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THE EVOLUTION OF INDUSTRIAL PROPERTY LAW IN BRAZIL

A EVOLUÇÃO DA LEI DE PROPRIEDADE INDUSTRIAL NO BRASIL

LA EVOLUCIÓN DEL DERECHO DE PROPIEDAD INDUSTRIAL EN BRASIL

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ABSTRACT

This thesis examines the evolution of Brazil's Industrial Property Law (Law No. 9,279/1996) and its effects on intangible asset protection, legal certainty, and the public interest. It adopts a qualitative approach, combining documentary analysis of statutes and regulations (Laws No. 10,196/2001, 14,195/2021, and 14,200/2021; INPI Ordinances 26/27-2023), case law research (Brazilian Supreme Court/ADI 5529; STJ/REsp 1,543,826/RJ), and doctrinal review. The study reconstructs the regulatory trajectory since 1996, covering prior consent by the health regulator (Anvisa) for pharmaceutical patents, the Supreme Court's ruling striking down the sole paragraph of Article 40, and the expansion of compulsory licensing in public emergencies. Findings suggest that recent changes reduced uncertainty regarding patent terms, strengthened access to essential technologies, and modernized the technology transfer environment, bringing Brazil closer to standards of predictability and social function. The conclusion is that the statute is in constant adaptation, pressured by technological challenges (including artificial intelligence) and public-health demands, which call for ongoing legislative and administrative improvements to balance innovation incentives with collective interests (BARBOSA, 2010; BASSO, 2018; BRASIL, 1996; WIPO, 2022).

Keywords: Industrial Property. Patents. Trademarks. Compulsory Licensing. Innovation.

RESUMO

Este trabalho examina a evolução da Lei de Propriedade Industrial (Lei nº 9.279/1996) no Brasil e seus impactos sobre a proteção de ativos intangíveis, a segurança jurídica e o interesse público. Adota-se abordagem qualitativa, com análise documental de legislação e atos infralegais (Leis nº 10.196/2001, nº 14.195/2021 e nº 14.200/2021; Portarias INPI 26/27/2023), além de pesquisa jurisprudencial (STF/ADI 5529; STJ/REsp 1.543.826/RJ) e

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revisão doutrinária. O estudo reconstrói a trajetória normativa desde a LPI/1996, passando pela anuência prévia da Anvisa para patentes farmacêuticas, pela declaração de inconstitucionalidade do parágrafo único do art. 40 e pela ampliação das hipóteses de licença compulsória em emergências. Os resultados indicam que as mudanças recentes reduziram incertezas sobre prazos de vigência, reforçaram mecanismos de acesso a tecnologias essenciais e modernizaram o ambiente de transferência de tecnologia, aproximando o sistema brasileiro de padrões de previsibilidade e função social. Conclui-se que a LPI está em transformação contínua, pressionada por desafios tecnológicos e por demandas de saúde pública, exigindo aperfeiçoamentos legislativos e administrativos permanentes para equilibrar incentivos à inovação e interesse coletivo (Barbosa, 2010; Basso, 2018; Brasil, 1996; OMPI, 2022).

Palavras-chave: Propriedade Industrial. Patentes. Marcas. Licença Compulsória. Inovação.

RESUMEN

Este trabajo examina la evolución de la Ley de Propiedad Industrial (Ley N° 9.279/1996) en Brasil y sus impactos en la protección de activos intangibles, la seguridad jurídica y el interés público. Se adopta un enfoque cualitativo, con análisis documental de la legislación y las normas secundarias (Leyes N° 10.196/2001, N° 14.195/2021 y N° 14.200/2021; Ordenanzas INPI 26/27/2023), además de investigación jurisprudencial (STF/ADI 5529; STJ/REsp 1.543.826/RJ) y revisión doctrinal. El estudio reconstruye la trayectoria normativa desde la LPI/1996, pasando por la aprobación previa de Anvisa para patentes farmacéuticas, la declaración de inconstitucionalidad del único párrafo del artículo 40 y la ampliación de las hipótesis de licencias obligatorias en situaciones de emergencia. Los resultados indican que los cambios recientes han reducido las incertidumbres respecto a los periodos de validez, fortalecido los mecanismos de acceso a tecnologías esenciales y modernizado el entorno de transferencia de tecnología, acercando el sistema brasileño a estándares de previsibilidad y funcionamiento social. Se concluye que la Ley de Propiedad Industrial (LPI) brasileña se encuentra en continua transformación, presionada por los desafíos tecnológicos y las demandas de salud pública, lo que requiere mejoras legislativas y administrativas permanentes para equilibrar los incentivos a la innovación y el interés colectivo (Barbosa, 2010; Basso, 2018; Brasil, 1996; OMPI, 2022).

