



**MINISTRY OF DEVELOPMENT, INDUSTRY AND FOREIGN COMMERCE
BRAZILIAN PATENT AND TRADEMARK OFFICE
PRESIDENCY**

PUBLIC CONSULTATION #2 OF JULY 27, 2017

*Proposal of an act for simplified procedure for
the allowance of patent applications.*

PROPOSAL REASONINGS

The accumulation of patent application in the Brazilian Patent and Trademark Office (BRPTO) reached an unsustainable proportion in view of the capacity of examination and response of the autarchy.

This accumulation, known as backlog, reached 231,184 applications at the end of June.

The BRPTO currently has 326 professionals dedicated to patent examination.

Despite all the dedication of the functional body, which has increased the productivity of annual decisions from 35 in 2015 to 45 in 2016 and is forecasted to reach 55 in 2017, the perverse scale relationship has not been allowing the reduction of the backlog of pending patent applications for examinations.

In keeping status quo with the current ratio of the backlog, examiners and productivity, the expected backlog will be 349,080 applications in 2029.

The relationship is so disproportionate that, even if we doubled the current productivity, we would reach 110 decisions per year. This still would not eliminate the delay: the expected backlog would be 189,312 applications.

Therefore, only productivity gain is not the measurement capable of solving the backlog issue.

Alternative studies were carried out considering the gain of scale through the admission of 687 new patent examiners. For this hypothesis, it was verified that the backlog would be solved after 8 years.

However, considering that the BRPTO's structure of examiners requires a total of 489 servers in order to meet current demand, the previous solution, in addition to having a tax cost in the order of R\$ 1 billion in this period of time, would also imply, from the 9th year, on the idleness of more than 500 servers, as well as their respective costs throughout their functional lives.

The before mentioned backlog solution scenarios prove to be ineffective and not feasible.

It is a fact that the backlog problem has reached numbers whose solution is not achieved by adopting a comfortable measure. Whatever the solution, it will be at a much bigger scale and of high financial and institutional cost.

Thus, given this serious and costly situation for the country, we have not seen a solution that is punctual and at an acceptable scale.

Taking this into consideration, the backlog solution by way of simplifying the examination of patent applications has been constructed from the consideration of being the most effective and least damaging to the system.

The simplified procedure of allowance is characterized by its facultative and enforceability nature, as well as not considering patent applications for drugs.

That means that the act establishing the simplified procedure will allow the applicant to express an interest in having its patent application excluded from that mechanism, or even third parties requesting the exclusion of third-party applications, provided that they submit technical subsidies.

Patent applications filed after the entry into force of the act shall not be subject to the simplified procedure. We want to establish that the solution is exceptional and limited.

Considering this framework, the alternative offered by the Ministry of Development, Industry and Foreign Commerce and by the BRPTO to solve the cumulative backlog of patent applications is a simplified and temporary procedure. By means of this measure, patent applications will be granted as requested by the resident applicants or by the non-resident applicants in the Brazilian national phase, even if the applications are within the scope of articles 10 and 18 of law # 9,279 of 1996.

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