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The use of patents and trade secrets in Brazil during the COVID-19 pandemic. A Case Study

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“A crisis is an opportunity to ride a dangerous wind.”

- The extraordinary context of COVID-19 led innovators to swiftly review their protection strategies vis a vis the renewed opportunities and structural tools.
- COVID-19 has highlighted the role of a structured IP system and *tested* how R&D centers decide between secrecy and patentability systems.
- Brazilian R&D centers *swiftly* changed their IP-driven goals and have enjoyed changes to the Brazilian IP structure, i.e., COVID-19-dedicated fast-track.





## “Sector”

- The industry dedicated to designing, developing, manufacturing, and distributing medical devices and technology used in healthcare, e.g., diagnostic equipment, surgical instruments, implantable devices, monitoring and life support equipment, in-vitro diagnostic devices, sanitation sterilization, and software (SaMD)



From June 12 to July 10, 2023, *representatives* of fifty-seven (57) patent applicants were asked to participate in a questionnaire-based survey concerning their views on the interplay between patents and trade secrets in the Sector.



Such an audience was selected out of one hundred (100) patent applications filed in the wake of the INPI's COVID-19-related fast track.



Publicly identified by open databases as inventors, co-inventors, or representatives of patent applications exclusively filed during the initial period of the COVID-19-related fast-track, i.e., April 3, 2020, to December 31, 2022



Associated with, contracted, or employed by Brazilian research institutions (and their innovation centers) *without* corporate associations with international enterprises



Fourteen (14) of confirmed that they were (i) familiar with the concepts of patents and trade secrets and (ii) directly involved in the decision to file the relevant patent application.

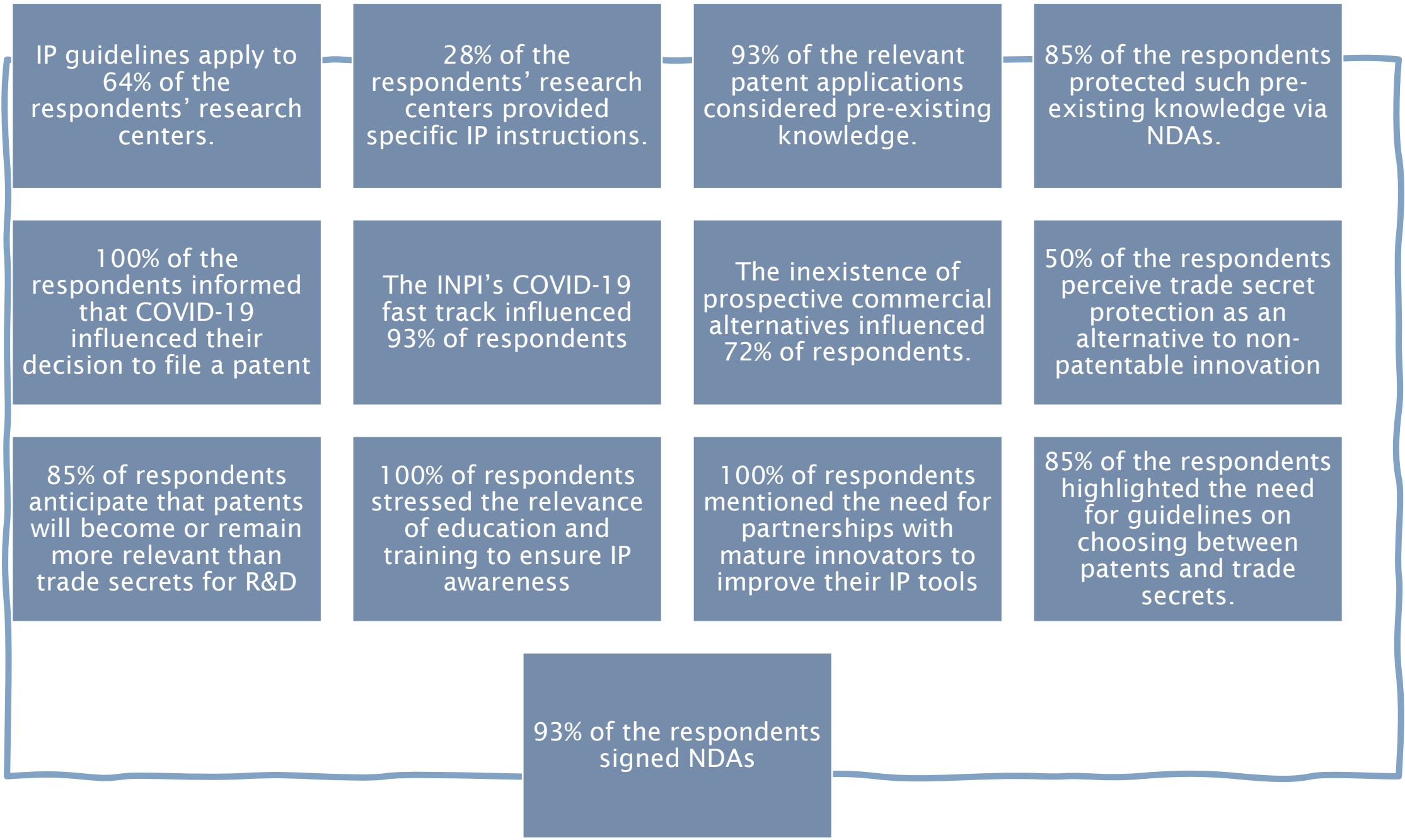


Medical technologies patents relate to IPC classes A61 [B, C, D, F, G, H, J, L, M, N], which include instruments, implements, and processes for diagnostic, surgical, and person-identification purposes



Seven (7) respondents participated in a 20M conference call to discuss their views.





R&D centers would benefit from specific educational and training sessions, which could advance their “beyond basic” IP knowledge and drive stewardship-like initiatives.

Training programs could consider formats such as round tables, problem-solving, and cases-based information sessions, including medical and research centers, relevant patent and trademark office representatives, security information officers, personal patents, and trade secret practitioners.

*Toolkit*-like initiatives could help innovation and research centers by compiling and identifying definitions and suggesting communication workflow between IP individuals, e.g., research team, technology officers, patent professionals, and board of directors.

The fast track (and associated expedited review process) highlighted the relevance of the patent system and added to decision-making processes.

Creating mechanisms or frameworks that facilitate cooperation and the exchange of knowledge could enhance innovation and accelerate the development of medical technologies.

Cooperation between industry stakeholders, research institutions, and regulatory bodies can facilitate best practices and knowledge exchange.

Private and public parties can align their shared goals and priorities regarding medical technology innovation and access via training and education.

Public-private initiatives may drive optimized results by exploring funding mechanisms and capacity-building exercises. Public-private partnerships for the Sector may organically result from capacity-building practices based on educational supporting rationale rather than purely commercially oriented.

The COVID-19 pandemic has profoundly impacted how innovators in the Sector research centers approach intellectual property protection, leading them to carefully consider the interplay between patents and trade secrets.

Sector innovators recognize patents and trade secrets as complementary and mutually supportive elements of IP protection, with many previously confidential innovations eventually becoming patent applications.

The pandemic-induced changes in IP strategies have prompted a reevaluation of existing IP structures and decision-making processes, offering opportunities for improving internal IP guidelines, policies, training, and collaborations with other stakeholders.

The INPI's fast-track program during the pandemic significantly accelerated the patent prosecution process in Brazil, encouraging inventors to rethink their IP protection strategies and promoting a culture of disclosure among Brazilian research centers.

This shift in the IP landscape may have permanently altered how Sector innovators in Brazil view and approach IP protection.

Thank you!

Obrigado!



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