

**RECENT IP
UPDATES**

ARGENTINA

Two legislative projects addressing ISP's liability and Data Protection.

Over the past months, two relevant drafts of regulations have been issued in Argentina. The first one addresses ISP's liability and has received preliminary approval by the Senate. The second is a draft of new data protection bill and has been posted on the website of the Argentine Data Protection Agency.

The first law would specifically address the liability of Internet Service Providers which, until now, was only ruled by general Civil law damage principles. The draft, preliminarily approved by the Senate, would surely provide legal certainty in the area. As it is now, it indicates that the ISP's would only be liable if they fail to remove content having been required to do so by a Court, indicating also that ISP's do not have a general obligation to monitor potential infringements in their platform. The draft on Data Protection is inspired on the EU General Data Protection Regulation that will come into effect in 2018 and addresses issues such as, among others: the recognition of individuals - not companies - as data subjects, the introduction of new criteria to determine whether Argentine law is applicable or rules for international transfers of personal data. The draft on Data Protection is expected to be sent to the President later this year and discussed by Congress in 2018.

BRAZIL:

Memorandum of Understanding between Anvisa and INPI - Draft of Guidelines for Chemical patents -Simplified analysis of license agreements.

Brazil has experienced several developments in recent months. Even though some of them may be seen as merely symbolic or drafts pending approval, all of them show that things are moving forward in the country to ease and update the prosecution of patent and trademark applications.

On April 12, a Memorandum of Understanding was signed between the BPO (INPI) and the Brazilian Health Regulatory Agency ("ANVISA"), which intends to address the problem related to the faculties assigned to ANVISA in the examination process of pharmaceutical patent applications. In accordance with this MOU, ANVISA would only be responsible for analyzing aspects related to public health, not related to patentability criteria. Also, it is worth noting that the INPI issued a draft of guidelines for patent applications in the chemical field and is accepting comments until May 16, 2017. The new guidelines address important issues which, as the draft is right now, are regulated as follows: chemical compounds defined by its physical, physicochemical or biological properties are not accepted; product by process claims can only be accepted when there is no other way to define the compound; the crystalline structure of a polymorph may be characterized by Single-Crystal X-Ray diffraction although, if this is not provided, the Powder X-Ray diffraction could be used associated with at least another identification method; a new use of a known compound defined by its dose, administration, etc. is not considered as novel, even though new therapeutic activity of a compound could be patented if in vivo tests are presented. As of today, these guidelines are only a draft and will be closely monitored to see how the INPI addresses this important issues. However, we understand they are a good sign showing the INPI's intention to update its guidelines and provide more legal certainty in a traditionally conflictive area. A Normative Instruction has been issued to reduce and simplify the scope of the examination by the INPI of technology transfer and IP license agreements. The INPI should now focus, strictly, on formalities applicable to this agreement and not on the merits of the agreement. In particular, the INPI will no longer examine the payment clause of IP license agreements and, therefore, they will merely state that they do not examine if the rules pertaining to tax and foreign exchange control law are met by the parties in the agreement. Finally, as explained in our previous Newsletter, the shock produced by the issuance of Resolution 174 in relation to the assignment of priority rights has finally cleared up. In accordance with Resolution 179, which revokes Resolution 174, assignments of priority documents signed after the filing date of the PCT application are valid and everything goes back to normal again. The assignment document will still need to be filed within 60 days of the national entry in Brazil and translated into Portuguese. Also, if the change of ownership has not been registered yet at the WIPO, a copy of the assignment needs to be filed upon entering the national phase in Brazil. The above changes will have to be monitored but we think it is fair to say that they show that the Brazilian authorities are trying to improve the prosecution of patent and trademarks in the country.

CHILE:

New Bill related to personal data and IP strategy to stimulate innovation.

On Monday, March 13, 2017, a bill was sent to the Senate seeking to increase protection of personal data privacy to fulfill international standards.

Should it be approved by the Senate, the bill will incorporate a series of new principles in this subject affecting the concept and requisites for consenting the use of personal data, Disclaimer: Please note that the present communication is of a general nature. It is not intended as legal advice and does not create an attorney-client relationship. No warranty of any kind is given with respect to the subject matter included herein or the completeness or accuracy of this note and no responsibility is assumed for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this note. In no event shall we be liable for any damages resulting from reliance on or use of this information. Any analysis regarding or related to the developments indicated above needs to be applied to a case in particular and consulted or verified with local counsel in each jurisdiction.

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restricting the automated processing of data, creating a Personal Data Protection Agency, regulating international data transfer and adopting certain security measures as well as the requirement to report them. The bill would enter in force 13 months after its publication, although it sets forth a 4-year period for previously existent databases to adapt their practices to the new regulations. The Chilean Patent and Trademark Office (INAPI) recently presented its IP Development Strategy to stimulate research and development in the country. It consists, essentially, in a battery of 60 proposals that can be viewed in the following link: http://www.inapi.cl/portal/publicaciones/608/articles-9870_recurso_1.pdf The above two developments and the recent creation of the Science and Technology Ministry demonstrate the commitment of Chile to keep improving an already quite sophisticated intellectual property system in Latin America.

