

Brazil

Trends and Developments

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Brazil in the Global SEP Arena: Litigation and Enforcement Trends in 2025

A more complex and strategic patent litigation landscape

Patent litigation in Brazil has undergone significant transformation over recent years, particularly in disputes involving Standard Essential Patents (SEPs). What was once a jurisdiction perceived as slow and procedurally rigid has become an increasingly strategic forum for SEP enforcement. This shift has been driven by procedural flexibility under the Brazilian Code of Civil Procedure, growing judicial familiarity with complex technology disputes, and the active role of specialised business courts.

Recent data confirms this evolution. SEP litigation in Brazil was limited for many years, with only scattered cases between 2012 and 2022. The number of lawsuits began to rise in 2023, but the real turning point came in 2025, when filings reached about 45 lawsuits – 38 infringement actions and seven declaratory actions seeking non-infringement and/or royalty-setting (these figures are based on a comprehensive review of all publicly available SEP cases in Brazil, acknowledging that some proceedings remain under seal and may not be visible in official databases or press reports). This highlights both the scale and the pace of change, providing a practical lens for readers to navigate current litigation dynamics.

It is possible to verify trends across filing chronology, technologies and litigants, showing a pronounced focus on video-related implementations (HEVC/AVC/AAC), sustained activity by patent pools such as Access Advance, and pressure tactics marked by multiple suits against the same target within short timeframes – up to eight actions against Transsion and, more recently, four against Hisense, with Nokia appearing as the most frequent plaintiff by a wide margin.

Against this backdrop, all infringement actions have been concentrated in the Rio de Janeiro Business Courts, while non-infringement and royalty-setting actions have been filed in São Paulo. This dual-track dynamic has triggered a jurisdictional “forum battle”, comparable to those seen in cross-border SEP disputes in Europe and Asia, where parties resort to anti-suit and anti-anti-suit injunctions to secure the most favourable venue. As a result, an additional layer of strategic complexity has emerged for global players litigating and negotiating SEP portfolios in Brazil.

In fact, Brazil is now firmly on the map of global SEP litigation strategy. It has moved from a peripheral jurisdiction to a strategic arena comparable to the US, Europe and Asia, where forum battles and FRAND debates are central to litigation dynamics.

This article explores the main trends and developments shaping SEP enforcement and patent litigation in Brazil. It focuses on the infringement actions, preliminary injunctions, parallel nullity proceedings, jurisdictional disputes and procedural tools that have become central to litigation strategy in 2025.

Infringement actions and the strategic use of preliminary injunctions

In SEP litigation, preliminary injunctions (PIs) have emerged as one of the most contentious and strategically relevant features of Brazilian proceedings. Plaintiffs frequently seek urgent relief to restrain the alleged use of the patented technology while the merits and technical evidence phases remain unresolved, thereby increasing commercial pressure and accelerating licensing discussions.

Some PI requests expressly mention the withdrawal of the accused products from the market, while others seek only an order to cease the use of the patented technology, without expressly requiring product withdrawal. This distinction – both in the relief sought and in the resulting judicial orders – has led practitioners and some judges in Brazil to distinguish between the two following practical categories of PIs.

- Conditional preliminary injunctions are contingent upon confirmation of infringement by an independent court-appointed expert. In these cases, daily fines are imposed retroactively once infringement is established, but the orders typically lack immediate practical effects on the defendant's commercial activities.
- Unconditional preliminary injunctions take immediate effect, ordering the defendant to cease the alleged infringement and withdraw the accused products from the market without awaiting further technical assessment.

Patent holders typically seek this relief at the outset of the proceedings in order to obtain immediate and practical effects. These include orders to cease manufacturing, prevent importation or commercialisation, remove products from the market or stop the use of a patented process.

When assessing anticipatory urgent relief, courts focus on two cumulative requirements:

- the likelihood of success on the merits; and
- the risk of irreparable harm.

In an effort to meet the first requirement, plaintiffs in SEP infringement actions usually rely on a set of technical documents to demonstrate to the judge the need for a PI. This evidentiary package usually includes:

- a valid and enforceable patent granted by the Brazilian Patent and Trademark Office (BPTO);
- a claim chart mapping the patent claims to the technical specifications of the standard, to argue essentiality; and
- one or more technical opinions prepared by experts retained by the plaintiff, often affiliated with federal universities.

However, these unilateral reports often focus primarily on asserting the essentiality of the patent to the standard, rather than providing a full and independent analysis of actual infringement in the accused implementation.

Legal and technical opinions, together with evidence of prior licensing, are often submitted to support the commercial relevance of the patent, whereas the definitive assessment of infringement is deferred to an independent court-appointed expert examination, which typically commences within six to nine months from the filing of the action.

