

Patent Litigation in Brazil



Jurisdiction and Courts

- **Infringement Lawsuits:** Filed in State Courts (defendant's domicile or plaintiff's domicile/place of damage if claiming indemnity).
- **Invalidity Lawsuits:** Filed in Federal Courts (where BPTO has offices or plaintiff's headquarters).
- **Specialized Judges:**
 - **State Courts:** Rio de Janeiro (7 judges), São Paulo (2 judges).
 - **Federal Courts:** Rio de Janeiro (4 IP-specialized judges).

Litigation Timeline

- **Defendant's Reply:** 15 business days (infringement) or 60 business days (invalidity).
- **Expert Evidence:** Common and often delays timeline.
- **First-instance Decision:** Typically within 1.5 years.
- **Final Resolution:** Up to 5 years, depending on appeals.



Appeals

- **Final Decisions:** Appeal within 15 business days (suspensive effect likely).
- **Interim Decisions:** Limited appeal rights; suspension only with proof of urgent harm.

Patent Infringement

- **Direct Infringement:** Unauthorized making, using, selling, or importing patented products/processes.
- **Indirect Infringement:** Supplying components/materials inevitably leading to patent exploitation.



Claim Interpretation and Defenses

- **Claim Scope:** Defined by claim language, interpreted via specification and drawings.
- **Doctrine of Equivalents:** Accepted, though without a formalized test.
- **Main Defenses:**
 - Non-infringement.
 - Incidental invalidity challenges.
 - Statutory exceptions (e.g., private use, experimental research).

Patent Invalidity

- **Invalidity Grounds:**
 - Lack of novelty, inventive step, or industrial application.
 - Statutory exclusions (e.g., living beings).
- **Prior Art:** Anything made public before filing.



Amendments and Patent Term

- **Amendments:** Permitted during examination or via court-ordered partial nullity.
- **Patent Term:**
 - 20 years from filing (inventions).
 - 15 years from filing (utility models).
- **No Extensions:** Following 2021 Supreme Court ruling.

Evidence and Confidentiality

- Court-appointed expert reports play a critical role.
- Confidentiality orders are available but rare.
- Limited disclosure; targeted evidence collection by court order is possible.

Alternative Dispute Resolution (ADR)

- Mediation and arbitration permitted but rare.
- Settlements can occur at any litigation stage.

Remedies

- **Interim Injunctions:** Available with strong evidence and proof of urgency.
- **Final Remedies:**
 - Permanent injunctions.
 - Monetary damages (including destruction of infringing products).



Trends and Challenges

- **Growth Sectors:** Life sciences, oil & gas, telecommunications.
- **Hot Topics:** Vaccine patent litigation, Patent Term Adjustment (PTA) lawsuits, 5G SEP/FRAND disputes.
- **Key Challenges:**
 - Increasing judicial technical expertise.
 - Reducing BPTO's administrative backlog.