Palabras clave: Propiedad Industrial. Patentes. Marcas. Licencia Obligatoria. Innovación.

1 INTRODUCTION

The Industrial Property Law (LPI) in Brazil, enacted in 1996, is a fundamental milestone for the protection of innovations and the regulation of the use of intangible assets. Since its creation, the LPI (Law No. 9,279, of May 14, 1996) has sought to balance the protection of creators' rights and the promotion of economic development, aiming to stimulate innovation and competitiveness in the market. The relevance of the law grows as the global economy becomes more technology- and creativity-centric, where the value of companies is increasingly tied to their intangible assets.

The protection of industrial property is one of the fundamental pillars for the scientific, technological and economic development of any country. In Brazil, the IPL represented a regulatory milestone by consolidating rules related to patents, trademarks, industrial designs and geographical indications, aligning national legislation with international standards.

Since its publication, the Industrial Property Law has not remained static: it has been the subject of successive judicial interpretations, legislative reforms and administrative adjustments, which reflect the tensions between the need to encourage innovation and the constitutional obligation to guarantee the social function of property.

The changes promoted by Law No. 10,196/2001, Law No. 14,195/2021, and Law No. 14,200/2021, as well as decisions by the Federal Supreme Court and the Superior Court of Justice, illustrate the dynamism of the IP Law. Issues such as the prior consent of the National Health Surveillance Agency (Anvisa) for the granting of pharmaceutical patents, the declaration of unconstitutionality of the sole paragraph of article 40, which automatically extended validity periods, and the redefinition of the criteria for compulsory licensing in situations of national emergency show the process of constant regulatory improvement. In addition, recent changes in the ordinances of the Brazilian Patent and Trademark Office (BPTO) and legislative proposals in progress reinforce the need for continuous monitoring of regulatory developments.

In this context, the present research seeks to analyze the trajectory of the IP Law from its creation to the most recent reforms, highlighting the role of the legislator, the Judiciary and the regulatory agencies in the conformation of the legal regime of industrial property in Brazil. It is intended, therefore, to understand how legislation has been adapting to the demands of society, to the balance between private and collective interests and to the challenges imposed by globalization.

The analysis of the evolution of the Industrial Property Law has academic relevance because it places it at the intersection between law, economics and public policy, articulating international commitments (CARVALHO, 2010), constitutional foundations of the social

function of property (BARBOSA, 2010) and mechanisms to encourage innovation in knowledge-based markets (WIPO, 2022; BASSO, 2018).

The examination of this trajectory allows us to understand how normative choices in industrial property directly affect the circulation of technology, innovation costs, legal certainty and access to essential goods, constituting a relevant object of investigation to explain how law organizes the appropriation and dissemination of technological knowledge in Brazil

In addition, there are gaps in the legislation that can compromise the effective protection of intangible assets. The complexity of the registration processes, the difficulty of inspection and the lack of clarity in certain legal provisions are aspects that need attention. Identifying these gaps will allow for deeper reflection on the effectiveness of IPL and the improvements needed to ensure more robust protection.

2 METHODOLOGY

The present research adopts a qualitative, exploratory and descriptive approach. It is based on the analysis of Law No. 9,279/1996 in its original wording and subsequent legislative amendments, as well as complementary normative acts issued by the National Institute of Industrial Property (INPI).

The research is developed in three main axes:

Documentary analysis – examination of the legal text, modifying laws (Laws No. 10,196/2001, No. 14,195/2021 and No. 14,200/2021), INPI ordinances and legislative proposals still in progress.

Jurisprudential research – study of decisions of the Federal Supreme Court (ADI 5529, which declared the unconstitutionality of the sole paragraph of article 40 of the IP Law) and of the Superior Court of Justice (REsp 1.543.826 on Anvisa's prior consent), with the objective of understanding the interpretative evolution and its normative impacts.

Bibliographic and doctrinal analysis – consultation of scientific articles, specialized books and technical reports, which deal with the role of industrial property in economic, social and technological development.

The study is guided by a practical concern: to identify how the transformations of the Industrial Property Law reflect the balance between incentive to innovation, legal certainty and the social function of property, in the context of the contemporary demands of globalization and technological advances.