The risk of irreparable harm is typically framed in terms of ongoing competitive damage. Courts frequently accept arguments relating to market erosion, price pressure, loss of technological exclusivity and the difficulty of accurately quantifying damages at a later stage. The risk of trivialising patent protection through continued unauthorised use is also a recurring theme. At the same time, however, PIs can significantly disrupt commercial activities, often forcing implementers into expedited settlements irrespective of the ultimate merits of the case.

It is undisputable that the growing volume of SEP litigation before the Rio de Janeiro Business Courts has significantly enhanced judges' technical familiarity with these disputes. Courts are now more aware of the high level of technological and economic complexity involved, and of the potential impact that Brazilian proceedings may have on global enforcement and licensing strategies.

In this context, and mindful of the risks associated with granting PIs on an *ex parte* basis, judges are increasingly relying on court-appointed technical expert evidence when assessing PI requests – a shift that has begun to reshape judicial practice in this area, especially in terms of how courts approach PI requests, which will be explored in the following section.

The central role of technical expert evidence

Expert evidence is a cornerstone of patent litigation in Brazil, as it is expressly required by Article 464, Section 1, item I, of the Brazilian Code of Civil Procedure whenever the proof of a relevant fact depends on specialised technical knowledge.

In this context, the issuance of a decision on the merits almost invariably requires a technical expert phase conducted by an independent court-appointed expert. In SEP disputes, expert analysis typically addresses whether the patent is indeed essential to the standard and whether the accused products implement the relevant technical specifications. These assessments are highly complex and time-consuming, and depend on specialised technical knowledge related to the subject matter of the patent that is being enforced.

Accordingly, although the court-appointed expert's conclusions are not formally binding, judges tend to heavily rely on such technical assessments when rendering decisions on the merits.

More recently, however, technical expert evidence has gained relevance not only for adjudicating the merits of the case, but also for assessing PI requests filed by plaintiffs at the outset of the proceedings.

While PIs were frequently granted on an almost *ex parte* basis in the past, grounded primarily on unilateral technical reports submitted by plaintiffs, courts are increasingly requiring some form of expert input before analysing/granting urgent relief. This input can take the following forms.

- Regular technical examination, following the standard procedural timetable. In these cases, when the PI request is not immediately denied, the court may defer its analysis until the court-appointed expert submits the technical report to the case records, which may take up to six months from the commencement of the lawsuit.
- Simplified expert reviews, limited to a preliminary assessment of whether the patent is essential to the standard. This stage does not replace nor preclude the subsequent regular technical examination on infringement and other

technical issues.

However, early attempts to streamline this process through utilising “simplified expert reviews” from the outset were quickly abandoned, as this created more uncertainty than clarity and failed to provide judges with reliable technical footing. It also prevented parties from submitting technical questions, leading to a limitation of adversarial testing and drawing criticism from litigants.

In general, recent case patterns confirm a strong correlation between the type of expert examination and injunction outcomes, as follows.

- In 2023–2024, four regular technical examinations were conducted, with PIs granted in three of those cases even before the expert reports were delivered.
- By contrast, six cases were assigned to regular examinations in 2025, and five injunctions were granted at the outset. In 11 other cases where injunctions were denied, judges opted for expedited examinations as a way to accelerate technical clarification, instead.
- Simplified reviews were used only once in 2025, and also failed to support injunctions.

In short, the current landscape can be summarised as follows.

- Regular expert examinations are historically associated with higher PI grant rates.
- Expedited examinations are increasingly used as an alternative to the granting of PIs in a faster manner; courts defer relief until technical clarity is achieved.
- Simplified/preliminary reviews are not common. They are judge-specific, and largely ineffective for PI decisions.

This evolution reflects a broader judicial effort to reduce the “lottery effect” of fragmented practices, and to ensure decisions are grounded in technical accuracy. The abandonment of simplified reviews, combined with the cautious use of expedited examinations, shows that courts are calibrating their reliance on expert evidence to balance speed with reliability.

In practice, expediting the beginning of the technical examination phase is a pragmatic compromise that is gaining acceptance among an increasing number of judges: while they have been rejecting PI requests at the outset of the lawsuit, especially on an ex parte basis, they are accelerating the technical evidence phase, allowing disputes to move forward with greater predictability and procedural fairness.

The Brazilian bifurcated judicial system: when infringement disputes meet invalidity disputes

SEP litigation in Brazil operates within a bifurcated judicial system, in which infringement and validity are decided by different courts. Infringement disputes are brought before State Courts, while patent nullity actions must be filed against the patentee and the BPTO before the Federal Courts.

