

**NATIONAL INTELLECTUAL PROPERTY STRATEGY: A
REFLECTION INSPIRED BY THE THOUGHTS OF PATRICIA LUÍZA
KEGEL**

*ESTRATÉGIA NACIONAL DE PROPRIEDADE INTELECTUAL: UMA
REFLEXÃO INSPIRADA NOS PENSAMENTOS DE PATRICIA LUÍZA
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ABSTRACT: The launching of the Brazilian National Intellectual Property (IP) Strategy in 2020 confirmed that the Government is aware of the system's weaknesses. Undoubtedly, it is also a way to (try to) assure potential and current investors that they can trust the Brazilian system. Nonetheless, although the group in charge of thinking about and making the Strategy did a respectable job, *only* an IP strategy is not enough. It does not (and cannot) provide the system automatically with the adjustments and support it needs to succeed. The present policy commentary on the Strategy aims to bring about those intersections, providing the facts and arguments that refer to the *status quo* and suggest the (possible) impacts of the Strategy's overall Brazilian IP system, in an analysis inspired by the thoughts of Patricia Luíza Kegel.

KEYWORDS: Brazil. Intellectual Property. National Intellectual Property Strategy. Patricia Luíza Kegel.

RESUMO: O lançamento da Estratégia Nacional de Propriedade Intelectual (PI) em 2020 confirmou que o Governo está ciente das fraquezas do sistema. Sem dúvida, é também uma forma de (tentar) assegurar aos investidores potenciais e aos atuais que eles podem confiar no sistema brasileiro. No entanto, embora o grupo encarregado de pensar e elaborar a Estratégia tenha feito um bom trabalho, apenas uma estratégia de PI não é suficiente. Ela não proporciona (nem pode proporcionar) automaticamente ao sistema os ajustes e o apoio de que ele precisa para ter sucesso. O presente comentário sobre a Estratégia como uma política pública tem como objetivo suscitar essas interseções, apresentando os fatos e argumentos que se referem ao status quo e sugerindo os (possíveis) impactos da Estratégia no sistema geral de PI brasileiro, em uma análise inspirada nos pensamentos de Patricia Luíza Kegel.

PALAVRAS-CHAVE: Brasil. Propriedade Intelectual. Estratégia Nacional de Propriedade Intelectual. Patricia Luíza Kegel.

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1 INTRODUCTION

Patricia Luíza Kegel (hereafter Kegel) was the woman behind my decision to pursue a master's and a doctorate degree. She was and always will be my inspiration to work in academia. I will never forget the day she once invited me to apply for the Master's Programme in Regional Development. More than that, she affirmed that she would be my supervisor.

It was an honour and privilege to have Kegel as my supervisor, supporting me in many ways as she always believed in my potential. The good memories are countless. I fondly remember the day I called to share the news about my approval in the PhD Programme and how she genuinely expressed her joy, but she also reminded me of the commitment that this approval meant. I will never forget all the inspiring conversations we had during my visits to her home, her interest in my progress as a scholar and her generosity as a mentor and as a human being.

Kegel was a brilliant and versatile jurist, capable of making sensible, relevant, and lasting contributions in different areas. She has left a legacy that therefore goes far beyond the average. It is comprehensive and solid, ranging from the philosophy of law to regional development, including a unique dedication to different themes of public international law, regional integration, and economics.

The topic for this essay was chosen precisely because it reflects the thoughts and beliefs that Kegel and I shared about the role of institutions in general and intellectual property in particular as a potential vector for regional development.

On 11 December 2020, the Brazilian Government launched the National Intellectual Property Strategy (*ENPI hereafter Strategy*) on the National Industrial Property Institute (INPI) 50th anniversary. The Special Secretariat for Productivity, Employment and Competitiveness of the Ministry of Economy (SEPEC/ME) leads the initiative, counting on the Inter-ministerial Group of IP(GIPI)² (INPI, 2020). The Strategy's making took a full year of work involving more than 200 IP specialists and around 100 contributions collected during the public consultation phase, especially from the private sector (BRAZIL - MI, 2020).

