

Opposition systems

Brazil

Law No. 9,279, of May 14th, 1996 (IPL), provides for the nullity of the patent granted contrary to the legal provisions, with effect from the date of filing of the application. Nullity proceedings may be instituted either administratively or in the judicial sphere (Articles 50 to 57 of the IPL).

Administrative nullity proceedings may be instituted either by INPI or by the request of any person having a legitimate interest, within a period of 6 (six) months of patent granting, for the following reasons:

- I – any of the legal requirements were not satisfied;
- II – the specification did not comply with the condition of sufficiency of disclosure, that is, it does not clearly and sufficiently describe the object in order to enable its realization by a technician in the subject;
- III – claims are not based on the specification, characterizing the particularities of the application, and clearly and precisely defining the subject matter that is the object of the protection; or
- IV – any of the essential formalities that are indispensable to granting has been omitted during the processing thereof.

The request for administrative nullity of a patent must be accompanied by reasons and evidence, and the burden of proof must be borne by the applicant. The patent holder is notified of the nullity proceedings beginning and is invited to speak in defense of the patent maintenance. The case analysis is carried out by a collegiate of experienced examiners of the Coordination of Appeals and Nullities of the INPI. Nullity may not apply to all claims, a condition for partial nullity being that the remaining claims are patents in themselves. It should be noted that the nullity proceedings will continue even if the patent expires.

The administrative nullity process is decided by the INPI's President, closing the administrative jurisdiction.

The validity of a Brazilian patent can also be questioned in the federal justice system (Articles 56 and 57 of Law No. 9,279 of May 14th, 1996).

Judicial nullity proceedings may be proposed, at any time during the patent term, either by the INPI or by any person having a legitimate interest. Exception is made for cases of defense, in which the patent nullity may be questioned at any time. INPI, when not the plaintiff, shall participate in the proceedings.

The judge may, as a preventive or incidental measure, determine the patent effects suspension, provided that the proper procedural requirements have been satisfied.

Legal proceedings for patent nullity are conducted by INPI's legal sector with the assistance of the technical staff. The instruction of the judicial case is carried out by a collegiate, made up of experienced examiners.

Frequently, since the case involves technical matters, the judge responsible for the analysis of the nullity suit summons a specialist in the patent technical field, who will be appointed Legal Expert, to assist the judicial nullity proceedings. The Legal Expert will study the case, taking into account the questions presented by the Parties, and will elaborate the Expert Report. The Parties involved (including INPI) are invited to submit comments to the Expert Report,

expressing agreement or disagreement with the Expert's understanding. The Expert Report shall be used, together with the manifestations of the Parties, as a subsidy for the Judge's decision.

Once the decision on the judicial nullity proceedings has become final, the INPI shall publish the entry thereof, so that third parties are informed.