State Courts are the forum where patentees seek injunctive relief, damages and leverage in licensing negotiations. The Business Courts in Rio de Janeiro have emerged as a particularly active venue for SEP disputes. As a result, judges are increasingly familiar with the technical and economic context in which SEP disputes arise.

On the other hand, lawsuits seeking the declaration of nullity of a Brazilian patent must be filed before the Federal Courts, with the BPTO named as a mandatory defendant alongside the patentee. Nullity actions therefore run in parallel to infringement proceedings and are structurally separated from them, tending to take longer than the infringement actions.

In the SEP context, nullity actions are rarely filed pre-emptively. This is due to the fact that SEP portfolios often comprise hundreds or even thousands of patents, particularly those managed through patent pools. Implementers are not expected to challenge the validity of an entire portfolio in advance, especially as not all declared SEPs are necessarily essential or actually implemented by the accused products.

As a result, nullity actions are commonly filed only after an infringement claim has been brought and a specific patent has been asserted against the implementer. The defendant typically becomes aware of which particular patent is being relied upon by the time of the service of process, triggering the decision to challenge its validity before the Federal Courts.

A recurring issue is whether the infringement action should be stayed while pending the outcome of the nullity case, since Brazilian law allows for suspension where the validity decision is prejudicial to the infringement dispute. Courts have adopted a case-by-case approach. Stays are more likely to be granted where the nullity action is at an advanced stage or where there are strong prima facie indications of invalidity. Thus, judges have shown sensitivity to the risk of conflicting outcomes and have sometimes tailored procedural calendars accordingly.

Although Brazil adopts a bifurcated structure for patent litigation, defendants in infringement actions are also allowed to raise patent invalidity as a defence before the State Courts, pursuant to Article 56, Section 1, of the Brazilian Industrial Property Law, which expressly allows nullity to be argued at any time as a matter of defence. In this context, State Courts are authorised to examine validity arguments, and may even recognise patent invalidity in an incidental manner, with effects being limited to the parties to the dispute (inter partes effects), without affecting third parties.

While such incidental findings do not produce erga omnes effects, if invalidity is subsequently confirmed by the court-appointed expert and recognised by the trial court within the infringement proceedings, the declaration operates retroactively to the patent application’s filing date, producing effects as if the patent had never existed inter partes. As a result, the infringement action is dismissed due to loss of subject matter.

In SEP disputes, the ability to challenge validity directly within the infringement proceedings provides defendants with an immediate procedural mechanism to counter enforcement efforts, without having to await the outcome of separate federal nullity actions. Both measures have pros and cons and must be carefully analysed on a case-by-case basis.

Declaratory actions (São Paulo State Courts)

Declaratory actions have gained prominence as a proactive defensive tool in Brazil. All declaratory lawsuits filed so far have been brought before the São Paulo Business Courts, with no exceptions to date. They often combine multiple objectives: permanent or even interim licences, declarations of non-essentiality for selected sets of patents, and broader FRAND-related relief.

The strategic rationale is clear: by filing first, implementers seek to control the narrative, reduce the risk of PIs in infringement actions brought in Rio de Janeiro, and build a judicial record that strengthens their negotiating leverage. This has become particularly relevant because, until 2024, Rio courts had high grant rates for PIs. Declaratory filings in São Paulo thus serve as a counterweight, aiming to neutralise pressure tactics and ensure that licensing discussions are framed under judicial oversight.

Courts have generally accepted the legitimacy of declaratory actions, provided there is a concrete legal interest and a credible threat of enforcement. Recent filings illustrate this trend, with implementers requesting not only recognition of non-infringement but also judicially supervised FRAND licences and determinations of non-essentiality, reinforcing their status as willing licensees and shaping the jurisdictional balance between Rio and São Paulo.

Forum shopping allegations and judicial response

Forum shopping is a recurring accusation in SEP disputes. Claimants may choose forums that are perceived as being more receptive to injunctions, while defendants may file declaratory or nullity actions elsewhere. This has led to a jurisdictional battle between Rio de Janeiro and São Paulo.

Judges in Rio have resisted arguments of prevention raised by defendants, insisting on retaining jurisdiction over infringement suits. In contrast, São Paulo judges have gone so far as to declare connection and prevention, and even to raise positive conflicts of competence before the Superior Court of Justice, to avoid contradictory outcomes.

These conflicts have already materialised in practice, with São Paulo courts explicitly framing declaratory suits as “umbrella actions” to consolidate disputes and prevent fragmented litigation, while Rio courts continue to prioritise patentees’ infringement claims.

