

BRPTO's Notice invites public comments on simplified procedures for the allowance of pending patent applications

(Federal Register of July 31th, 2017)

The BRPTO's notice invites public comments on the proposal aiming at reducing the backlog via simplified allowance procedures for pending patent applications. This proposal comes as an effort of the Ministry for Development, Industry and Foreign Trade (MDIC), which understand the importance of obtaining the patent right within an acceptable time frame.

According to MDIC and BRPTO's proposal reasonings, the BRPTO's backlog reached an unsustainable ratio considering the BRPTO's reduced examination capabilities. Even if 687 new patent examiners were hired today, the backlog would not be solved within the next eight years. No proposals considered so far for the reduction of the BRPTO's backlog would solve it. The MDIC and BRPTO's reasonings, presented together with the draft, show an extensive research and in-depth study of the problems faced by the BRPTO, aiming at the best interest of the users of the Brazilian patent system.

Applications that fulfill the requirements established by the proposed draft will have a notice of acceptance published at the BRPTO's official gazette without any intervention or request from applicants, who will have to manifest only to opt-out. The notice of allowance of these patent applications shall be published within the following 90 days of the notice of acceptance into the simplified procedures, as provided by Article 3 of the proposed draft. However, no deadline is defined for the publication of said notice of acceptance.

Article 2 determines that an application must comply with the following pre-established conditions to be eligible for the proposed simplified allowance program: (i) the application filing petition or national phase entry petition must have been presented at the BRPTO before the publication date of the act establishing the simplified procedures; (ii) the application must have been published or a request for its anticipated publication must have been submitted within 30 days from the

publication date of the act establishing the simplified procedures; (iii) the request for examination of the application must be submitted no later than 30 days from the act establishing the simplified procedures; (iv) all due annuity fees must have been timely paid; and (v) office actions under the provisions of Article 35 of the Brazilian Patent Statute (Law #9,279/96) cannot have been issued on the application, that is, applications already under substantive examination by an examiner, with at least one published office action are not eligible.

The sole paragraph of Article 1 of the draft establishes that divisional applications, certificate of addition applications, and applications related to pharmaceutical products and processes shall not benefit from the simplified procedures. Applications filed after the publication date of the act establishing the simplified procedures and applications for which third party observations have been submitted, even if within the 90-day allowance publication deadline established by Article 3, are also excluded from the program.

The sole paragraph of Article 4 provides for the exclusion of a patent application from the program, upon the applicant's request. The applicant must submit the exclusion request within the 90-day deadline established by Article 3.

Article 5 of the draft establishes that the application shall be allowed as published or as notified in its national phase entry.

Since no substantive analysis will be carried out by the BRPTO, the Letters patent will be issued with a disclaimer regarding non-statutory subject matter, under the provisions of Articles 10 and 18 of the Brazilian Patent Statute.

To assist applicants to make the most of this act, we are working to provide a specific service, upon request, to assure eligibility for the program or to request the exclusion from it, in a hotline at fastgrant@lickslegal.com. We make available the documents published together with the public comments invitation notice, in English, at the following links:

- [Notice of public comments invitation;](#)
- [Proposal reasonings;](#)
- [Proposed normative;](#)
- Statistic summary of the situation of patent applications at the BRPTO (will be available soon); and
- [Suggestion form.](#)