² GIPI is chaired by the special secretary for Productivity, Employment and Competitiveness of the Ministry of Economy, Carlos Da Costa, and is composed of 10 members from the following public bodies: Presidential Government Secretariat, Civil House, Ministry of Economy (ME), Ministry of Justice and Public Security (MJSP), Ministry of Science, Technology and Innovation (MCTI), Ministry of Agriculture, Livestock and Supply (MAPA), Ministry of Tourism (MTur), Ministry of Health (MS), Ministry of Foreign Affairs (MRE) and Ministry of Environment (MMA). For additional information, see <[https://www.gov.br/participamaisbrasil/-grupo-interministerial-de-propriedade-intelectual->](https://www.gov.br/participamaisbrasil/-grupo-interministerial-de-propriedade-intelectual-).

The Strategy was designed to address the Brazilian IP System issues and to be operative for ten years (until 2030), therefore, its key goals include (BRAZIL, 2020):

- (a) to place Brazil among the ten worldwide most active applicants for IP protection;
- (b) to increase by 10%³ the participation of industries with intensive IP use in the GDP;
- and,
- (c) to reach a scenario where 80% of the innovative Brazilian sector protects their IP assets using the available tools.

The driving problems behind the Strategy are many and are related to the shortcomings of the national IP system. Among those issues, and in a broad sense, are the reticent innovation numbers, the low rate of IP assets commercialisation and the high number of piracy cases⁴. The Strategy goes deep into those issues, points out different challenges, and proposes actions to deal with them. It is an attempt to overcome the limitations of the national IP system. The willingness to provide the conditions needed for that system becomes efficient and capable of stimulating creativity and investments in innovation and accommodating the rights that come with such a scenario.

A tremendous amount of work and good intentions are undoubtedly involved. Still, some questions stay unanswered: Does the Strategy cover all the major national IP issues? Which are the possible missed opportunities? Which support does the Strategy need to succeed? The article draws on those issues. Following this introduction, section 2 presents an overview of the Brazilian national IP legal and technical framework. Next, section 3 explores the Strategy structure and facts from the first 18 months. Then, section 4 offers a perspective on the changes highlighted as a must whitening the Brazilian IP system. The text ends with the final remarks section.

2 OVERVIEWS OF THE NATIONAL IP FRAMEWORK

Building upon the various IP definitions, it can be regarded as a branch of law that aims to guarantee a reward for those responsible for creative and innovative production, whether in industry, science, literature, or art. It involves three sub-branches: industrial property, copyright and sui generis protection, which include, for example, the knowledge of traditional populations. The Brazilian legislative framework refers to all those rights.

³ Currently, this is 20%.

⁴ Although, the Government has been working hard to try to overcome it.

As to the international influences on the domestic IP system, Brazil is a member of all fundamental IP Conventions⁵ and several multilateral treaties. The most recent move was the Brazilian ascension to the Madrid system for international registration of trademarks, which came into force in October 2019⁶ (WIPO, 2019). In the multilateral scenario, the EU-Mercosur Trade Agreement, which entered into force is still unknown, is the most relevant Brazilian attempt in terms of bilateral trade commitments (CARLS, 2020; "EU-MERCOSUR", 2019).

The legal domestic IP framework is based on three fundamental areas:

- (a) copyrights, connection rights, regulated by the Copyright Act (Law No. 9.610/1998) and Software, which is regulated by Law No. 9.609/1998;
- (b) industrial property, including trademarks, patents, industrial designs, geographical indications, trade secrets and unfair competition, with regulation provided by the Industrial Property Act (Law No. 9.279/1996 or simply LPI); and,
- (c) the *sui generis protection*, group embracing integrated circuits (or chips) (Law No. 11.484/2007), plant variety and essentially derived variety rights (Law No. 9.456/2007), genetic resources and traditional knowledge (Law No. 13.123/2015).

