

## Brazilian Patent Office shall reject patent applications on genetic use restriction technologies

**O**perational Rule No. 005/2012 was issued by the Brazilian Patent Office on October 30, 2012, ruling on the interference of the Biosafety Law (No No. 11,105 of 24 March 2005) on the granting of Biotechnology patent applications.

This operational rule came as a consequence of previous Brazilian Patent Office's Notification No. 0182-2012-AGU-PGF/INPI/COOPI-ALB-2.2, published on August 21, 2012 in Official Gazette No. 2,172, which considered not to be patentable subject-matter involving genetic use restriction technologies (GURTs) for plants, as set forth by the Biosafety Law (BL).

This BL establishes, in its Section 6° VII, that it is forbidden to: “use, sell register, patent and license genetic use restriction technologies”, these technologies being defined in the sole paragraph of said section as “any process by which human intervention generates or multiplies genetically modified plants to produce sterile reproductive structures, as well as any manner of genetic manipulation that aims at activating or deactivating fertile-related plant genes by using external chemical inducers”.

In view of the controversy on the interpretation on the patentability of this subject-matter, since the Brazilian Industrial Property Law No. 9,279/96 (IPL) is silent in this respect, the Attorney General has been called upon to issue an opinion.

By means of the notification published in the Official Gazette No. 2,172 of August 21, 2012, the Attorney General concluded that all pending patent applications directed to genetic use restriction technologies should be rejected in light of Biosafety Law 11,105/05, even though such prohibition is not specifically found in the Brazilian Industrial Property Law.

The President of the Brazilian PTO gave immediate normative character to this opinion, now translated into Operational Rule No. 005/2012, confirming the understanding that all patent applications claiming this subject-matter should be rejected.

Notwithstanding the foregoing, we deem important to draw your attention to Bill No. 5,575/2009, which seeks to amend the Biosafety Law and to lift the bar on GURTs. This legislative proposal is still under discussion in the House of Representatives, but it has already received positive feedback from the Commission for the Environment and Sustainable Development of that House.

Please be sure that we shall keep you apprised of developments on this matter as they arise. In the meantime, please do not hesitate to contact us should you have any queries or concerns in this regard.