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Pinheiro Neto & Cia., Brazil, and *Cavelier, Perdomo & Cavelier*, Colombia, Patents: Brazil and Colombia

PATENTS

PINHEIRO NETO & CIA.,
Brazil

and

CAVELIER, PERDOMO & CAVELIER,
Colombia

EDITOR'S NOTE: Periodically, *Lawyer of the Americas* receives reports from those cooperating law firms in Latin America which have joined the *Lawyer* in its objective to promulgate legal developments in the Americas. Recognizing the merit of these reports the *Lawyer* will, from time to time, make these available to its readers, and in doing so expresses its appreciation to the number of cooperating law firms whose contributions enrich the *Lawyer* and add to the development of inter-American law. This issue includes two reports on the subject of patents from our colleagues in Brazil and Colombia.

PATENTS IN BRAZIL—RAPID PROCESSING

Perennially, the procedure for obtaining a patent in Brazil has been characterized by inordinate delay, and as a result has been a source of anxiety and apprehension for persons and industries whose inventions have been buried in the red tape. Projects for the execution of nascent products naturally had to be put off until the final approval of the patent, an ordeal which sometimes lasted years.

Under the current Industrial Property Code (IPC) (Law No. 5.772 of December 21, 1971) a Special Procedure has made it possible to expedite registration and thus obtain a patent within approximately one year of the date of application.

The Code describes the traditional Normal Procedure as follows: (i) the application is filed, secrecy being maintained as to the exact

nature of the product; (ii) the application is published eighteen months later in the Industrial Property Magazine; (iii) after the publication the applicant is allowed twenty-four months in which he must request technical examination of the invention.

To shorten these waiting periods the applicant may now avail himself of the option granted by the IPC provisions cited in paragraph 2 above. By the Special Procedure he can pay an additional charge and request that the publication of his application be "anticipated". This insures that the invention will be given immediate consideration.

Following the steps of the Normal Procedure, the patent application is practically forgotten during the eighteen months which separate filing and publication. Obviously, by requesting the Special Procedure *ab ibnitio* the applicant can shave as much as a year and a half off the patent process. The request for technical examination can then be made within the ensuing twenty-four months.

The request for anticipation of publication, however, is insufficient by itself. Immediately upon publication of the patent application, in the Industrial Property Magazine, the applicant should petition for technical examination. Waiting the full twenty-four month period before doing so would defeat the purpose of the Special Procedure.

It is well to compare the progress of applications filed simultaneously but under different procedures. For the purposes of illustration we will suppose that the initial filing takes place on September 19, 1974. Dates below are approximate and designed to reflect the greatest possible disparity.

	SPECIAL PROCEDURE	NORMAL PROCEDURE
a. Filing of application	September 19, 1974	September 19, 1974
b. First listing in Industrial Property Magazine	October 19, 1974	October 19, 1974
c. Request for anticipated publication	October 20, 1974	Not applicable
d. Official publication of patent application, copies available to interested third parties	November 15, 1974	April 19, 1976
e. Request for technical examination of application	November 16, 1974	April 19, 1978
f. Publication of request for technical examination	December 16, 1974	May 19, 1978
g. Expiration of the 90 days period during which third parties may challenge patent	March 16, 1975	August 19, 1978
h. Decision on patent application	June 16, 1975	November 19, 1978
i. Expiration of 60 day period during which third parties may appeal patent decision	August 16, 1975	January 19, 1979
j. Date of issuance of Patent Certificate	September 16, 1975	February 16, 1979

Clearly, then, as much as three and a half years can separate the respective issuance dates of Patent Certificates under the different procedures. The chart also demonstrates that if one opts for the Special Procedure, paying the charge and encountering no appeal or opposition from third parties, it is now possible to obtain a Brazilian patent within an approximate period of one year.

This Special Procedure is not applicable to patent applications which have already been published, but only to those which have not yet been

filed, since the Special Procedure must be requested immediately upon filing the patent application. In cases where the application has been filed but is suspended in the eighteen month waiting period which must precede publication under the Normal Procedure, a belated request for anticipation of publication coupled with an immediate petition for technical examination can abbreviate the process somewhat, although not to the extent possible under the Special Procedure.

