

Supreme Court Decides on Patent Term

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The Brazilian Supreme Court is analyzing an action filed by the Federal Attorney General challenging the constitutionality of a provision of the Brazilian IP law (sole paragraph of art. 40, Law No. 9,279, of May 14, 1996) according to which patents shall continue valid for at least 10 (ten) years from the issuance date of the patent by the Brazilian PTO (INPI) even if this period surpasses 20 (twenty) years from the filing of the application.

On April 7, 2021, the reporting justice of the case issued a monocratic decision granting partially the request for provisional urgent relief submitted by the Federal Attorney General to suspend the effectiveness of such provision, *ad referendum* of the Plenary, only with regards to patents related to pharmaceutical products and processes and equipment and/or materials for use in health, with *ex nunc* effects. Such urgent relief decision does not apply to pharmaceutical patents already granted and still in force due to the possibility of the extension term set forth by the Industrial Property Law.

In addition to grant the urgent relief, the reporting Justice also made available his vote in connection to the merits of the case and a proposal to modulate the effects of the recognition of unconstitutionality. According to the modulation proposal, the declaration of unconstitutionality of the sole paragraph of art. 40 will have *ex nunc* effects, as from the publication of the judgment, to maintain the validity of the patents already granted and still in force as a result of the sole paragraph. However, the declaration will have *ex nunc* effects for the **(i)** lawsuits in progress and **(ii)** patents already granted related to pharmaceutical products and processes and equipment and/or materials for use in health.

This vote of the reporting Justice must still be validated by the plenary of the Supreme Court in case the majority of the Supreme Court recognizes the unconstitutionality of the challenged provision of the Industrial Property Law. If this vote prevails, the terms of pharmaceutical patents already granted will be immediately affected.

It is also important to point out that the urgent relief is also subject to confirmation of the plenary of the Supreme Court, which will probably occur on April 14, 2021, the new date designated for trial of the case.

[Click here to read the decision in full.](#)