Finally, there are rules applicable to confidential information (Law No. 10.603/2015) and technology transfer.

Although the law provisions can be tough in theory, enforcement is not strong with civil and criminal consequences and high piracy figures. Brazil is number five in the list of countries with the highest number of accesses to pirated content in 2021, only behind the United States, Russia, India, and China. Data from The National Forum Against Piracy and Illegality (FNCP) quotes that the cost for the country was R\$ 287 billion. More than the financial loss for the producing companies, the account includes taxes that are not collected and job vacancies not generated (HALPERN, 2022).

The applications for protection, recognition, or declaration, depending on the IPR, follow a procedure before the National Industrial Property Office (INPI). In the case of Software, although the protection follows the copyrights rule, the code is registrable before the INPI. Rules on liability limitation and the rights to make copies of the program apply.

⁵ TRIPS, CUP, Berna and so on.

⁶ The Hague system for the international registration of designs or the Lisbon system for international registration of geographical indications still do not count on the Brazilian membership.

Against the IP system's background, the Strategy's broad expectation is to foster competition and socio-economic development in the country. However, while the Strategy conveys a potential to do the job, there is a missing opportunity, and it is unlikely that those neglected issues will be dealt with during the ten-year Strategy term if they have not been mentioned there (BRAZIL, 2020).

Of course, there are excellent initiatives, even running in parallel. It is remarkable the improvement related to the services provided by INPI. Before the Covid-19 pandemic hit, trademark registration waiting time was reduced to two years (AKSOFT, 2019). The scenario slightly changed during the pandemic and demanded INPI to deal with a significant increase in the trademark application while the number of examiners went down (REDAÇÃO MIAGALHAS, 2022). Still, in the trademarks area, the operationalisation, as mentioned earlier, of the Madrid system for international registration of trademarks is another positive fact (OSMAN; LANA, 2019).

In the area of patents, work has been, and it is being done to reduce the backlog. In connection with that, a patent priority examination system has been in place since 2019 (SARTORI, 2020). Depending on the patent's technological connection, the examination could take up to 14 years in the recent past.

The IP Digital is an initiative to transform all INPI services available in electronic environments (BRAZIL - INPI, 2019). There is also the INPI for Business Program (INPI Negócios), which has the diffusion of IP-related information, promotion, and generation of IP protectable assets by national residents (BRAZIL - INPI, 2020).

Also, going back to piracy, in recent years, the cooperation between the different federation entities to fight piracy has shown relevant results. Moreover, there is cooperation at the international level. In 2020, for example, Brazilian and international authorities from the United States and the United Kingdom coordinated to bring down an unprecedented number of illegal flow sites across Brazil (DANIEL LAW, 2021).

3 THE STRATEGY

The Strategy's main goal is to have an effective, efficient, reliable, and well-known national IP system that spurs creativity and investment in innovation, increasing competitiveness and socio-economic development in Brazil (BRAZIL - INPI, 2021a).

Following the identification of the main concerns, which are represented by nine challenges to be overcome, the Strategy gained the support of directives and goals and was built on seven different lines of action that encompass more than 210 actions to transform the national IP system (BRAZIL - INPI, 2021b):

- (a) IP for competitiveness and development;
- (b) IP dissemination, training, and capacity building;
- (c) governance and institutional strengthening;
- (d) modernisation of legal frameworks;
- (e) legal observance and security;
- (f) intelligence and vision of the future; and,
- (g) Brazil's insertion in the global IP system.

Each line offers a set of macro-objectives to address the country's IP issues. More than 210 actions are envisaged to reform the Brazilian IP system. The proposed activities are further elaborate and mapped out in line with the priorities found by the society, both during a public consultation held between August and October 2020 and by the internal work of Government bodies. They are organised in biannual-based Action Plans, looking to guarantee an effective implementation, monitoring, evaluation of results and eventual adjustments necessary throughout the execution and elaboration of the new plans (BRAZIL - INPI, 2021c).

