

3. IP REGULATIONS AND ENVIRONMENTAL AGREEMENTS:
AN OVERVIEW OF THE BRAZILIAN GREEN PATENTS SERVICE

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ABSTRACT

The Brazilian National Institute of Industrial Property

launched a fasttrack proced

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more acceptable ways than the technologies for which they were substitutes.'

At that time, INPI publicised its legal measures with rules, called 'Resolutions' On 2 April 2012, Resolution n. 283 'Discipline the priority exam of green patent applications in the framework of the INPI, the procedures relating to the Pilot Program on the theme and gives other legal measures issued Under this regulation, the INPI green technology concept is explained as follows.

Green patent applications are defined as patent applications with a focus on environmentally friendly

technologies or green technologies (d0.307 0 T-1.827 [(wTd [o[(wTd [)4]TJ /TT2 1 Tf 0 Tc 0 Tw 22.653 0 Td u-13)

The evolution of the Green Patent project was described by the resolutions listed below. It was divided into three phases and in a service. The table below presents the phases

and Article 27.1 of TRIPS Agreement (for WTO Members).

Additionally, it mentioned that the request must 'contain a maximum of 15 (fifteen) claims, of which up to 3 (three) are independent claims'.³²

'For whom this will be protected' is directed to applicants, resident or non-residents, through the Paris Convention, whose technologies were described in one of five categories, mentioned which Brazil accepted as green technology.

The sole paragraph of Article 4 was the first rule to (n)1 (o)- er aanst E.4 (aa6 (irs)2.() (d [(m)-6 (entpf)-6.7 ()-11.3 ()-11.3 ()-2.7

2013;⁴² implementing the new phase of the project; and (b) Resolution n. 122 of 29 November 2013, expanding to allow utility models and certificate of addition to be included in the priority examination policy. Thus, the discussion will set out chronologically the legal norms.

INPI elaborated new rules based on the previous ones after their term expired. As a consequence, Resolution n. 208 of 17 April 2013, which became effective since 17 April 2013, extended and expanded the pilot project. It is considered the time frame the beginning of the second phase of the project. Moreover, it had the same legal structure of the previous one, which represents one positive point: patent applicants were suited to the information requested on the form and they were able to supply the necessary information for examiners.

In this way, the Preamble and Articles 1 to 8 maintained the provisions described in the first phase. Only eight months after the second phase had begun, inventions, as utility models and as certificate of addition, were included in the project by Resolution n. 122 of 29 November 2013. During the first phase, the reading of Article 4 was limited only for inventions.

Furthermore, some significant differences are seen in Article 9 of Resolution n. 82 of 29 November 2013.⁴³ Item I replaced 'examines' by

regular technical examination (Ord. 37-71/94 of 30 September 1994, (m) 21/18/85 (T) - 0.339520 (e) 141-46 (a) 17 io) 2, 3th, (t) - 2.3n62n.0

the previous criteria. This provision reduced the chances of to the use of an instrument of power of attorney and a repeal creating new lawsuits against the INPI once patent applicants, of the Resolution n. 752013, the updated numbering of the with a patent application pending longer than those eligible Resolution which created the 'Green Patent' in Brazil.

in the first phase, were also able to choose the priority examination. The second characteristic the access to genetic patrimony and traditional knowledge are obtained through the request at Genetic Heritage Management Council⁴⁶ under the Ministry of Environment in Brazil, regulated by Resolution n. 69 of 18 March 2013.

In a comparison of previous Resolution n. 2013, Article 11 of Resolution n. 83-2013 regulated the number of claims that an application should have. It relates to the quantity of independent and dependent claims described in Article 4. That proviso has been made in correlation to Article 32 of the BrPL⁴⁸. Such a determination enabled applicants to tailor their claims to the number of claims required, without expanding the content already filed. This article is a positive point of the project because it increased the credibility of the project among applicants, avoiding strictly technical issues submitted to judicial decisions.

In the same way, Articles 125 of Resolution n. 83-2013⁴⁹ are the same as in the first phase (Resolution 72013). The main difference is the provision of Article 16, which started the new phase of the project on 17 April 2013 and remained in force until 15 April 2014. Similar to what happened before, this phase did not reach the maximum number of applications permitted to enter into the project.

