

Digitally Signed Documents accepted by the Brazilian PTO

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Authors

Antonella Carminatti

Jana Fraccaroli

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Due the lockdown rules and other social distancing measures that have been implemented worldwide to try to reduce the spread of the Covid-19, it has been a challenge for some companies and individuals to execute valid and legally binding documents involving Intellectual Property rights.

In order to accept some type of documents, the Brazilian Institute of Industrial Property ("Brazilian PTO") requires specific formalities that, as a rule, must be performed in the presence of witnesses or demand services that are temporarily unavailable in some countries and regions, such as signature in writing in the presence of two witnesses, notarization, legalization and Apostille.

An alternative to overcome the aforesaid obstacles arising from the Covid-19 outbreak is to execute documents digitally signed and perform the required formalities (notarization, legalization and Apostille) also digitally. This solution would not be effective in any and all cases, as each department of the Brazilian PTO has its own rules for acceptance of documents and may demand different requirements and formalities from the applicants. However, it would be useful for a wide range of situations.

For instance, the Trademark Department, the Software Department and the Technology Transfer Department of the Brazilian PTO have been accepting documents digitally signed. For clarification purposes, the Technology Transfer Department is the one in charge of the recordal of trademark license agreements, patent license agreements, technology supply agreements, technical and scientific assistance agreements and franchise agreements.

We wish to point out that the recordal of these types of agreements with the Brazilian PTO is a requirement to enable the remittance of royalties and other payments abroad, by a Brazilian Licensee/Assignee/Franchisee to a foreign Licensor/Assignor/Franchisor. This is particularly important at a time when companies, laboratories and research institutions around the world are entering into partnerships to fight the Covid-19 by developing a vaccine, finding effective drugs against the virus and manufacturing respirators, personal protective equipment and tests.

The main requirement demanded by the aforesaid departments of the Brazilian PTO to accept digitally signed documents is a digital certificate, encrypted, issued by a Certification Authority accredited by the Brazilian Public Key Infrastructure (ICP-Brasil). Other requirements are also applicable depending on the nature of the transaction and rights involved.

Nevertheless, we verified that the Patent Department of the Brazilian PTO, responsible for the analysis of patent applications and granting of patents, has not accepted digitally signed documents yet. We have been recently informed that this matter is still under evaluation by their Board.

We have a specialized team of IP professionals aimed to provide personalized legal support on this subject considering the particularities of each given case, as well as to assist you and your company in the process of submission and recordal of digitally signed documents with the Brazilian PTO.

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Antonella Carminatti



Jana Fraccaroli