According to GIPI, the Strategy's main goals are to place Brazil among the top countries to receive applications for the protection of IP rights and help make 80% of national innovation companies able to protect their IP (ANPEI, 2021).

The Strategy's actions are about innovation, registration of patents and brands, technology transfer, and software development, among others. The expectations are as higher as possible. The country aims to increase by 10% the Gross Domestic Product (GDP) originating from sectors with intensive use of IP, going from 20% to 30% in the Strategy's 10-year duration. Besides, there is hope that Brazil will climb to be one of the ten countries that most use IP tools (ANPEI, 2021).⁷ Among the measures included in the Strategy is the development of credit lines and tax benefits for companies, which will, in return, be able to invest in innovation. A revision of the technology transfer rules is also expected. Still related to the tech transfer area, and mostly related to the promotion of awareness of the consequences of piracy, is the advancement of cooperation between

⁷ That was the essence of a talk given by the Special Secretary for Productivity, Employment and Competitiveness at the Ministry of Economy, Carlos Alexandre da Costa.

public power, scientific institutions, and small and medium-sized enterprises (SMEs). Another valid concern is increasing compliance with legislation while strengthening the governance bodies and incentivising the Judiciary IP specialisation (BRAZIL - GIPI, 2020).

The Strategy also plans to evaluate the inclusion of a mandatory IP course in the undergraduate Law and Exact Sciences program and as an optional course for all the other areas. For the least developed regions around the country, there is a suggestion for the official establishment of IP training courses in areas such as green patents and collective trademarks, which are believed to be a good approach for those geographical locations like the Amazon (BRAZIL – GIPI, 2020).

A concern with the country's preparation for the 4.0 Economy exists too. The belief is that a review of the IP legal framework will pave the way toward the digital transformation of Brazilian companies.

In the "Governance and Institutional Strengthening" section⁸, the Strategy proposes the development of an IP policy within the Ministry of Health. Developing such a policy will help set up a connection and a continuation of strategic actions or actions that will be implemented at different stages – short-term, middle-term or long-term strategies – by stakeholders and public bodies (BRAZIL – GIPI, 2020).

Several proposals may affect the pharmaceutical area in the "Modernisation of Legal and Infralegal Frameworks" section⁹. For example, one proposition supports measures to adjust the patents granted on drugs considered strategic to the Brazilian Health System (SUS). It specifically aims at:

- (a) enabling changes to the minimum medication price, established by Law No. 10.742/2003, based on the remaining term of a patent;
- (b) reviewing Resolution No. 02/2004 of the Drug Market Regulation Chamber (CMED) to include patent evaluation before allowing the commercialisation of a first generic medicine; and,
- (c) reviewing Ordinance No. 2/GM/MS/2017, Chapter III, Annex XXVII, that institutes the National Policy of Medicine. A technical group established within GIPI will evaluate and (eventually) propose adjustments to several IP issues like this and others that affect the sector's public health and innovation policy.

⁸ For details, see the Strategy's Structural Axis 3.

⁹ For details, see the Strategy's Structural Axis 4.

Brazil's inclusion in the Global System of IP¹⁰ is intended to empower its participation in IP international forums, stimulate the presence of Brazilian companies abroad and promote a local business environment beneficial for foreign investments. The same axis also pursues to set the basis for promoting Brazil's inclusion in the PCT- Patent Prosecution Highway's pilot program (PCT-PPH and Global PPH)¹¹ (WIPO, 2022). The intention also is to assess and stimulate Brazil's participation in international agreements, such as:

- (a) The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs;
- (b) Act of the International Convention for the Protection of New Varieties of Plants (1991);
- (c) Patent Law Treaty (PLT);
- (d) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- (e) Singapore Treaty on the Law of Trademarks; WIPO Copyright Treaty (WCT);
- (f) WIPO Performances and Phonograms Treaty (WPPT);
- (g) Beijing Treaty on Audiovisual Performances; and,
- (h) Lisbon Agreement on Appellations of Origin and Geographical Indications.

