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INTELLECTUAL
PROPERTY.

5th Edition

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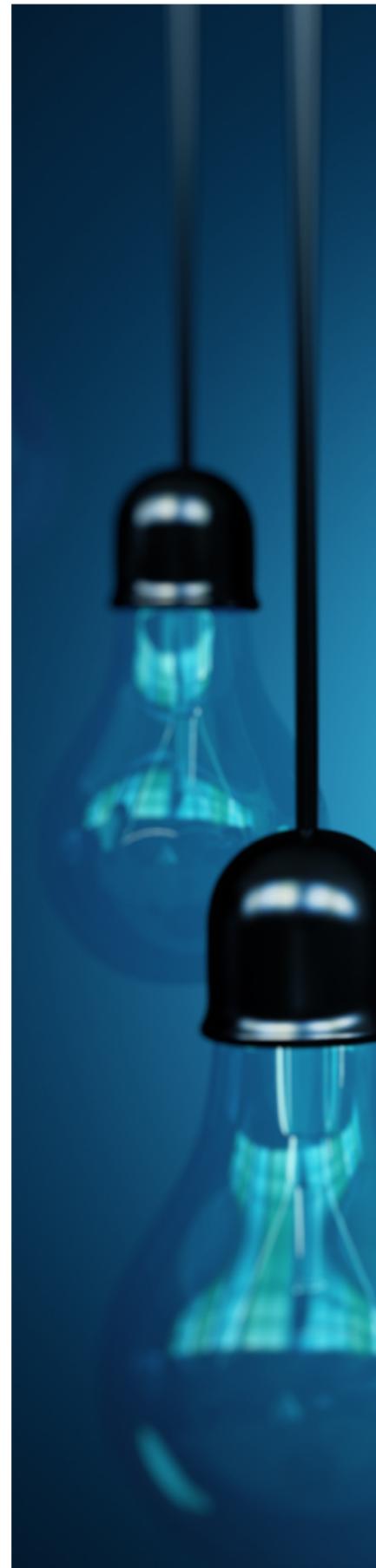
NORMATIVE DEVELOPMENTS.

Update on patent priority procedure and Patent Prosecution Highway (PPH) pilot project

In late December 2022, the Brazilian Patent and Trademark Office (BPTO) published Ordinances No. 78/2022 and No. 79/2022, which regulate, respectively, phase IV of the shared examination pilot project Patent Prosecution Highway (PPH) and the priority procedure for patent applications before the BPTO, both in force since January 1, 2023.

The main changes to these procedures are:

- A positive opinion on international patentability will be accepted as a basis for requesting inclusion of the Brazilian patent application in the PPH;

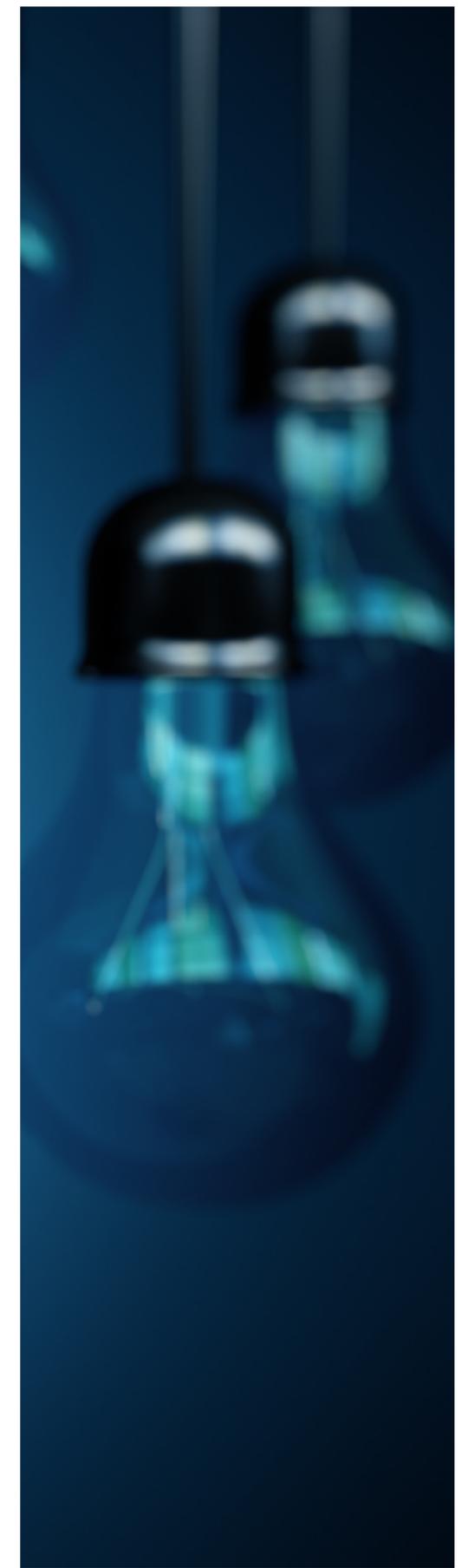
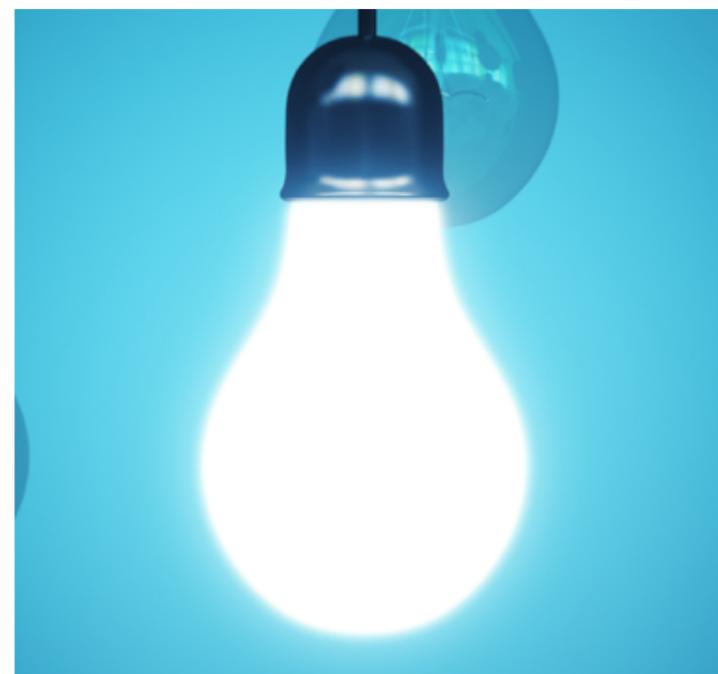


