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XXXVI

Congresso Internacional
da Propriedade Intelectual-ABPI

XXXVI International Congress on Intellectual Property - ABPI



Quality and diversity were the strong points of the XXXVI Congress

Thanking the presence of the nearly 600 participants representing 26 countries who participated in the four plenary sessions and 14 panels, where a wide range of Intellectual Property topics was discussed, the President of ABPI Maria Carmen de Souza Brito, closed the XXXVI International Congress of Intellectual Property in São Paulo. "The event was great and we had high-quality speakers", she said.

The President also referred to the pre-event, indicating that "it has become a congress in itself", and thanked the Organizing Committee, the sponsors, institutional partners and associated offices. In the end, she extended all participants an invitation to come to the XXXVII Congress to be held in Rio de Janeiro, from August 20 through 22, 2017.



No protection, no solutions



How does Brazil rank in innovation?

Maria Carmen de Souza Brito: There are renowned institutions producing high level publications, so in this aspect Brazil ranks quite high. Our problem does not lie in innovation itself but rather in the stimulus to innovation. That can only happen

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when you have an institutional and legal framework to adequately protect property rights holders.

Is our otherwise low ranking due to legislation problems?

MCSB: Not necessarily. When our Industrial property rights law was passed 20 years ago the system was greatly improved. But since then the world has gone through great changes, new Market practices came about, as well as the Internet revolution. This is why it would be advisable to make adjustments in many areas, especially in law regulation.

How does ABPI see INPI's action?

MCSB: Every time INPI is mentioned, the issue of backlog comes up. This is discouraging for applicants, especially of patent rights, although the same problem happens with trademarks - and here it is not as serious. For patents, depending on the area, there is an average waiting time of nearly 10 years, while in others like telecommunications that can be as much as 14 years. The problem stems from the insufficient number of INPI examiners to cover demand.

How bad is that for the country?

MCSB: It discourages company investments and impacts negatively on the economy. How

can you encourage companies to invest in a country where the legal framework is so weak?

What is your assessment of the fight against piracy and its results in Brazil?

MCSB: All measures taken to repress violations are still insufficient to refrain piracy, which is increasing in a number of segments - from audiovisual to software, music, counterfeit toys. Even in drugs, a very serious issue affecting human health. The problem is not one of property rights owners alone, it burdens society as a whole, to the extent that it leads to tax evasion, unemployment and violence increase.

Higher legal security for innovation

“Brazil has a great potential for innovation, but owing to the general legal insecurity in the country foreign investments must go through rather winding routes of the country's laws”, said Marcelo Peviani, Legal and Compliance director of Lenovo Brazil during the plenary session “Technology Transfer in the context of Innovation Incentives”, at the ABPI Congress. “Our challenge is to take foreign investors away from the regulatory maze so that Brazil may in fact have an environment that is conducive to the spontaneous flourishing of innovation”, he added.

As an example of how foreign investors see this complex scenario, the representative of Lenovo Brazil mentioned the recent extinction of fiscal benefits in Provisional Law 690/2015, which affected companies whose medium term planning was counting on the law's exemptions. However, Peviani is optimistic with the oncoming regulation of the Legal Frame-



work for Science, Technology and Innovation, which he considers will facilitate R&D partnering between public institutions, such as universities, and the private sector.

The Legal Framework for Science, Technology and Innovation was generally praised by all plenary speakers, as it will foster

incentives for technological innovation in the country in a near future. At the plenary head table were also present Sibelle de Andrade Silva, IP Coordinator of Embrapa, and Ana Teresa Ballve of Brasken, with Gabriel Leonardos of Kasznar Leonardos Propriedade Intelectual acting as mediator.

Different criteria in the registration of generic terms



Registration of generic terms depends on each country's legislation and very often on the legislators' interpretation. "We are adopting procedures that are more stringent in trade-names examination so that they become definitive", said Michele Coppeti of BPTO last Tuesday during the conference on "Exclusion of Generic Terms Protection

in Trademark registration" at the XXXVI ABPI Congress.

"There is no consensus on that subject", stated Maria del Pilar Troncoso, president of Asociación Interamericana de la Propiedad Intelectual - ASIPI. "In Latin America, each country has its own criteria to exclude a generic term". In Mexico, the local office considers that generic

terms can only be registered if they contain a distinctive element. In Costa Rica the trademark "Mojito" was rejected because it is a very popular local drink. In Colombia the patents office refused to register trademarks as "panetone" and "nachos" because they have become generic words.

In other countries, as in Bolivia, Ecuador and Chile, local legislations prevent registration based on "trademark genericization", which is when the product and the trademark become indistinguishable. In Ecuador and the Dominican Republic competition manufacturers of "Aspirina", the generic term for analgesics, filed for invalidation of the trademark protection but it was denied because Bayer, the product manufacturer, was able to prove that the tradename was part of their product line.