3 THE INDUSTRIAL PROPERTY LAW

Law No. 9,279, of May 14, 1996, consolidated the discipline of industrial property in the Brazilian legal system, regulating patents, trademarks, industrial designs and geographical indications. Its enactment took place in a context of Brazil's adaptation to the TRIPS Agreement, internalized by Decree No. 1,355/1994, which established minimum international standards for the protection of intellectual property.

Barbosa (2010) states that article 5, XXIX, of the Federal Constitution of 1988 already provided that the law would ensure the authors of industrial inventions "temporary privilege for their use, as well as protection of industrial creations, in view of the social interest and the technological and economic development of the country". This demonstrates that, since its origin, the IPL has sought not only to protect the creator, but also to guarantee the social function of industrial property.

In this way, the IPL not only aligned Brazil with international minimum standards, but disciplined different appropriation instruments in a segmented manner. Patents regulate inventions and utility models (articles 8 to 40), conferring technical exclusivity conditioned to novelty, inventive step and industrial application.

Trademarks protect distinctive visual signs of products or services (articles 122 to 175), ensuring market identification and avoiding competitive confusion. Industrial designs protect the ornamental form applied to a product (articles 95 to 120), as long as it is endowed with novelty and originality, with a primarily aesthetic and non-functional purpose.

Geographical indications, on the other hand, link protection to the geographical environment (articles 176 to 182), recognizing reputation and qualities attributable to the territory, either as an Indication of Origin or as a Designation of Origin. The Law also establishes, in its article 211, that the National Institute of Industrial Property, the federal agency responsible for the aforementioned registrations, will also register contracts that involve technology transfer, franchise agreements and the like to produce effects in relation to third parties.

Authors such as Denis Borges Barbosa argue that the IPL, although inspired by international standards, should be interpreted in the light of the Constitution, because "patent protection in Brazil is not an end in itself, but an instrument to achieve the economic order based on social justice".

This normative architecture executes the constitutional command of protection conditioned to the social function (BARBOSA, 2010), while adjusting the Brazilian system to TRIPS and the logic of international circulation of knowledge (CARVALHO, 2010), increasing institutional predictability, reducing transaction costs and serving as a basis for the current

dynamics of markets intensive in intangible assets (BASSO, 2018; WIPO, 2022).

4 CHANGE HISTORY

Since its creation, the IPL has undergone relevant changes, reflecting the pressure between private and collective interests. One of them was Law No. 10,196/2001, which deals with Anvisa's prior consent, which included article 229-C, establishing that "the granting of patents for pharmaceutical products and processes will depend on the prior consent of the National Health Surveillance Agency – ANVISA". The rule sought to make patent protection compatible with health protection, avoiding the granting of monopolies that hindered access to medicines.

The Superior Court of Justice (STJ), in REsp 1.543.826/RJ, consolidated the understanding that Anvisa's opinion was binding, since the agency should ensure the risk to public health. Although this provision was later revoked, it marked the intersection between health policy and industrial property in Brazil.

In 2021, Law No. 14,195 revoked two controversial provisions: article 229-C and the sole paragraph of article 40, which provided for the automatic extension of patent terms. The revocation was preceded by the judgment of ADI 5529, in which the Federal Supreme Court declared the unconstitutionality of the provision, understanding that it violated legal certainty and the principle of reasonable duration of the process.

In the case of the repeal of article 229-C by Law No. 14,195/2021, the effect was not an abrupt movement in the volume of filings, but rather in the procedural flow: the suppression of prior consent eliminated a second decision-making filter before granting, reducing regulatory friction in pharmaceutical patents and lowering the transaction time cost (Carvalho, 2010; Basso, 2018).

The removal of this filter once again shifted the decision-making centrality to the BPTO, strengthening interpretative unity and predictability in patent examination, without detracting from the sanitary function, which remains ensured by other instruments for regulating the life cycle of medicines (Barbosa, 2010; WIPO, 2022).

In the summary of the decision, the STF stated: "The sole paragraph of article 40 of Law No. 9,279/1996 is unconstitutional, as it offends the reasonable duration of the process, legal certainty and the social function of property".

