

Draft legislation promotes compulsory patent licensing

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Authors

Valter Silva Couto

The COVID-19 pandemic has stirred a number of legislative initiatives aimed at Brazil's Industrial Property Law (Law 9279/1996, the "LPI" – Lei de Propriedade Industrial), and particularly at patents.

Bills 1184/2020, 1320/2020 and 1462/2020, presented in the period from 30 March to 2 April 2020, all seek to relax the legal requirements for the compulsory grant of patent licenses for reasons of national emergency or public interest. Compulsory licenses are currently provided for in article 71 of the LPI and in the regulations under Decrees 3201/1999 and 4830/2003.

The most recent proposal, signed by members of the Chamber of Deputies from eight different parties, combines elements of the earlier two proposals and seeks to amend article 71 to provide for licenses where the patent application is still pending and, in practice, would do away with the need for an executive act by the Federal Administration when "a public health emergency has been declared" by the WHO or by the relevant "national authorities". The provisions added by the Bill would make the grant of compulsory licenses automatic, and independent of the finding whether the patentee or his licensee does not meet the necessity created by the emergency. Royalties would be fixed at 1.5% of the "sale price to government authorities".

The objective of these initiatives seems to be to remove possible barriers to access to protected technologies in exceptional circumstances like the COVID-19 pandemic, but they can create other problems by making existing exceptions under the law the rule. The Bills must therefore be evaluated with care, taking into consideration the exceptional and transitory nature of the current emergency and the need for legal certainty as to the protection given by IP rights.

This text belongs to BMA's Newsletter called: "**COVID-19 and its impacts on Intellectual Property and Data Protection**".

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Valter Silva Couto