

IP litigation in Brazil - Another major step forward

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Intellectual property (IP) is gaining increasing attention in numerous fields and countries, including Brazil, where we can see an exponential growth in new court actions aiming to enforce IP rights.

Brazil is a member of numerous treaties that affect the protection of Intellectual Property locally, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which publicly recognizes the importance of effectively protecting and enforcing intellectual property rights.

Even though TRIPS itself does not require its signatories to establish specialized Intellectual Property courts, several countries have done so in their own accord, promoting greater familiarity with IP-related issues. Such specialized courts ensure greater predictability, consistency, and legal certainty, which is essential to attract investment, and lead to better and faster decisions, reducing judicial errors and litigation costs.

In the past few years, the Brazilian Judiciary has been constantly adopting innovative performances, and gathering efforts to increase the quality and efficiency of its activities. These efforts have also been a way to ensure Section 6 of the Brazilian Code of Civil Procedure - that was redesigned in 2015 –, which provides that the judicial process intrinsically depends on the cooperation of the parties and the public sector to obtain, within a reasonable period of time, a fair and effective judgment on the merits.

When it comes to IP matters, the São Paulo State Court and the Rio de Janeiro State Court both take the lead in seeking to make the judicial system more effective. Aiming to keep such goal year by year, the Rio de Janeiro State Court has recently taken one more step in order to achieve its greater effectiveness and will soon be better equipped to keep pace with and adapt to dynamic developments in IP law.

On last October 3rd, 2022, the President of the Rio de Janeiro State Court, Hon. Judge Henrique Carlos de Andrade Figueira, along with the Presidents of each Civil Chamber, brought up an essential subject which was being widely debated among IP practitioners for some years: the need for the specialization of the Court of Appeals Chambers of Rio de Janeiro.

Now, it seems that such a project has finally become a reality: as of February 23rd, 2023 the Civil Chambers of the Rio de Janeiro Court of Appeals will start working on two different fronts - Private Law and Public Law.

Of the 28 existing Civil Chambers, 22 will address Private Law matters and the remaining 6 will address Public Law matters. Also, by that time, the Court of Appeals will count on 2 new Chambers which will be specialized exclusively in corporate matters, including IP.

The new organization of the Appellate Court of Rio de Janeiro aligns with the existing lower court structure – which counts on 7 trial courts specializing in IP related issues as well as in judicial recovery and bankruptcy.

According to Hon. Judge Henrique Figueira “the changes will provide speed and quality of judgments in the matter” – and there could be no different conclusion. Up until now, judges from the Rio de Janeiro Court of Appeals are bound to judge the most different type of lawsuits in the same Civil Chamber, which directly impacts not only the speed of the lawsuit’s timeline, but also the quality of the decisions that are issued in each case.

Imagine that the same judge who handles complex cases involving health/medical matters or debt securities, for example, must also handle IP-related cases, such as patent infringement actions - needing to understand the complex details of the most different areas of Law. Although this is a reality in most Brazilian State Courts, the lack of specialization creates obstacles to the efficiency of judicial provision as well as to the speed of procedures.

Intellectual Property Law is fulfilled with details and can achieve highly complex discussions, especially when it comes to patent infringement controversies. From the Brazilian IP attorneys who are used to litigate in the main State Courts of the country, as well as in other States Courts, a great difference can be seen between the quality of decisions issued by judges with/without deeper experience and knowledge in IP matters.

In light of the above and based on the practical experience of IP lawyers who have closely faced the difficulties of litigating in non-specialized courts over the past few years, news of the implementation of the Specialized Court of Appeals of the State of Rio de Janeiro is received with enthusiasm and high expectations.

As a matter of fact, since the Rio de Janeiro State Court will not be the first one to have both specialized instances - since the São Paulo State Court already counts with it -, expectations with the upcoming implementation of this project as of the beginning of 2023 are even higher for the ones who work in the IP litigation field, as they already know, in practice, the advantages of having both instances of the Judiciary specialized in IP matters. From greater predictability and legal certainty to faster decisions, this new framework is designed to bring many benefits and advantages, especially to IP owners.

History of IP courts

This was not the first time that the Rio de Janeiro courts have taken the lead in seeking to make the judicial system more effective.

In 2001, following the introduction of a special provision to the Brazilian Industrial Property Law authorizing the judiciary to establish specialized courts to handle disputes relating to intellectual property, the Rio de Janeiro Federal Court implemented lower courts whose remit was to deal with patent and trademark invalidity cases. It was the first federal court to apply the provision at the federal level, which is the level at which the courts are entitled to handle invalidity lawsuits

Soon after, the Rio de Janeiro State Court, which is responsible for ruling on infringement actions, changed the name of its bankruptcy courts to corporate courts, thereby extending its jurisdiction to include patent, trademark, trade dress and, later, copyright infringement lawsuits.

In 2005, the Rio de Janeiro Federal Court of Appeals, which is responsible for ruling on appeals from the Rio de Janeiro and Espírito Santo federal courts, also formed specialized chambers for IP invalidity cases, becoming one of the first courts of appeal to do so. Such changes, along with the efforts of some judges to communicate best practice for handling IP matters, have resulted in notable contributions to the development of IP case law in Brazil. Other states, including Rio Grande do Sul, Minas Gerais and Sao Paulo, have subsequently created specialized lower courts or courts of appeal for infringement lawsuits.

These developments reflect growing public awareness of IP issues and the exponential increase in new court actions aimed at enforcing IP rights in Brazil. Further, IP-related topics have become an increasingly significant area of interest nationally, with an ever-increasing number of cases and controversies.

In addition to issuing better and faster decisions, specialized lower courts and courts of appeal ensure greater predictability and legal certainty, which is essential to attract investment and growth to the Brazilian economy. Likewise, other measures that have been recently implemented such as the 100% Digital Court project seek to

enhance the quality and speed of the procedural acts taken by the courts, which benefits not only the parties concerned, but also civil society in general.

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