

Brazilian Congress upheld Presidential Veto of Technology Transfer Provisions related to compulsory licensing

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In the wake of events resulting from the Covid19 pandemic, the Brazilian Congress decided on July 05, 2022, to uphold Presidential Veto #48 on Law #14,200/2021, which modifies Brazilian Industrial Property Law #9.279/96. Said vetoes relate to rules governing compulsory licenses in Brazil changing critical know-how technology transfer provisions based on the declaration of national or international emergency or of public interest, or national domain public calamity state requests.

The vetoed decision included: (i) the provision establishing that the patent holder or applicant would have to provide the necessary and sufficient information for the effective reproduction of the object protected by the patent or patent application and other applicable technical aspects, including test results, data and also access to biological material; and (ii) the provision stating that Brazilian Congress would also have the power to grant compulsory licenses in Brazil.

One of the arguments for the vetoed decision is that the legislative proposal is contrary to the public interest, since it could bring breakdowns to the national patent system, and could raise conflicts with certain industries, such as pharmaceutical and pharmachemical. Another point for reflection is that according to Brazilian rules and legislation, the know-how is the exclusive property of the technology holder, who has the prerogative to license it or not, including the choice to produce information beyond those already disclosed to adapt its manufacturing plant in view of the product to be manufactured.

On the other hand, the Brazilian IP Law already foresees that all patent applications must contain enough information in their specification for a person skilled in the art to be able to reproduce it. Otherwise, the patent is not granted. Compulsory licenses of IP rights are also encompassed by the Brazilian IP Law in specific situations.

However, adding the intended provisions to those already protected by the law could jeopardize IP rights and violate international treaties to which Brazil is a signatory, not to mention that such provisions could turn Brazil into a disadvantageous market and discourage foreign investment.

By upholding the vetoed decision, Brazil sends a strong message to the international patent community by strengthening the incentives for research, innovation and development needed for its continued economic progress.

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