

# Brazilian PTO decides to apostille Letters-Patents related to healthcare technology

**Brazil** | February 17 2022

On February 08, 2022, the BPTO (Brazilian Patent and Trademark Office) issued a notice informing that an apostille will be included in the Letters-Patent of patents covering pharmaceutical products/processes and equipment and/or materials for use in healthcare and also other technologies not related to the pharmaceutical/healthcare field, in cases wherein the patent was granted based on the 10-year rule validity term, but said term was adjusted based on the Brazilian Supreme Court's decision to abolish this legal provision.

Said apostille will guarantee that subject matter other than pharmaceutical products/processes and equipment and/or materials for use in healthcare will not be unduly retroactively affected by the Supreme Court's decision.

The main aspects of the apostille are:

- In view of operational limitations in the BPTO's database (it is only possible to have one expiration date for each patent), the validity of the patent in the BPTO's website will be 10 years from the granting date.
- The validity term of the patent related to pharmaceutical products/process and healthcare products/equipment for application in humans will be 20 years from the filing date, complying with the Brazilian Supreme Court's decision, and it will be determined by the apostille.
- The Letters-Patent will be amended to include the apostille by the issuance of decision code 16.3 in the BPTO's Official Bulletin, informing the original validity term, according to item 1.
- There will be an official internal document, justifying the correction. This document will not be automatically published, but may be provided by the BPTO to any interested parties, upon request.
- The patent expiration notice will be published in the BPTO's Official Bulletin based on the greater validity term, although the subject matter related to pharmaceutical products/processes and equipment and/or materials for use in healthcare will be already expired, in accordance with the Letters-Patent apostille.
- The patent annuity fees will apply until the greater validity term.

By adopting this measure, the Brazilian PTO provides patentees with a fair timeframe to explore the whole scope covered by the patent regardless the technological field. In addition, it gives a clear perspective of the patent expiration date to third-parties that wish to explore the protected scope without any risks that could lead to an unnecessary litigation.

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