



Brazilian Antitrust Authority (CADE) Hosts Event on Standard Essential Patents (SEPs)

Montaury Pimenta, Machado & Vieira de Mello

Brazil | September 26 2025

Following the release of its institutional study on Standard Essential Patents (SEPs), Brazil's antitrust authority, CADE, hosted a dedicated event to underscore the public interest surrounding SEP-related disputes.

In his remarks, CADE President Gustavo Augusto Freitas de Lima emphasized that SEPs differ from regular patents due to their essential role in industry standards. He noted that restrictions on the use of certain technological standards can significantly impact both consumers and the broader market, underscoring the need for greater attention to the issue.

Key Discussion Points:

There remains uncertainty around how best to address SEP-related challenges – whether through regulation, pricing mechanisms, or direct intervention by CADE.

CADE acknowledged strong international interest in the *Ericsson v. Lenovo* case.

Efforts in Europe, the UK, and the U.S. to establish local frameworks or international jurisdictions have faced considerable hurdles.

The event also featured contributions from Lílian Santos Marques Severino, CADE's Chief Economist; Gerson Carvalho Bênia, CADE's Public Policy Specialist; and a representative from the Interministerial Group on Intellectual Property (GIPI), linked to Brazil's Ministry of Development, Industry, Commerce, and Services.

Additional Takeaways:

GIPI:

- GIPI's initiatives stem from recognizing SEPs' relevance to social welfare.
- GIPI has also released a study on SEPs, which ultimately proved inconclusive due to the complexity of the topic.

CADE:

- FRAND licensing is conceptually straightforward but operationally complex.
- Overdeclaration remains a concern: Brazil's PTO lists 70,000 patents related to 5G, though studies suggest only 1,000 are truly essential.
- At least 10 different royalty calculation models are currently in use.
- Most SEP disputes end up in court, with common issues including sham litigation, hold-up, and hold-out tactics.
- The U.S. pioneered a step-by-step approach to royalty calculation and has a long history of SEP litigation.
- The DOJ's stance shifted with its 2019 policy statement.

- The EU proposed a regulatory framework, but it failed to advance – despite broad support, companies like Ericsson, Nokia, and certain industry sectors opposed it.
- China’s SEP guide is considered the most comprehensive globally.
- In Brazil, SEP litigation is concentrated in the state of Rio de Janeiro.
- Initially treated as standard IP disputes, Brazilian courts are now beginning to apply a FRAND-based analysis.
- Two notable cases before CADE: *Ericsson v. TCT* and *Ericsson v. Lenovo*.
- Even after settlement, signs of potential anti-competitive conduct led CADE to keep *Ericsson vsv. Lenovo* case open.
- Possible sanctions by CADE range from substantial fines to compulsory licensing, exclusion from public tenders, among others.

In closing, CADE representatives reiterated that the event was another step toward fostering public debate. The strong interest shown by various sectors and companies both during the study’s development and after its release reinforces the importance of the topic.

Montaury Pimenta, Machado & Vieira de Mello - Vicente de Moura Rosenfeld

Montaury Pimenta, Machado & Vieira de Mello is a Leading Brazilian Intellectual Property (IP) law firm, distinguished for its work in complex IP Litigation, IP Prosecution, and Enforcement. Click here to learn more about the firm <https://www.montaury.com.br/en/>

Powered by
LEXOLOGY.