Arbitrage has become global

"Under the new law, arbitration is now global", said yesterday Nathalia Mazzonetto of Müller Mazzonetto, during the panel "Legislative Innovations and Practical Aspects of Mediation and Arbitrage use in Intellectual Property" in the XXXVI ABPI International Congress.

In 2015 there had already been some significant legislative changes and even the legal civil framework for mediation was established. Looking at the New Civil Code and the newly enacted Arbitrage and Mediation Law, speakers debated on the controversies and their impact on IP dispute solutions. Marc Lieberstein of Kilpatrick Townsend & Stockton LLP talked about the American experience in conflict resolution.

Daniela Monteiro Gabbay, professor of the São Paulo Law



School of Fundação Getúlio Vargas - FGV also participated in the panel, with Manoel J. Pereira

dos Santos, of Santos & Borges Barbosa Sociedade de Advogados acting as mediator.



Challenges ahead for Streaming

Streaming, where multimedia files (videos or music) are temporarily transferred to the end-users' device, either for free or not, with the delivery method chosen by the user, was the topic of the panel "Streaming – Copyrights Protection extended to the public execution of music works" during the XXXVI ABPI International Intellectual Property Congress held in São Paulo.

Henrique Fares Leite, Trademark Relationships Director for Latin America at Deezer, opened his talk with a timeline of the streaming market, beginning with the first platforms and closing with the current market success of Deezer and Spotify. He pointed out that streaming services follow a market logic. "In the physical logic, production and launching represent high costs and most of the income is generated during the 6 first months of sale, while in streaming the income is generated through time and investment budgets are low", said Fares Leite.

The streaming Market is facing a number of challenges. "The main challenge is that monthly subscriptions tend to grow and the market is far from reaching its full potential, not only in Brazil but in the world as well, and the business model is relatively new. The bigger challenge is to increase income throughout the chain. This model currently generates little money, pays a great number of recorders and therefore for most artists and authors the financial compensation seems to be too small", stated Paulo Rosa, President of Associação Brasileira dos Produtores de Disco (Brazilian Association of Record Producers). Rosa explained that streaming services are highly dependent on the increase of subscribers so that remuneration is better perceived. Almost 90% of income mix derives from advertising and this share still needs to be increased.

Deezer believes the challenge will always lie on competitiveness. The competition is against

illegal or "semi-legal" contents available on Internet and other models that market internet content. "In Brazil, particularly, there are two main points to consider: smartphones penetration, which is the primary device for our service format, and credit cards penetration, which is the recurrent payment model. The latter is not a widely accepted model as a large part of the population does not use credit cards to pay for this kind of services although music consumption is quite strong", indicated Fares Leite. He went on to say that there are barriers to charging for the service, whether of technological nature or unfair competition.

With participation of Glória Braga, Executive Superintendent of ECAD (copyrights office) and moderated by Marcelo Goyanes of Murta Goyanes Advogados the panel also showed updated information regarding the different understandings and courts ruling on the subject.

Changes in the law of Plant Varieties are controversial

On September 13, 2016 the National Congress will vote on the proposed changes in Law for Plant Varieties protection (draft 827/2015), that will introduce significant changes in current legislation (Law 9.456/97) and may have considerable impact on the sector. This issue was debated yesterday during the XXXVI ABPI International Congress panel on "Legislation Proposals to Change the Law of Plant Varieties" integrated by Ivo Carraro, President of Associação Brasileira do Obtentores Vegetais (BRASPOV), Almir Dalpasquale, of Dalpasquale Agro, Eduardo Andretto, Legal Director of Fibria, and moderated by Gabriel Di Blasi of Di Blasi, Parente & Associados.



The project text is quite polemic and has been raising debates since it was first presented by congressman Dilceu Sperafico (PP/PR) in March 2015. Under the current legislation, farmers can buy the seeds (germplasm), plant them and save some for

the next crop without limitation of years or land size, a provision the new Draft 827/2015 wants to change. Currently nearly 35% of seeds are saved from one crop to the next so farmers do not have to pay for the germplasm used in the crops.

3D printing copyrights



“Not only 3D printing digitalization brings more power to file distribution but it also involves intellectual property copyright violation issues, a problem that Internet has been facing for years”, said researcher Bruna Castanheira de Freitas of Fundação Getúlio Vargas, during the debate on the issue of design pro-

tection as 3D printing becomes increasingly popular. “With 3D printers, the physical and digital frontier is disappearing”, added the researcher during the ABPI XXXVI International Congress. She was part of a panel next to Jan Bernd Nordermann of Boehmert Office, and Michael Jacobs of Crowell & Moring LP, moder-

ated by counsellor Fabiano do Bem da Rocha of Kasznar Leonardos Propriedade Intelectual.