On the empirical level, the removal of the sole paragraph of article 40 of the IP Law by the STF (ADI 5529) did not produce a collapse in patent filings; on the contrary, there is a trajectory of stability with slight advance and subsequent accommodation. According to the BPTO's Monthly Intellectual Property Bulletin, the 12-month cumulative index immediately

following (February 2022 to January 2023), total patent filings went from 26,944 to 27,135 (+0.7%), with invention patents rising from 24,265 to 24,776 (+2.1%) and utility models falling (-12.2%), signaling a reallocation of protection strategies rather than a retraction of the system.

On an annual basis, the BPTO reports, in 2024, 27,139 total applications in 2022 and 27,908 in 2023 (+2.8%), with residents growing 10.3% (from 6,739 to 7,437), which suggests that the reduction in uncertainty about terms of validity (after ADI 5529) coexisted with a relative increase in domestic protagonism.

The fact that there were also no subsequent drops in pharmaceutical deposits suggests that the revocation did not weaken protection, but reordered competencies — reducing interinstitutional conflict and procedural uncertainty, which is the most relevant cost for investment decisions.

In 2024, according to news published by the BPTO on its website, there was a slight decrease in total filings to 27,701 (-0.8% vs. 2023), indicating normalization of the level after the 2023 peak and effects of the sectoral and macroeconomic cycle, not a lasting negative impact of the decision.

When it comes to concessions, the greater variations from one year to another also depend on the agency's ability to analyze applications and the volume of processes in the queue, not only on the willingness to file applications. Therefore, it is necessary to be careful before attributing a direct cause to these numbers

Also in 2021, in the midst of the COVID-19 pandemic, Law No. 14,200 reformed article 71 of the Brazilian IP Law, allowing the granting of a compulsory ex officio, temporary and non-exclusive license, in cases of national or international emergency. It is a legal instrument that allows the State to relativize the exclusive rights of patent holders to meet collective interests, such as access to medicines and vaccines.

According to Maristela Basso, "the compulsory license is an essential mechanism to ensure that industrial property is not exercised in a manner contrary to the social interest and the social function of property".

With regard to Law No. 14,200/2021, which rewrote article 71 and facilitated compulsory licensing in emergencies, the BPTO's data do not show abrupt variations in patent filings that can be directly attributed to the reform, as applications respond to long-term protection horizons and market expectations, not to episodic rules of flexibility.

The relevant impact is structural: by making clearer the situations in which the State can intervene and by creating objective triggers to make the license mandatory, the law changed the level of regulatory risk for essential technologies (Basso, 2018), without

distorting the system of incentives for innovation.

In legal systems that comply with TRIPS, compulsory licensing coexists with high levels of deposit (Carvalho, 2010), acting as a distributive correction valve, and not as a revocation of exclusivity, under the terms of Article 31 of TRIPS and the Doha Declaration on Public Health (WIPO, 2022).

Recent data, which show stable volumes or even a slight increase after 2021, indicate that having clear rules to limit exclusivity causes less damage to investment in innovation than uncertainty about how far this privilege goes. (Barbosa, 2010).

In addition to the repercussions already examined, the set of these changes produced relevant secondary effects on the legal and economic ecosystem of industrial property. First, there was a strategic recalibration of private agents: the suppression of the term extra (ADI 5529) reduced the incentive for "strategic procrastination" in the examination, a practice of deliberately keeping the process in a pending state to capture automatic time extension, favoring a dynamic more convergent with the principle of reasonable procedural duration and with the international logic of fixed deadlines.

Secondly, the reform of article 71 produced an international reputational effect: by making explicit objective hypotheses of sanitary compulsoriness, Brazil legally shielded itself against allegations of "arbitrary discretion" in international IP disputes, since what generates litigation in international forums is not the compulsory license itself, accepted by TRIPS, but the unpredictability of the trigger. By making it transparent, the country gains negotiability in controversies.

Thirdly, the repeal of 229-C reduced the decision-making overlap between agencies, which has an institutional governance effect: the removal of "decision-making binomials" (INPI + Anvisa) reduces veto points, reduces litigation due to conflict of jurisdiction and increases the technical density of the decision, concentrating patent filtering on the INPI and shifting sanitary control to instruments specific to sanitary surveillance, recomposing the functional specialization of the regulatory State.

Finally, from a systemic perspective, the combination of the three changes is not reduced to exclusivity, but removes the unpredictability about its scope, duration and limits, which is economically more relevant for the intertemporal decision-making of the innovator than the raw volume of protection (Barbosa, 2010; Carvalho, 2010; Basso, 2018; WIPO, 2022).