Nevertheless, despite the Strategy's guiding text, several problems and challenges are still to be tackled. With its 120 pages, the document presents a contextualisation of the national scene, of course. However, there is much more to do to improve a Brazilian IP system that was found ineffective. Among the problems expressly pointed out are the timid innovation indicators, the reduced commercialisation of IP assets and the high number of piracy cases.

According to the document, to maximise the impact of the creative economy and innovation in Brazil and promote the country's competitiveness on the international stage, the State must act in the protection of rights and promote the balance between free competition and social interest.

The Strategy's seven complementary and transversal lines of action seek to face that and other challenges by leveraging competitiveness, disseminating knowledge, structuring institutional

¹⁰ For details, see the Strategy's Structural Axis 7.

¹¹ "Under the Global Patent Prosecution Highway (Global PPH) pilot, a request for accelerated processing can be made at any participating office based on work products, including PCT work products, from any one of the other participating offices under unified criteria."

governance, modernising legal frameworks, ensuring greater legal security, generating intelligence and inserting Brazil into the global IP system (BRAZIL – GIPI, 2020).¹²

3.1 The case of biopharma

Health-related areas, mainly the biopharmaceuticals sector, are a good example that encompasses several different targets of the Strategy. It all starts with a commitment to seriously analyse the implementation of data protection regulation in the case of drugs. It is another demonstration that Brazil is willing to change, or, at least, to discuss it. While this was for a long time a taboo topic, now there is a will that might lead to modifications and the alignment of its framework and practices with the US and Europe, for instance, which are well developed in the area. It sounds promising since the lack of data protection within the sector has been a long-standing problem for many years, especially when one adds to the patent examination backlog.¹³

Also essential is the pledge for revision of the role of ANVISA (Brazil National Health Surveillance Agency)¹⁴ in case of patent applications in the pharmaceutical area, when the public body must give prior permission before the INPI proceed with the patent application examination. In practice, the rule usually conveys two main consequences: it (deliberately) blocks secondary patents and adds the first-stage backlog to the INPI backlog.

INPI and ANVISA addressed the blockage of secondary patents in a joint Ordinance in 2017, which regulates the procedures for the application of article 229-C of the LPI, the one dealing with the need for ANVISA's prior consent to allow INPI to proceed with the patent examination (BRAZIL, 2017). After that, the topic went to the Judiciary and later, in 2021, a controversial piece of legislation, Law No. 14.195/2021, revoked the provision (BRAZIL, 2021). Still, in pharmaceuticals, the Strategy places on the table the exploration of – to one extent – a kind of patent linkage.

Finally, there is the intention to join the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. Once this happens, there will be no need to deposit biological materials abroad, easing and speeding up the patent granting.

¹² The Strategy drafting process included analyses of experiences from other countries and workshops held earlier this year in São Paulo, Rio de Janeiro and Brasília. There was also a period of public consultation. The Ministry of Economy received contributions, via online form, between August and September (BRAZIL - MI, 2020).

¹³ That is the understanding of IP lawyers, such as Roberto Rodrigues (Licks Attorneys).

¹⁴ ANVISA is the Brazilian equivalent of the European Medicines Agency (EMA) or the United States Food and Drug Administration (FDA).

Another topic closely related to the biopharma sector, which by now is already decided by the Supreme Court, but that was important as a commitment when the Strategy was being drafted, was the revision of the sole paragraph of article 40 of the Industrial Property Act. The provision ensured ten years of patent protection from the granting date

The case was the object of Direct Unconstitutionality Action¹⁵ No. 5529, at the end of which the Federal Supreme Court declared Article 40, sole paragraph, of the Industrial Property Law unconstitutional.