- The priority procedure modality for “technology for tackling national and international emergencies” was created, and those for “commercial technology” and “technology resulting from public funding” were implemented;

- There was an increase in the limit of PPH applications to 250 classified in the same section of the International Patent Classification (IPC); and

- To request priority processing, the original and split applications must be published and have the request for examination.

See the full text of Ordinances No. [78/2022](#) and No. [79/2022](#)



BPTO's new rules on technology transfer agreements

According to the order published in the BPTO's Official Gazette No. 2716 - Announcements Section, of January 24, 2023, the new rules for registration and annotation of technology transfer agreements, decided at the Board of Directors' meeting on December 28, 2022, have now normative force.

The new rules will be adopted in future decisions on technology transfer agreements and will certainly facilitate the registration process of agreements before the BPTO. You can see these new rules by clicking [here](#).



Brazilian
Context.

To base its decision in connection to a trademark application, BPTO conducts searches on the internet

The Brazilian Patent and Trademark Office (BPTO)'s examiner, responsible for the analysis of the trademark application "0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23" designated to Brazil via Madrid Protocol, stated in its decision that the mentioned trademark is sufficiently distinctive. Having performed searches on the internet to confirm the effective use of the trademark in its composite form and to verify the distinctiveness of the trademark, therefore, it was

concluded the technical examination of the registrability of this trademark application.

This trademark by a sequence of numbers from 0 to 23 was considered sufficiently distinctive by the BPTO because each number refers to the numbers of each collection of products sold by the owner.

BPTO releases study on patents related to artificial intelligence in aviation

Since 2020, the BPTO has been a member of the executive committee of the Brazil-Sweden High-Level Group on Aeronautics (HLG), which is a partnership for the cooperation for technological development in the sector.

As a result of this partnership, the BPTO released a new study entitled “Mapping of artificial intelligence technologies applied to aviation in Brazil and Sweden, through an

analysis of patents related to this industry filed with the BPTO”.

Through this study, it was verified that in Brazil most of the patent applicants are foreign, especially American and French, such as Boeing and Airbus, and the only Brazilian applicant identified in the research was Embraer.

See the full Study [here](#).

03

Judicial Decisions.

STF rejects claims to extend the validity of drug patents

The Brazilian Supreme Federal Court (STF) dismissed requests for the extension of the validity of drug patents claimed by pharmaceutical industries.

The pharmaceutical industries filed a lawsuit after the declaration of unconstitutionality of the sole paragraph of Article 40 of the Industrial Property Law (No. 9,279/1996), which established a minimum period of 10 years in case of delay of the BPTO in the analysis of the patent application.

In addition, pharmaceutical companies used as a basis for filing these lawsuits the foreign legal procedure called “Patent Adjustment Actions” (PTA), which provides the possibility of reviewing the patent validity in case of delay in the analysis of the patent application.



021

IP Abroad.

Nike sues Lululemon for patent infringement



In January 2023, Nike sued Lululemon Athletica Inc. claiming that some footwear sold by Lululemon constituted an infringement of Nike patents, resulting in economic damage and irreparable harm to the company.

Nike had already sued Lululemon for patent infringement in January 2022 but due to the selling of Mirror Home Gym and related mobile applications.

Independent designer Thom Browne wins Adidas in the US Court

A court in Manhattan has ruled in favor of American designer, Thom Browne, in a trademark dispute with sportswear giant, Adidas. The court case focused on the use of four stripes and a red, white, and blue-stripe grosgrain ribbon loop used by Thom Browne in his designs.

The Court found that Thom Browne was not guilty of infringing upon the three stripes Adidas uses in its logo. Adidas had sought US\$8 million in damages and has said it will “continue to vigilantly enforce its intellectual property, including filing any appropriate appeals.”

Nike sues BAPE brand for copying its most famous sneaker designs

 In January 25, 2023, American company Nike filed a federal lawsuit against the Japanese fashion brand “A Bathing Ape” (also known as BAPE), for allegedly copying the design of its most famous sneaker designs and consequently violating trademark registrations Nike Air Force 1, Air Jordan 1, and Nike Dunk.

In the records of the lawsuit, Nike stated that it had notified BAPE about the matter but without success. In this sense, Nike required BAPE to stop selling its shoes and pay damages to Nike due to the confusion created by the imitation of Nike’s design and infringement of rights.



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PARTNERS IN CHARGE OF THE CONTENT:

- 👤 Marcela Waksman Ejnisman
- 👤 Carla do Couto Hellu Battilana
- 👤 Luiza Sato

CONTRIBUTED TO THIS NEWSLETTER:

João Vitor de Almeida Ramos
Julia Parizotto Menzel
Julie Lissa Kagawa
Mauricio Ades
Stephanie Consonni De Schryver
Tatiane Robles Martins

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