

The Patent Right evolution during the pandemic: The unconstitutionality of the Patent Term Extension and the new Compulsory Licensing Regulations in Brazil

Prof. Dr. Milton Lucídio Leão Barcellos – Leão Intellectual Property (Brazil)
e-mail: milton.lucidio@leao.adv.br

Abstract: The challenges of the COVID-19 pandemic situation were (and are) numerous. For example, in the patent field an intense debate about the possibility of waiving the patent rights on vaccines and the interpretation/implementation/review of the compulsory licensing regulations are still over the table. Countries faced the patent rights issue differently according to their own national and/or supranational views, interests and perspectives related to the patent policy during this pandemic challenging environment. Brazilian legal and political initiatives were intense in the patent field during the last two years. This paper proposal intends to navigate through the legal reasoning behind two historical facts that slightly changed the Brazilian Patent Statute during the last year: a) The Brazilian Supreme Court decision ruling the unconstitutionality of the sole paragraph of the article 40 of the Industrial Property Law n. 9279/96 (uniform and automatic patent term extension was ruled as unconstitutional); b) The Brazilian Congress approved changes in the Compulsory License procedures by establishing modifications on the article 71 of the Industrial Property Law n. 9279/96. Those changes reveal the relevance of the pandemic crisis to the healthy adjustments on the patent system.