In either case, a decision on the patent application will be forthcoming in much less time than could be expected under the provisions of prior legislation.

DECISION 85 OF THE ANDEAN GROUP-INDUSTRIAL PROPERTY REGULATIONS

The Commission of the Cartagena Agreement has, through its Decision 85 (25 May-5 June 1974), adopted the "Statute of Industrial Property Regulations". These Regulations will not enter into force in Colombia until they are approved by Congress, according to Law 8th of 1973, thereby amending the relevant Colombian legislation contained in the Code of Commerce.

The main provisions of the Regulations on the subject of patents follow.

PATENTS

Patentable inventions:

— New creations that have industrial applicability.

— An invention is not new if it is contained within the state of the art, that is if it has been accessible to the public in any place through oral or written description, through use or exploitation or through any other means sufficient to make possible its execution prior to filing of the patent application.

— An invention has industrial applicability if its object can be manufactured or used in any type of industry.

— The following are not considered as inventions: scientific principles; commercial, financial and accounting schemes and other plans of this nature; rules of games and other abstract systems; therapeutic and

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— An invention has industrial applicability if its object can be manufactured or used in any type of industry.

— The following are not considered as inventions: scientific principles; commercial, financial and accounting schemes and other plans of this nature; rules of games and other abstract systems; therapeutic and

surgical methods for the treatment of humans or animals; methods of diagnosis; and purely aesthetic creations.

Non-patentable inventions:

— Those contrary to public order and good morals.

— Those on plant varieties or varieties of animal species, and the essential biological processes to obtain these varieties.

— Those on pharmaceutical products, medicine, therapeutic substances, food and drink for human, animal or plant consumption.

— Inventions which affect the country's development, or the processes, products or groups of products whose patentability is debarred by the government.

Foreign inventions: Applications for patents should be filed within one year after filing of the application in the first country.

Priority of the Andean Group: The first application originally filed in one of the Member States gives its owner the right to one year's priority from the date of application in order to apply for a patent in the other Member States.

Procedure: Patent applications must be filed together with the usual data and documents (power of attorney, description and claims, drawings) and with copy of the first application filed for the same invention.

A preliminary study is carried out to determine if the application meets all the proper requirements; then the application is published; if no observations are made by third parties, an examination is made of the invention's fundamental patentability.

There is no provision for opposition, however third parties may file observations which can vitiate the invention's patentability.

Copies of patents: are only given of registered patents.

Rights conferred by the patent: The rights to work the invention, to grant licenses for its exploitation and to collect royalties when it is worked by third parties, but not the exclusive right to import the patented product or the product manufactured by the patented process.

Duration of the patent: Ten years in all from the date of issue. At the end of five (5) years, the patentee must provide proof of the patent's exploitation in order to obtain its renewal.

Exploitation is understood to mean permanent and steady use of the patented process or the manufacture of the product in such a way as to supply the market with the resultant product in a marketable condition, provided that exploitation is carried out within the territory of the country which granted the patent, and provided that there is no detriment to the sectoral programmes for industrial development.

Proof of exploitation must be given within the first three (3) years in order to preclude the granting of compulsory licenses.

Voluntary licenses: shall be granted by registered, written agreements that fulfill the provisions of Article 20 of Decision 24.

Compulsory licenses: can be requested three (3) years after the granting of the patent, if the invention has not been exploited, if its exploitation has been suspended, or if its exploitation does not meet reasonable conditions of domestic demand in terms of quantity, quality or price; or if the patentee has not granted a license to supply the market in said reasonable conditions.

CHANGE OF LEGISLATION

When these Regulations come into force, the industrial property rights which have already been acquired shall be kept in effect during the period for which they have been granted, but their exploitation, enjoyment, obligations, licensing and renewals shall be governed by the Regulations. Moreover, the term of patents shall be reduced to ten (10) years, with one (1) year's grace for patents which may expire by reason of this limitation.

MATTERS NOT COVERED BY THE REGULATIONS

The Regulations contain no provisions on commercial names and ensigns, on indications of source and indications of geographical origin, on publicity slogans and unfair competition, which matters shall continue to be governed by national legislation.

EDITOR'S NOTE: The above report on Colombia was prepared in August, 1974.