CHINA:

New IP Courts - Reduction of trademark official fees - Amended patent examination guidelines.

After establishing specialized IP Courts in Beijing, Shanghai and Guangzhou, the Chinese Supreme People's Court has recently approved the establishment of specialized IP tribunals in the cities of Wuhan, Nanjing, Suzhou and Chengdu, which have been experiencing a substantial increase in complex IP litigation issues.

These new tribunals will have jurisdiction over intellectual property cases and will be formed by judges with substantial experience in this subject. Also, the Chinese Trade Mark Office announced a reduction of official fees as of 1st April 2017, including the fees for a trade mark application, renewal, opposition and fees for most types of records. Finally, the Chinese Patent office (SIPO) has issued its amended Patent Examination Guidelines, which became effective on 1 April 2017. The amended guidelines bring several changes and clarifications, in particular in relation to business models and computer implemented inventions. It also affects the possibility to make allowable amendments in invalidation proceedings and introduces changes in the suspension of proceedings before the patent office as a consequence of civil court proceedings.

EGYPT:

Increase in official fees.

As a consequence of the drastic drop in the value of the local currency, the Egyptian Patent Office decided to increase the official fees of some patent related services, including substantive examination fees, with a retroactive effect for all new patent applications filed on or after February 13, 2017.

JAPAN:

PPH programs with Argentina, Brazil and Taiwan.

The Japan Patent Office agreed to start a Patent Prosecution Highway program with the National Institute of Industrial Property of Brazil (INPI) on April 1, 2017, and with the Chilean Patent and Trademark Office (INAPI) on August 1, 2017.

The agreement with the INPI implies that both sides will accept petitions for two years or until reaching 200 applications filed with each office. The JPO will accept application in any technical field; the INPI will accept them in IT and machinery, mainly for automotive-related technologies. On March 14, 2017, the JPO and the INAPI held a commissioners meeting in Santiago and agreed to start the PPH pilot program on August 1, 2017. Moreover, the JPO and the Patent Office of Argentina should start a PPH pilot program on April 1, 2017. As a result of the start of these programs with Brazil, Argentina and Chile, the number of JPO's partner IP offices overseas under the PPH program comes to 38. The JPO will release details of the PPH program between Japan and Brazil, Argentina and Chile on its website upon the start of the respective PPH programs.

JORDAN:

Accession to the PCT.

The Director General of the World Intellectual Property Organization (WIPO) had the honor of notifying the deposit by the Government of the Hashemite Kingdom of Jordan of its instrument of accession to the Patent Cooperation Treaty, which will enter into force with respect to Jordan on June 9, 2017.

MEXICO:

New criteria on Assignment Documents.

As a consequence of new criteria in the implementations of the rules of procedure, the Mexican Patent Office is requesting that the certified Inventor Assignments be stamped with the Apostille of the Hague Convention.

This requirement is based in article 9, fraction IX, of the already applicable Regulation of the Intellectual Property Law, which had not been applied in the past. However, this has been recently changed and this provision will be requested from now on in relation to assignment agreements.

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SAUDI ARABIA:

Change in opposition proceedings - Increase in official fees.

As a consequence of the GCC Trademark Law being adopted by Saudi Arabia, opposition procedure has been adjusted to a purely administrative proceeding.

Oppositions may be filed by any interested party within 60 days from last publication date in the Official Gazette and no proof of use can be requested by the applicant. If use is to be contested, separate non-use cancellation proceedings must be initiated. In addition to that, Saudi Arabia has increased again the official fees, in this particular case those related to the recordal of assignment, license, mortgage, and limitations of goods, amendment of mark, merger, change of name and change of address.

SINGAPORE:

Revised fees for patents and trademarks - PCT applications now accepted in Chinese.

The Intellectual Property Office of Singapore announced that, as of April 1st, new official fees, Patent filing, search and examination, as well as trademark filing fees are reduced. However, fees for renewing and maintaining applications are substantially increased.

On another matter, the Intellectual Property Office of Singapore is now accepting Chinese as a language for PCT applications, becoming the second International Search Authority (ISA) and International Preliminary Examining Authority (IPEA) other than the Chinese Patent Office to conduct searches and examinations in Chinese.

UAE:

New law against counterfeiting.

The UAE has approved a new law against commercial fraud and the importation of counterfeit goods.

It is effective immediately from the date of publication and aims at strengthening the ability of intellectual property rights owners to enforce these rights in the UAE. The law defines counterfeited goods as those identical to or similar to the legally registered trademark and increases the penalties for Commercial Fraud Offenses.

URUGUAY:

Parliament receives bill of law to join the PCT.

After many rumors about the possibility of Argentina and Uruguay starting the process of becoming member states of the PCT, on March 13, 2017, the Presidency of Uruguay sent to Parliament a bill of law to join the PCT.

The bill of law supports the adoption of the PCT by Uruguay and the project will now be analyzed and debated by the Parliament. It is not possible to predict if and when would it be approved, but we will monitor it and will inform you of any developments.