Article 40, the sole paragraph of the Industrial Property Law, provided that the minimum exclusivity period for patents granted by the INPI would be ten years from the date of grant for invention patents and seven years for utility models. This provision applied, therefore, regardless of the time elapsed until the effective grant of the patent.

This provision added to the INPI's historical delay in examining patent applications; the famous backlog, around ten years, ended up generating an extension of the exclusivity right over the subject matter of patents already granted beyond the time provided by law. As a result, it became a common situation for inventors to have more than 30 years of monopoly over their creations since, from the moment of the application, there is an expectation of right that third parties can oppose. This situation directly and negatively impacted free enterprise in the Brazilian market.

The Attorney General's Office proposed the Direct Unconstitutionality Action No. 5529 because of the potential damage that the extension of exclusivity rights could have on the Brazilian market. Given the Covid-19 pandemic scenario, the pharmaceutical market was in the spotlight. With the Supreme Court's decision, invention patents are now only valid for 20 (twenty) years, and utility model patents for 15 (fifteen) years, as of the filing date.

In addition, the decision had declared retroactive effects on patents dealing with pharmaceutical products and processes, equipment and materials in use in health, and those patents were discussed in lawsuits filed until April 7, 2021, the object of which is the unconstitutionality of such rule. Such a rule caused thousands of patents to lose their validity immediately. Soon after the Supreme Court's decision, on August 26, 2021, the understanding was converted into law through Law No. 14,195/2021, which expressly revokes the sole paragraph of article 40 of the Industrial Property Law.

¹⁵ The direct action for the declaration of unconstitutionality is an instrument to declare the unconstitutionality of law or federal norms, with respect to the current Constitution.

The issue of patents for secondary medical uses, which the legislation permits but is quite hard to get, is another delicate and ambiguous matter within the Strategy's patenting arena. However, when all the propositions related to the biopharma sector are broadly considered, the Strategy does bring good news to the sector. It also represents a general shift in the Brazilian political attitudes about biopharma and life sciences.

Those who look at the Brazilian IP Strategy from the outside can see Brazil is actively moving forward, intending to improve its IP system.¹⁶ Foreigner lawyers in the field of IP see the Strategy as another step in the right direction. "It is a sign that Brazil wants to shore up its IP protection and give pharmaceutical and biologics companies confidence." Before a taboo discussion, pharma patents are now under a friendly debate in Brazil. It is understandable from the Government's goals point of view, as the country wants to increase international deals. Of course, there must be something in return for the national generic producers (RIBEIRO, 2020).

Again, there is no question some good changes will happen. The exact complexion of the full body of results should be revealed, little by little, in the process.

4. IMPETUS FOR A CHANGE

IP drives innovative production by assigning specific and time-limited rights to creators. The outcome of innovation, which is immaterial by its very nature, finds its wellspring of protection and impetus in intellectual property.

Consolidating a strong and reliable Brazilian IP system is essential to ensure that creativity and innovation activities increase within the domestic scenario, together with the expansion in investments in research and development. Policy and lawmakers should be ready to reject proposals bringing nothing but degeneration and contribute to the country's deindustrialisation, especially in the innovative sector.

The Brazilian incentive framework for innovation deserves a review too. There is a need to refine the innovation act by reducing hurdles from old fiscal legislation. That background only prevents Brazil from accessing relevant technologies and hinders national industry's competition.

Some recent minor changes are accounted for by stepping outside the industrial property domain and entering the copyright arena under the perspective of the creators' guarantees. They

¹⁶ This is the view of many foreign and international IP lawyers, like Casimir Jones' Lisa Mueller, a US attorney who pays close attention to Brazilian patent law.

relate, for instance, to the non-application of collection and distribution of royalties to the performance of literary, artistic, or scientific works inside some kind of accommodation. What is under debate now – originating from a proposal from 2019 (PL 2370/19), is the issue of regulating copyrights in the digital environment. It brings rules for content removal, providing the rights holder with the possibility to request the Internet provider to remove the content or to pay, even if the publication is from a third party. In any environment, however, there is a call for the copyrights to come close to the analogies of human rights and the relevance of cultural accessibility.

