

Operating virtually in pursuit of greater effectiveness



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Over the past year the Brazilian courts and the Brazilian Patent and Trademark Office (BRPTO), along with most law firms in Brazil, have been adapting to the new reality brought about by the COVID-19 pandemic.

Virtual courts

Despite all of the challenges that the pandemic has brought, the Brazilian judicial sector has not slowed down.

The need to adapt to a new way of life almost overnight forced the state courts to expedite the scanning of lawsuits which were not yet digitised. Further, on 27 October 2020 the National Council of Justice announced the implementation of the 100% Digital Court project,⁽¹⁾ which the Rio de Janeiro State Court was first to introduce. The project aims to execute the procedural acts of lawsuits digitally. Despite most lawsuits being processed electronically at the time of its implementation, many presential acts (eg, conciliatory and judgment sessions) still used physical documentation.

This project will enable the Brazilian judicial system to be more effective. While online courts bring their own challenges, they can improve the fairness, transparency and speed of trials, since their main purpose is to avoid bureaucracy and resulting delays. Parties can now participate in hearings even if they are miles away, thereby saving time and money.

History of IP courts

This was not the first time that the Rio de Janeiro courts took 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 which authorises the judiciary to establish specialised 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 Espirito Santo federal courts, also formed specialised 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 specialised 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 which aim to enforce IP rights in Brazil. In recent years – discounting the period affected by the COVID-19 pandemic – the number of patent, industrial design and trademark applications filed with the BRPTO has increased considerably. Further, IP-related topics have become an increasingly significant area of interest nationally, with an ever-increasing number of cases and controversies.

As well as issuing better and faster decisions, specialised lower courts and courts of appeal ensure greater predictability and legal certainty, which is essential for attracting investment and growing Brazil's economy. Likewise, measures such as the 100% Digital Court project seek to enhance the quality of the procedural acts taken by the courts, which benefits not only the parties concerned, but also civil society in general. More efficacy results in faster outcomes and relieves the judicial system of lawsuits held up by bureaucracy.

Although the specialised courts of the Rio de Janeiro State Court have not yet incorporated the first part of the 100% Digital Court pilot project, the transition will likely be simple now that – due to the COVID-19 pandemic – the courts and the public have already had to adapt to working remotely.

Virtual BRPTO

According to its president, **(2)** the BRPTO has introduced various goals concerning the efficiency of its services, including commitments to carry out the following by the end of 2021:

- promote digital access to all of its services;
- increase the technical training of examiners; and
- reduce the backlog of patent applications pending examination by 80%.

Although BRPTO staff have been working remotely since the start of the COVID-19 pandemic, their performance has remained positive. In March 2020 the number of decisions to grant or reject patent applications was the highest since January 2019 and 16% more technical office actions were issued compared with the same period in 2019.

As of September 2020 the BRPTO had reduced the backlog of patent application orders filed by 2016 by 41% and the average length of time taken to grant or reject a patent was five years after the examination request, compared with an average of between 10 and 12 years before the start of the project. These numbers demonstrate the positive results that the BRPTO is achieving despite the pandemic, reflecting how it has adapted to the new reality.

Comment

In light of these judicial and administrative changes, the Brazilian IP landscape is becoming increasingly favourable for entrepreneurs and companies. While Brazil still has a long way to go, the government's pursuit of greater effectiveness in its judicial and IP systems is commendable.

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Endnotes

(1) The 100% Digital Court project was implemented by National Council of Justice Resolution 345/2020.

(2) This information was given by Claudio Furtado, director of the BRPTO, at the first plenary session of the Brazilian Intellectual Property Association's 40th annual meeting.

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