



Chapter 4 - Brazil Hot Topics in IP 2025: IP Litigation

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Standard Essential Patents (SEPs): Brazil's Consolidation as a Strategic Forum for Global Disputes

Disputes involving Standard Essential Patents (SEPs) have rapidly evolved into one of the most dynamic areas of IP litigation in Brazil. What was once a marginal jurisdiction for SEP enforcement has, particularly from 2024 onwards, evolved into a consolidated and strategically relevant forum within the global litigation and licensing landscape.

The acceleration of SEP-related lawsuits reflects a broader shift in how Brazil is perceived by both SEP owners and implementers. Infringement actions remain largely concentrated before the Rio de Janeiro Business Courts, frequently accompanied by requests for preliminary injunctions, while declaratory actions filed before the São Paulo Business Courts have emerged as a structured counter-strategy. These actions typically seek declarations of non-infringement, non-essentiality and broader licensing-related relief, thereby contributing to a dual-track dynamic that has triggered jurisdictional disputes reminiscent of forum battles commonly observed in other major SEP jurisdictions.

Another notable development lies in the increasing sophistication of litigation strategies on both sides. SEP owners have expanded their enforcement toolbox beyond traditional injunction requests, including coordinated patent-pool campaigns involving multiple lawsuits against the same implementer within short timeframes, the use of specialized media outlets to publicize disputes and intensify negotiation pressure, and growing reliance on simplified or expedited technical examinations for the purpose of deciding on the granting or denial of preliminary injunctions.

Implementers, in turn, have increasingly resorted to defensive measures such as declaratory actions and patent nullity proceedings before the Federal Courts in Rio de Janeiro, where the Brazilian Patent and Trademark Office acts as a mandatory co-defendant and may reassess the validity of the asserted patent based on newly produced evidence.

Recent practice also highlights the evolving role of technical expert evidence at the preliminary stage. Simplified technical examinations have so far been adopted by a single judge among the Rio de Janeiro Business Courts and are conducted without full participation of the parties, being limited to an initial technical assessment for injunction purposes. Expedited examinations, by contrast, have been more frequently employed and often require parties to define their technical strategy, including the formulation of technical queries for the court appointed expert, within the same procedural timeframe as the statement of defense, which is typically due within 15 business days from service of process. This compression of procedural stages has significantly increased the strategic relevance of early technical preparation.

Finally, judges have become increasingly attentive to the parties' conduct during licensing negotiations and to whether SEP enforcement aligns with internationally recognized FRAND principles when assessing injunctions - whether preliminary or permanent. Recent decisions suggest an emerging convergence with international parameters, including those developed under *Huawei v ZTE*, adapted to the Brazilian procedural framework.

Taken together, these developments confirm that Brazil is no longer a peripheral venue for SEP disputes. Instead, it has become an integrated and consolidated part of global SEP litigation strategies, making it essential that global SEP enforcement and defense strategies take Brazil into account and remain aligned with positions adopted in parallel foreign jurisdictions.

Patent-Term Adjustment (PTA): STJ reinforces a strict post-ADI 5529 framework and shifts the debate back to Congress

In 2025, the Brazilian scenario for Patent-Term Adjustment (PTA) shifted from “stable” to more consolidated and restrictive, especially following the December 2025 judgment of the 4th Panel of the Superior Court of Justice (STJ), Rapporteur Justice Maria Isabel Gallotti, in REsp 2.240.025/DF (*Novo Nordisk v. INPI*, with intervening parties including EMS and multiple amici curiae).

In that decision, the STJ rejected Novo Nordisk's request to extend the term of patents related to semaglutide-based products (Ozempic® and Rybelsus®) as compensation for alleged undue delay by the Brazilian Patent and Trademark Office (INPI). The Court reaffirmed that, after the Brazilian Supreme Court's binding precedent in ADI 5.529, patent term cannot exceed the statutory maximum of 20 years from the filing date, and that courts are not allowed to create a case-by-case “adjustment” mechanism in the absence of legislation setting objective criteria for any exceptional extension.

A key takeaway from the STJ's reasoning is its explicit endorsement of the STF's post-ADI 5.529 approach seen in later constitutional complaints: absent statutory objective parameters, a “casuistic” judicial recalculation of term based solely on INPI delay would amount to recreating—by other means—the same automatic extension regime struck down by the STF. The STJ also emphasized the broader constitutional balance underpinning ADI 5.529, including legal certainty, temporariness of patent privileges, free competition, consumer protection, and the right to health, and relied on the idea that applicants are not left without protection during prosecution, given statutory mechanisms such as indemnification for unauthorized exploitation after publication of the application.

The December 2025 precedent is expected to accelerate the dismissal of pending PTA lawsuits (especially in the pharmaceutical field), reduce space for evidentiary disputes about whether a specific delay was “disproportionate,” and further discourage attempts to revive or extend already expired patents. In practical terms, the STJ's message is that the PTA discussion, as a judicial remedy, is increasingly close to exhaustion—at least until a new statutory framework is enacted.

At the same time, the decision highlights what remains the core structural issue in Brazil: a legislative gap has existed since ADI 5.529. In its opinion in ADI 5.529, Justice Dias Toffoli acknowledged—while rejecting automatic extensions—that other jurisdictions adopt tailored mechanisms to address administrative delay, typically grounded in clear statutory criteria and safeguards. The Brazilian courts, however, have consistently treated this point as an invitation for legislative (not judicial) action, reiterating that any compensation model for undue INPI delay must be designed by Congress through objective, predictable, and constitutionally compatible rules.

Accordingly, in 2026 and beyond, companies should recalibrate their strategy. Rather than relying on PTA litigation, they should focus on administrative tools to mitigate delays, proactive portfolio management, and—where relevant—supporting legislative initiatives capable of addressing prosecution inefficiencies without reintroducing indeterminate or automatic extensions. In short, 2025 confirms that PTA in Brazil has become less a courtroom debate and more a policy and legislative agenda, with the STJ's semaglutide decision serving as the most significant judicial reinforcement of that shift.

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