According to Bruna Castanheira, on these first moments of 3D printing popularization the copyright issues are rather simple. Take for instance copies of sculptures, games and designs. These do not involve patents or industrial design, but that will inevitably change in the near future. “3d printing will bring enormous challenges, starting with content”, she said. According to Bem da Rocha, that is what happened in the records industry when MP3 came about.

Probably almost everything can and will be printed in the future. In the US, printers already make luxury cars and in Amsterdam even a bridge was printed. “With a simple STL file, myriads of objects will be replicated by 3D printers and they can be modified, mass produced and marketed”, added FGV researcher.

Compliance is cost saving

“Many Brazilian companies have yet to understand that implementing a compliance policy means costs saving, and not added operational costs”, said Daniel Sibille, Latin America Compliance Director at Oracle, during the panel on “Compliance Management: Avoiding Intangible Assets Deviation” in the XXXVI ABPI Congress.

According to Sibille, compliance “helps companies to become a business partner and also may prevent investigation and accountability on fraud and corruption cases”, which would inevitably lead to higher costs. Implementing a department to check and control the companies’ actions and practices is very worthwhile.

Still on the subject of costs,



Sibille points out the possible losses for a company that does not have protection. “The loss could be as high as 2.9% of market value when a company is investigated on compliance issues”.

In cases of accounting frauds, Sibille said that a company may suffer as much as 55% loss in market value - which could

amount to millions, depending on the company size.

The debate had the participation of Marli Elizabeth Ritter, Director of Technology Transfer Office at PUC-RS and Josie Jardim, Legal and Compliance Director at GE America Latina, and the moderator was Jacques Labrunie of Gusmão & Labrunie Propriedade Intelectual.

Biosimilar does not mean generic



Unlike generic drugs, patenting of biosimilars – biologic medical products that do not allow identical copies replication – requires specific regulatory conditions. That was the experts' conclusion at the panel "Biosimilars- Characteristics and Patent-

ability" held last Tuesday during the XXXVI ABPI International Congress. "Any variation in the manufacturing process, which is inherent to this kind of products, implies product identity variation", observed Valdir Pinto, an Independent Consultant in phar-

maceutical medicine.

To approve a biosimilar, explained Pinto, a series of evidences are required, including an extensive file on the manufacturing process. "This process is crucial and has to be quite detailed, and it is also necessary to conduct animal and security pre-clinical studies", he added. On the other hand, for the approval of generics it is sufficient to have active ingredients analysis and bioavailability studies.

Morton Scheinberg, of Hospital Israelita Albert Einstein and responsible for the clinical research group was also part of the panel, that was moderated by Gustavo de Freitas Moraes of Dannemann Siemsen.

Geographical Indication needs new laws



Thye need to change Geographical Indication law to adapt it to present time was a consensus among participants in the debate "Trademarks vs Geographical Indication and related aspects", moderated by José Mauro Decossau Machado, of Pinheiro Neto Advogados, with the participation of Carlos Lima, Director of Instituto Brasileiro

da Cachaça – IBRAC; Karlo Fonseca Tinoco of Bhering Advogados and Kelly Lisandra Bruch of Instituto Brasileiro do Vinho – IBRAVIN.

Kelly Lisandra advocated that Geographical Indications, now under the hat of Industrial Property, needs to have a specific law, as is the case in European countries. This would prevent

many problems, like what happened with Salinas eau de vie, from the North of Minas Gerais, in the Jequitinhonha valley. The region was granted BPTO registration, but that trademark had been used by the manufacturer for years. "Brazilian legislation does not reflect the actual GI in Brazil and has to be updated", said IBRAC director.

Civil Rights Framework for the Internet call for more stringent copyright protection



The incipient copyrights protection was a recurrent topic during yesterday debates on the civil rights framework for the internet, during the XXXVI ABPI Intellectual Property Congress. "The current civil rights framework places copyrights on a subordinate standing", said coun-

sellor Marcos Alberto Sant'Anna Bitelli of Bitelli Advogados, participating on the panel with Benny Spiewak, of Zancaner, Costa, Bastos e Spiewak Advogados, and Walter Ceneviva of Grupo Bandeirantes de Comunicação, moderated by Ricardo Castanheira, executive officer of Mo-

tion Picture Association Latin America.

Criticism to the Civil Right Framework that came into force in May 2014 can be centered on the voting of the Draft 5204/2016, presented by the Congress Inquest Committee (CPI) that was to investigate cyber crimes. The draft calls for the suppression of content that infringes any right, even copyrights, posted on host sites abroad. The object was to deny Brazilian ISPs, under Brazilian jurisdiction, traffic to destinations considered to be illegal. This kind of blocking happens in the UK, Australia, Spain, France, South Korea, Belgium, Denmark, Germany, Sweden, the Netherlands and Italy, among many others.

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