It is all about reviewing frameworks. The one that deals with research and development in the biodiversity field falls in the same need. It is necessary to go further and have dynamic and transparent mechanisms for access to genetic resources and associated traditional knowledge that guarantees consistent and effective benefit sharing. At the same time, however, there must be room for development and mechanisms of protection for biodiversity-related inventions. Equally important is that those inventions also reflect economic benefits. It will work in favour of the country's competitiveness and be better prepared to face the internationalisation challenges.

There should be, and there is no question about it, IP freedom in the innovation park's daily activities. It applies not only to patents but also to each IP right. Hitches to use trademarks, for instance, lead to illegal behaviour and violations and disturbs the fight to end counterfeiting, piracy and unfair competition.¹⁷

Although they are usually not mainstream, trade secrets are a powerful strategy to protect Brazilian trade and its companies' competitiveness and shall also be considered.

Another extremely important measure is to ensure that INPI has real and full administrative and financial autonomy. Its independence is necessary to constantly improve its activities, services, and work, especially in reducing the examination timeframe, i.e., a fight against the well-known backlog.

Besides the amendments expected to take place concerning the biopharmaceutical innovations and the need for pre-analysis by ANVISA, there is also an expectation for an update of the plant variety legislation. Changes in terms of extension of protection to all species and the scope of the breeders' rights as well as stronger means to deal with irregular commercialisation of protected varieties and a more precise regulation for the exceptions of the right.

Incentives in the green technology area and the protection of sensorial trademarks are topics on the table too. Revising the tax management of technology transfer contracts' revenues also

¹⁷ Highlights to the actions and efforts of the National Council for Combating Piracy of the Ministry of Justice.

demands attention.

The national IP system will also benefit from more specialised judges and courts, which would help intensify measures to fight against IP infringements and violations in general, both in the civil and criminal areas. There is room to think in an independent judiciary body, nationally specialised only in IP matters.

Brazil lacks the policy to incentivise small and medium-sized companies to innovate and apply for patent protection. Besides, Brazil is the only country among the ten biggest economies performing very poorly in international patent applications. That kind of asset is, nevertheless, essential for the country's growth and development and the achievement of technological sovereignty.

Several other topics can enlarge the list, for instance:

- (a) The use of trademarks on product packing;¹⁸
- (b) Incentivise the filling for industrial design protection, and to achieve that, adopt rules in line with global practice, train and increase the number of INPI examiners and sign partnerships with other countries;
- (c) Full autonomy for the INPI;¹⁹
- (d) Empower the National Council for the Fight against Piracy of the Ministry of Justice and the fight against all sorts of IP crimes; and,
- (e) Modernisation and consolidation of Copyright norms considering the Digital Economy and reinforcing the fight against piracy.

By 2022, the Strategy's thematic plan is expected to direct Brazil to be among the nations with many IP protection applications in all three main areas (industrial property, copyrights and *sui generis* protection). The plan's fulfilment can bring economic benefits and social activities to the country and leverage the generation of innovation and creativity for the benefit of all.

¹⁸ Rejection of initiatives that limit the right to display and free use of trademarks on product packaging, in accordance with the explanatory memorandum contained in ABPI Resolution No. 84/2014.

¹⁹ Rejection of initiatives that limit the right to display and free use of trademarks on product packaging, in accordance with the explanatory memorandum contained in ABPI Resolution No. 84/2014.

ng that understanding, is the Complementary Law No. 143/2019, authored by Federal Congressman Marcos Pereira. Moreover, it is widely known that the use of official INPI fees revenue for other purposes is the main cause of INPI's infrastructure and personnel shortages and represents a creation disguised as a tax on innovation.

