

The Brazilian Patent and Trademark Office (BPTO) publishes new **resolution** also ruling on applicability of PCT Rule 49.6 for Brazil

New Resolution No. 291 published by the BPTO on September 4, 2012 establishes new proceedings for nationalizing, in Brazil, applications filed under the PCT – Patent Cooperation Treaty – following Rule 49.6 of such treaty.

Rule 49.6 sets forth that the applicant may reinstate the rights after failure to timely enter the national phase, provided that this failure was unintentional or occurred in spite of due care required by the circumstances having been taken.

The major change introduced by this Resolution is the establishment of the procedures applied concerning PCT Rule 49.6, thus including the possibility of reinstating the rights of the applicant with respect to the national phase entry, if the delay in meeting the 30-month deadline is unintentional or the failure to meet such time limit occurred in spite of due care having been taken by the applicant/legal representative.

The term available for submitting such request to the BPTO is therefore in line with PCT Rule 49.6, i.e.: (i) within 2 months from the date of removal of the cause of the failure to meet the 30-month term; or (ii) within 12 months from the date of the expiration of the 30-month term; whichever expires first.

Further, in accordance with this resolution, the applicant is to file the request at the time of the belated entry into national stage, together with documents characterizing/evidencing the facts for having missed the 30-month deadline, as well as the receipt of payment of the corresponding fee, and further legally required documents.

The documentation will be then analyzed by the BPTO, which may or not grant the request. If accepted, the national phase of the patent application will be started. In case the request is denied, there will be a 60-day term from the corresponding publication of the refusal to be made in the Official Gazette for filing an appeal from the BPTO's decision, according to Section 212 of the Brazilian Patent Law.

As this is a very recent Resolution, when and how the BPTO will analyze such requests for belated entry into national phase in Brazil remains uncertain. In any event, should you wish to receive detailed information on this matter, please do not hesitate to contact us and we will be pleased to provide you with all the assistance you might need.