It is important to add that Ordinances No. 26 and 27/2023 of the BPTO modernized the regulation on technology and industrial property contracts. Among the main changes are the recognition of the licensing of know-how; acceptance of royalty payments for patent

applications still under analysis; and the simplification of documentary formalities (digital signatures, deletion of initials on all pages). These changes reflect the need to make Brazil more competitive in the global technology transfer scenario.

5 IMPACTS ON THE PROTECTION OF INTANGIBLE ASSETS

Despite the regulatory framework, the protection of intangible assets in Brazil faces operational and structural barriers that reduce its practical effectiveness. The slowness of the examination at the BPTO, historically marked by a backlog and long decision cycles, generates temporal uncertainty incompatible with sectors with a short technological cycle, reducing the present value of exclusivity.

Added to this is the cost of registration and maintenance (annuities, translations, specialized advice), which creates an entry barrier for innovative micro and small companies, producing a concentration of ownership in a few corporations. The problem is compounded by high levels of piracy, counterfeiting, and parallel importation, which erode the economic return on formalized ownership.

At the same time, there is a low culture of preventive appropriation: companies and universities often innovate without protecting, or protect late and reactively, which reduces the capture of the value generated and limits the strategic use of IP in contracts, licensing and investment attraction.

These vectors reveal that, although the normative design is compatible with international standards, the economic effectiveness of protection in Brazil is constrained by asymmetries of time, cost, and IP culture that prevent the full conversion of formal rights into real economic value (Barbosa, 2010; Basso, 2018; WIPO, 2022; Carvalho, 2010).

The cultural deficiency of legal appropriation of knowledge is one of the structuring factors of the low exploitation of intangible assets in the country. In public universities and ICTs, the absence of routines and evaluation of patentability at origin leads to loss of anteriority and the premature publication of results, neutralizing the possibility of subsequent protection (WIPO, 2022; Barbosa, 2010).

In the productive sector, especially among MSEs and startups, a logic of execution predominates before legal shielding: a product is developed, launched on the market, and only then is it verified whether there is a risk of violation or opportunity for protection, when the exclusivity space has already been consumed by third parties (Basso, 2018).

This behavioral pattern reiterates an imbalance between creation and appropriation, in which Brazil produces knowledge, but does not systemically convert it into an exclusive legal position or a replicable competitive advantage (Carvalho, 2010).

The changes in the IPL had direct impacts on the protection of intangible assets, such as the creation and subsequent repeal of article 229-C evidenced the concern to reconcile exclusivity and public health; the declaration of unconstitutionality of the sole paragraph of article 40 reduced legal uncertainties about patent validity periods, strengthening predictability and aligning Brazil with fixed international standards of protection.

In addition to the expansion of the compulsory license, it allowed greater flexibility in cases of emergency, reinforcing the idea that industrial property must meet the collective interest and the BPTO's measures in 2023 boosted the business environment, increasing the contractual protection of intangible assets in national and international transactions.

6 PROPOSITIONS

Currently, bills that seek to update the IPL are being processed, including:

- PL 2.210/2022 – creation of the provisional patent application, allowing simplified filings.
- PL 303/2024 – regulates the possibility of inventions generated by artificial intelligence, a topic that is still controversial internationally.
- PL 2,496/2024 – combating trademark registrations in bad faith, criminalizing speculative practices.
- PL 3,152/2020 – proposes to amend article 124 of the Brazilian IP Law to expressly prohibit brands with racist or discriminatory content.

These propositions point to a continuous process of normative evolution, in which industrial property seeks to respond to new technological and social challenges.

7 FINAL CONSIDERATIONS

The trajectory of the Industrial Property Law in Brazil shows a movement between strengthening the exclusive rights of patent and trademark owners and ensuring the social function of these institutes. The normative evolution shows that Brazil has sought to adapt to international standards (TRIPS), but also to respond to their peculiarities, especially in the field of public health.

The legislative changes of 2001, 2021 and 2023, added to the paradigmatic decisions of the STF and STJ, consolidated a more balanced system, which restricts disproportionate privileges and strengthens mechanisms for access to essential technologies. The recent administrative measures of the BPTO and the legislative projects in progress point to a future

in which industrial property will be increasingly dynamic, permeated by topics such as artificial intelligence, biotechnology, combating piracy and social responsibility.

Thus, it can be concluded that the Brazilian IPL is in constant transformation, seeking to balance the incentive to innovation with the interests of the collectivity, fulfilling its dual mission of promoting economic development and ensuring fundamental rights, such as access to health and information.

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