Brazilian courts have become more alert to these tactics. Allegations of abusive litigation strategies are increasingly addressed explicitly in judicial decisions. The emerging RJ × SP conflict mirrors those seen in cross-border SEP disputes in Europe and Asia, where parties resort to anti-suit and anti-anti-suit injunctions to secure the most favourable venue.

A few years ago, another tactic adopted by plaintiffs was the filing of validity actions (ie, seeking judicial confirmation of patents that were already formally valid) before the Federal Courts in Brasília, rather than before the Federal Courts in Rio de Janeiro, which traditionally handle a large volume of patent nullity cases due to the Brazilian Patent and Trademark Office being headquartered there. The apparent strategic objective of this practice was to secure jurisdiction over the validity dispute and, in doing so, prevent implementers from filing nullity actions before the Rio de Janeiro Federal Courts, which are widely regarded as a more specialised, experienced and faster forum for patent litigation.

This practice, however, was increasingly questioned by practitioners and judges, as there was no clear procedural justification for patentees to file infringement actions in the Rio de Janeiro State Courts while choosing to litigate patent validity in a different federal jurisdiction located more than 1,100 km away.

Over time, courts became more sceptical of this forum selection strategy, particularly where it appeared to be driven by tactical considerations rather than genuine jurisdictional criteria. This trend reflects a broader concern with balancing patent enforcement with competition and due process considerations. Going forward, close attention will be paid to the decisions of the Rio de Janeiro Court of Appeals in pending SEP cases and to the Superior Court of Justice’s rulings on conflicts of competence, as these will shape the contours of forum selection in Brazil.

Competition law and FRAND considerations

Although Brazil does not have specialised FRAND legislation, competition law arguments have become central in SEP litigation.

When SEP cases first reached Brazilian courts, judges generally disregarded FRAND-related arguments, focusing exclusively on infringement and validity. Over time, however, some judges began to address FRAND obligations more cautiously, even treating the parties’ conduct during negotiations as a relevant factor in assessing PI requests.

A turning point came with Judge Victor Augustin’s decisions, which combined jurisdictional issues (such as prevention and “umbrella actions”) with a substantive FRAND analysis.

In *Dolby v Roku*, Augustin explicitly framed FRAND as a central requirement. Rather than attempting to set a numerical royalty rate, he adopted a disjunctive approach – ie, asking whether the licensor’s offer was FRAND or not. This methodology aligned Brazilian practice with international precedents, notably *Huawei v ZTE*, and underscored that a failure to make a FRAND offer could lead to denial of injunctive relief.

This evolution shows a growing judicial awareness of global SEP jurisprudence and the need to balance patent enforcement with competition principles. While still cautious, Brazilian courts are beginning to integrate FRAND considerations into the core of SEP disputes, moving beyond peripheral references to make them decisive in both interim and merits outcomes.

Recent decisions also highlight that FRAND analysis is not limited to royalty rates: courts have started to scrutinise negotiation conduct, non-discrimination among licensees, and the disclosure of comparable agreements under judicial supervision.

While increased attention to FRAND-related aspects is gaining traction, this approach remains at an early stage and has not yet been adopted by all judges handling SEP disputes before the Rio de Janeiro State Courts. As pending cases move forward, close monitoring will be essential to assess how FRAND principles will consolidate within Brazilian jurisprudence.

Practical implications for rights holders

For patentees, Brazil offers meaningful enforcement opportunities but requires careful planning. Aggressive PI strategies may backfire if not supported by strong evidence and procedural discipline.

Early technical preparation, awareness of nullity risks and readiness to post security are increasingly important. SEP holders must also be prepared to address FRAND and competition arguments substantively, in view of the maturity of the legal environment in Brazil.

Practical implications for implementers

For implementers, Brazil provides a range of defensive tools. Parallel nullity actions, non-infringement and royalty-setting actions, as well as the strategic use of expert evidence, can significantly influence outcomes.

Vigilance regarding interim relief throughout the proceedings is critical. Implementers should also be prepared to challenge jurisdiction and request security where appropriate.

Conclusion: Brazil as a mature SEP litigation forum

Brazilian patent litigation, particularly in the SEP context, has reached a new level of complexity and maturity. Courts are no longer addressing SEP disputes as “common patent disputes”, nor solely through the lens of infringement and validity, but are increasingly engaging with procedural co-ordination, technical accuracy, proportionality of remedies and competition-related considerations. This reflects a broader judicial awareness of the economic and technological implications of SEP enforcement.

The trends observed in 2025 indicate that Brazil is no longer a peripheral or secondary jurisdiction in global SEP disputes. Instead, it has become a forum that demands strategic attention and careful navigation. For clients doing business in Brazil, understanding these developments is essential to manage risk and leverage opportunities in an increasingly sophisticated litigation environment.