Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

First Name:

[redacted]

Last Name:

[redacted]

Country:

Brazil

IP Office

National Institute of Industrial Property of Brazil

Job title

Coordinator General of Patents

Email address:

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Email address confirmation:

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Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.
It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

i) Study on the determination of inventorship and conditions of foreign filing, with a view to identifying potential challenges for innovators in the cross-border collaborative environment

1. Which of the following does the applicable legal framework in your jurisdiction require before a patent application can be filed in another country or at a regional patent organization?

Security clearance

2. Please list the statutes or guidance documents that patent applicants in your country can consult to inform themselves of the foreign filing requirements and the procedure to follow.

Inventions whose subject matter may be of interest to national defense are subject to monitoring by the Secretariat of Strategic Affairs of the Presidency of the Republic of Brazil, for purposes of national security review.
According to paragraph 2 of article 75 of Brazilian IP Law (Law No. 9,279, of May 14, 1996), the filing of a patent application abroad whose subject matter has been deemed to be of interest to national defense is prohibited, as is any disclosure thereof, except with the express authorization of the competent authority.
For more about Security Clearance, see Article 75 of Law No. 9,279, of May 14, 1996 (Brazilian IP Law) and Decree No. 2,553, of 1998 (Regulates articles 75 and 88 to 93 of Brazilian IP Law).

4. What specific criteria will trigger the Foreign Filing Conditionality?

Impact on the country's national security or national defense;
The place of invention;
The technical field or subject matter of the invention (e.g. atomic/nuclear, weaponry, arms, ammunition, blasting, surveillance, cryptology etc.);

Please provide any further details on the scope of the specific criteria applicable in your jurisdiction.

For security clearance, article 75 of Brazilian IP Law (Law No. 9,279, of May 14, 1996) must be strictly observed. According to article 75 of Brazilian IP Law, patent applications originating in Brazil whose subject matter is of interest to national defense will be processed confidentially and will not be subject to the publications provided for in this Law. INPI (National Institute of Industrial Property) will immediately forward the application to the competent body of the Executive Power, which will have 60 (sixty) days to decide on the confidential nature of the application. If the competent body does not respond within this period, the application will be processed normally.

5. Does your law allow for a deemed license or automatic approval, if the Office does not act or respond within a specific time period?

Yes

What is that period?

60 (sixty) days

6. Does your jurisdiction's patent law provide for the imposition of a "Secrecy Order" (or other similar national security restrictions) that prohibits or restricts an applicant from filing for patent protection in other jurisdictions?

Yes

What is the nature/impact of this restriction regarding foreign filing?

In Brazil, the filing of a patent application abroad whose subject matter has been deemed to be of interest to national defense is prohibited, as is any disclosure thereof, except with the express authorization of the competent authority. Where the rights of a patent applicant or patent holder are restricted on grounds of national defense, pursuant to Article 75, §3 of Brazilian IP Law (Law No. 9,279/1996), the applicant or patent holder shall be entitled to compensation, upon demonstration of the economic benefits that would have been derived from the exploitation or assignment of the patent.

Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.