5. FINAL REMARKS

The Brazilian National IP Strategy launching in December 2020 sowed the seeds of hope for an IP system capable of stimulating creativity and investments in innovation, promoting competitiveness and socio-economic development.

The Strategy presents ambitious goals beyond purely IP since obvious interconnections, and even dependency relations cannot be overseen. It targets to directly contribute to the productive and cultural sectors by increasing their interest and the applications for protection before the INPI. The goals foreseen in the plan include the annual increase of filing requests, training of professionals and companies in IP strategy, elimination of the backlog of patents filed, revision of the regulatory norms for processes involving IP and adhesion to the Budapest Treaty and the Hague Agreement, which deal, respectively, with biological materials and industrial designs.

Following the dynamics and development of the Science, Technology and Information sector²⁰, the Strategy's blueprint demonstrates an adaptation of the IP sector to current needs, including the revision of procedures, deadlines, assistance to those interested in filing and, especially, training and activities to foster the protection of innovations.

The long waiting time for the examination of patents applied for at the INPI, which, depending on the technological area, can take a decade or more, does not stand for a stimulus for the use of the system by the national industry or inventors. Besides financial autonomy, for INPI to be able to examine patent applications with agility and quality, it is fundamental that it can also establish partnerships. An example of success in setting up partnerships comes from Japan, which outsources most research activity²¹.

Each improvement is an improvement²², and society recognises them. A crucial issue that demands attention and directly impacts the credibility of the IP system is, again, piracy. In this field, Brazil has been genuinely concerned and active. In addition to partnerships among the federative entities or even with foreign governments aimed at specific actions to combat piracy, the IP Strategy is present in this fight.

²⁰ See, for instance (BRAZIL - MCTI, 2020)

²¹ With the purpose of regulating such partnerships, Bill No. 2.334/2019, authored by Federal Deputy Marcos Pereira, is in progress (MARCOS PEREIRA, 2019).

²² A manifestation of Brazilian IP Lawyers during a Conference in 2019 proves that any single improvement is celebrate, at least by those directly involved in the IP practice or affected somehow by any changes. For details, see *Advogados Brasileiros Especializados em Propriedade Intelectual (2019)*.

The National Plan to Combat Piracy reform is based on the Strategy. It was approved on 3 December 2021 by the Brazilian Ministry of Justice and Public Security, together with the National Secretariat for Consumer Defence (SENACON). The new national plan to combat piracy, smuggling, tax evasion and IP offences contemplates short, medium, and long-term goals, ranging from awareness-raising initiatives to measures to combat piracy effectively.

Measures such as these take shape at a critical moment in the country when piracy and counterfeiting are making national headlines. And more than that, the fact that this plan was born from the dialogue between different sectors of Government and is also attentive to public policies already in place, such as the case of the IP Strategy, proves that it is possible to improve not only the IP system but the entire national institutional environment. However, inter-institutional engagement and constant attention to what occurs in the real world during the execution of public policies are necessary.

For the next year, with the fulfilment of the thematic plan, Brazil is expected to be among the nations with an expressive number of applications for the protection of IP and the rights of its inventors, which has the potential to bring significant economic and social benefits to the country and leverage the generation of innovation and creativity for the benefit of all. (BARBOSA; ROVESTA, 2022).

In a nutshell, it is a delicate context that requires different institutions to work towards the same goal at different levels of power and scope, and in the end, it is by no means an easy task to try to predict what will be when (and if) it all comes together. I am sure Kegel would be as careful as the topic demands but also as critical as her knowledge and experience allowed her to be when analysing this topic. Inspired by her reflections, I have endeavoured to assess Brazil's national intellectual property strategy as deeply and thoroughly as possible, aligning in mind its strengths, weaknesses, and the Strategy's potential impact on the dynamics of national, international, and regional integration, contexts of tremendous importance in Kegel's work.

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Recebido em: 15/07/2022

Artigo de autora estrangeira convidada.

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