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Law-suits to accelerate the examination of Trademark or Patent applications

In view of the slow pace of the Brazilian Trademark and Patent Office (BPTO) and the National Health Surveillance Agency (ANVISA)¹ on the analysis of trademark and patent applications, over the last few years there has been a significant increase in the number of judicial cases seeking the acceleration of the examination of such applications.

In fact, several court decisions have ruled that if the application is pending for a long time before the BPTO or ANVISA, it is possible to file a writ of mandamus to redress an unreasonable delay.²

The faster procedure of a writ of mandamus is only allowed in the discussion of legal issues. There is no discovery after filing, and the petitioner must present all the necessary evidence, if any, with the initial brief. The writ of mandamus would aim at redressing the inaction of BPTO or ANVISA, since such a delay represents an infringement of the constitutional guaranty of speediness in administrative proceedings, set out in Article 5, paragraph LXXVIII of the Brazilian Federal Constitution. Moreover, the right to a reasonable length of administrative proceedings is also guaranteed in Article 37 of our Constitution, which states that efficiency must be one of the principles governing the public administration.

Brazilian Courts have recognized the intimate connection between efficiency and the fundamental right to a reasonable duration of proceedings, as stated by the Supreme Court: “*the inaction of the constraining authority to analyze the administrative appeal regularly filed without a reasonable justification configures an omission challengeable by way of injunction.*”³

In this sense, we successfully obtained decisions ruling in favor of the adequacy of a writ of mandamus to compel the analysis of a trademark or patent application by the BPTO, or the patent’s prior approval by ANVISA, including the granting of injunctions.⁴

Should you wish further information concerning this strategy in connection with a particular case do not hesitate to contact us.

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¹ In Brazil, ANVISA is responsible for the examination of patent applications in the pharmaceutical field, jointly with the BPTO. In practice, ANVISA is expected to give their approval before a patent is granted.

² Following the example of Ordinary Appeal in Writ of Mandamus 4289/MS, ruled by the Fifty Panel of the Superior Court of Justice, Reporting Judge Gilson Dipp, published on June 04, 2001.

³ See Writ of Mandamus 24167-5, Reporting Minister Joaquim Barbosa, judged by the Plenary of the Supreme Court, published on February 2, 2007.

⁴ REOMS 200551015162766, 2nd Panel of the Court of Appeals for the Second Circuit; Injunction granted by the Trial Judge of the 1º Federal Court of Brasilia, Writ of Mandamus 0028563-38.2011.4.01.3400; Writ of Mandamus 13.584/DF, 3ª Section of Superior Court of Justice; Special Appeal 1091042/SC, 2ª Panel of the Superior Court of Justice; Writ of mandamus 13.545/DF, 3ª Section of Superior Court of Justice.