order to maintain the exclusivity and protection of a company's intellectual assets, it is extremely important that the entrepreneur has the support of IP specialists, so that the process is followed in a timely manner and the appropriate measures are taken within the deadlines”, concludes Vieira de Mello.