Thus, the second phase of the Brazilian Green Patent closed due to the deadline. The Resolutions ended with a reference

In order to take this into account, INPI extended the project through the Resolution n. 122013. This occurred with the inclusion of utility models and certificate of addition of invention, incorporated in Article 4. The replacement of the term 'invention' for 'patent applications' allows for that inclusion.

This resolution permitted all types of patents described in Article 2, Item I⁵⁰ Article 6;⁵¹ and Article 55 of BrPL⁵². On the other hand, INPI maintained that applicants should submit their requests until 16 April 2014 (Article 16), and Resolution n. 83-2013 was revoked. The second phase resulted in 16 'Green Patents' being granted, with an average of 400 days under examination, between a minimum of 131 days and a maximum of 506 days (MCID 5w -266ee5 0 Tw -2 day and a

⁴⁶ 'Conselho de Gestão do Patrimônio Genético' // 'Genetic Heritage Management Council' (Ministry of Environment, Brazil) <<http://www.mma.gov.br/patrimoniogenetico/conselhode-gestaodo-patrimonio-genetico>> accessed 10 October 2018.

⁴⁷ Subject: Regulates the procedures for the patent applications for an invention whose object has been obtained as a result of an access to the national genetic heritage components of the sample.

⁴⁸ BrPL (n 15) art. 32. 'In order to better clarify or define a patent application, the applicant may make changes until the time of the request for examination, provided these are limited to the subject matter initially disclosed in the application.'

⁴⁹ Resolution n. 83 of 2013 (n 42).

Critical points observed	Solution Proposed by P3V
Search for applicants requesting after the deadline	Guidance to await the possibility of a new pilot
PCT: doubts about the possibility of requesting priority examination of green patents and ISA	A search of PCT Division to guide the filing ISA application
The green patent application which is also a priority in the ISA	Agreement with the PCT Division: the examiner who analysed ISA will analyse the green patent or the contrary.

Source: P3V (INPI, 2016), 34 – Translation from Portuguese.

Moreover, the Technical Report describes that even in a promising sector of the industrial property system dealing with internal and external issues required the attention of researchers. Thus, the service to be implemented would overcome such barriers and produce an ideal scenario in relation to the externalities of the system. In addition, the Technical Report analysed the data in detail to conclude the project.⁶² Some of the data were relevant to this study as an indication of positive results.

The results provided in the Technical Report contributed to the expansion of the project and the migration from project to a service. In this sense, Resolution n. 2016 came to regulate the Green Patents Service. However, the normative structure was arranged in a different format from previous versions.

Some points in the writing of this normative act deserve attention. Resolution n.175-2016, composed of 10 articles, was presented in a reduced format in comparison to the previous others. It brought in the body of its text the brief concept of green patents (Article 2) and its exceptions linked to Articles 10 and 18 of the BriPL without expanding or including doctrinal considerations on the subject. In addition,

it remains linked to the list originally proposed by the Pilot Project based on the WIPO inventory.

Even after the restructuring of INPI, the Patent Board (DIRPA) remained with the technical responsibility for selecting, analysing and deciding the applications to be considered eligible for the priority examination (Article 3), without any other coordination or external division of the patent area being introduced in the process⁶³.

The Resolution confirmed the possibility for both foreign and national applications to apply (Article 4), as all of them were considered as national applications. The limit of 5 claims, with 3 independents (Article 5), proved successful in the previous stages. In the same way, the article wording remained linked with the determinations contained Article

32 of the BriPL. It means that it is not possible to add new matter to the subject disclosure before the descriptive report or in the abstract when the examiner requests the clarification or adjustments (Article 8).

More relevant in that context, Article 6 described the conditions for participation in the examination, linked to the BriPL, and defined the publication criteria and the status of the application at the time of its request to join the Patentes Verdes

From the time between the ends of the pilot phase until the institution of the service, another 20 new patent applications were granted, with a period of at least 22 and a maximum of 1567 days, between the entrance into the exam and its publication at RPI.

As a result of this brief study, the following table points, objectively, in a comparative way, the Brazilian scenario of Green Patent Technologies from 2012 to 2019.

⁶² P3V (n 8) pp 339.

⁶³ By means of Brazil Decree n. 8.854 of 22 September 2016.

http://www.planalto.gov.br/ccivil_03/_Ato2015

2018/2016/Decreto/D8854.htm accessed 10 October 2018.

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