

BRAZIL: END OF THE EXTENSION OF PATENT VALIDITY AND SPECIAL REGIME FOR THE PHARMACEUTICAL SECTOR



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Paris, 19 May 2021 - On May 7, 2021, the Brazilian Supreme Court put an end to the extension of validity of Brazilian patents for a 10-year period starting from the granting of patents, due to the unconstitutionality of the measure. It has now specified the terms of its application, by a new decision issued on May 12, 2021.



These terms will apply as soon as the new decision is published, which should happen in the next few days. We will take note of two key principles.

The **first principle** is that **from now on**, all Brazilian patents will be valid for a **20 years period counted from their filing date**, regardless of the duration of the examination procedure before the Brazilian Patent Office and regardless of the technical field.

The **second principle** is that **patents granted** and already benefiting from the 10-year period of validity from the granting date **will keep on benefiting from this extension of validity until its expiration**, except in two cases:

- ⦿ patents for which a legal dispute has been filed on the basis of the unconstitutionality of the measure granting the 10-year extension of validity, prior to April 7, 2021, and
- ⦿ patents in the pharmaceutical field concerning products, processes, equipment and materials for health use.

In other words, patents granted and already benefiting from the 10-year extension as of their grant, not related to the pharmaceutical industry, such as telecommunications or electronics, will be valid until the expiration of the term of this extension.

Patents in the pharmaceutical field granted and already benefiting from the 10-year extension of validity will have their validity stopped as soon as this decision is published. The Brazilian patent office specified that the effects already produced (such as the execution of previous contracts) will be preserved until the end of the concerned patents.

Two major questions will require to be answered in the near future:

- ⦿ what is the exact scope of the pharmaceutical field concerned: what about the veterinary field? What about Medtech inventions?
- ⦿ will the backlog of the Brazilian patent office be quickly resolved to allow Brazilian patents to be granted within a "reasonable" timeframe?

In particular, it will be important to monitor the progress of patent examination procedures in Brazil in order to promptly undertake all necessary measures to optimize the duration of these procedures.

Our teams are closely following these changes and are available to advise you. If you have any questions and would like to address how these changes affect you, please do not hesitate to get in touch with your usual contact person or write to us at info@regimbeau.eu.

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