



## A Congress that left us wishing for more

► They were four intense days. Filled with talks, debates, and lots of networking. The largest of its kind in Latin America, the XXX-

IX ABPI International Congress on Intellectual Property opened with a pre-event on Saturday, 24, and closed on Tuesday, 27 with a gathering of the best known specialists in Intellectual Property. "The final balance was extremely positive: relevant themes, record audiences and many foreign visitors - among which a 10-member delegation of Chinese IP

professionals". That was the assessment of ABPI President Luiz Edgard Montauray Pimenta. "The topics generated so much interest that we were not able to answer all questions - which left us wishing for more sessions".

The opening was made by economist Ricardo Amorim, and the inaugural address by Minister Luiz Fux, Vice-President of the Supreme Federal Court. With over 700 attendants and 130 foreign visitors coming from South America, Asia, Europe and the USA, debates on trademarks, patents, industrial design and copyrights tackled contemporary issues linked to the globalized market. Topics included artificial intelligence, games, the Madrid Protocol, medicinal use of *Cannabis sativa*, among others.

In the workshops on good business practices, experts talked about Data Protection General Law, compliance and negotiation techniques. Pre-event roundtables, organized by 12 ABPI Study Committees, had a record attendance and registered heated debates on the most current topics related to Industrial Property.

Now all we have to do is wait for the next ABPI Congress, to be held on August 22 thru 24, in Foz do Iguaçu, state of Paraná ◀◀

## Trademarks depletion and congestion date

► Brands depletion and congestion dates is a topic that has been little studied, but it is coming up often in trademark registrations. This is happening in many countries and has a strong interference in companies' routine, especially at the beginning stage of choosing distinctive characteristics and signals. To talk about "Depletion and trademarks effective proof of use: what has changed?", ABPI Congress invited Eryck Castillo Orive, partner of Uthoff, Jeffrey A. Kobulnick, partner of Brutzkus Gubner, André Luis Balloussier

Ancora da Luz, director of Trademark, Industrial Design and Geographical Indication from INPI, and Ricardo Vieira de Mello from Montauray Pimenta, Machado & Vieira de Mello to act as moderator.

Ricardo Vieira de Mello considers that a fundamental discussion panel, because the extinction of a trademark right is as serious as granting one. "What we have seen around the world is a congestion of trademarks. Many are granted and not used. Because of that, third parties seeking very similar or identical trademarks are harmed. The time has come to discuss how to extinguish such rights without infringing the rules." ◀◀



## A backlog stands in the way

▶ To discuss the investment cycle in innovation and intellectual property for pesticides in agribusiness, ABPI Congress held a panel on protection of confidential data in regulatory processes. The panel had the participation of Dr. Javier Fernandez, legal consultant and Director of Regulatory Affairs at CropLife Latin America, Felipe Teixeira, legal director of Syngenta, Roberto Sant'Anna from ANDE, and moderation of Ricardo Nunes from Daniel Advogados.

The panel started by showing the importance of agribusiness for Brazil. It is the

world's first coffee, sugar cane and orange producer and exporter. But to develop further, this industry needs many investments in innovation and technology, the patents for which are often pending in the applications backlog and in Anvisa's list for approval - as well as in the Ministries of Agriculture, Health and the Environment. "We have 29 active ingredients still under analysis", explained Sant'Anna. The waiting list includes precisely the least harmful ones that would be much better tools to use in our products - but they do not reach the market due to the delays in

Anvisa", says he. He reminded that the year began with 31 products in the approval list. Two have been approved and 3 will be by the end of the year. This is already a great progress, as compared to 2018, when only one product was approved".

According to Felipe Teixeira, it is important to note that the cycle time for a technology, from generation to marketing, may take up to 18 months. "And that allows the industry barely two years for patent exploration - which is absurd, considering the high cost involved in product development" ◀◀



## The world of patents is getting ready for new technologies

▶ All markets are constantly seeking innovation, agility competitiveness and new technologies are the means to get. With patents it could be no different. In ABPI ABPI Congress panel, representatives of INPI, USPTO and EPO showed how they are dealing with the issue of innovation.

Liane Lage from INPI made the opening remarks talking about the challenges faced by INPI to find answers to issues raised by new technologies. "We must optimize our examination processes to deal with the growing amount of information and complexities of new technologies like biotech and nanotech, artificial intelligence and games. I was asking myself yesterday, 'are we prepared for the issues of games?'".

INPI has been working examiners training and process automation. "We have a pilot project for outsourcing searches, and we have some partnerships to channel knowledge to our examiners. We are not standing still - although we lack the financial resources - but as far as we can and with the agree-

ments made, I am sure that in two years' time we will be up to the mark", said Lage.

Gabriel Leonardos from Kasznar Leonardos Propriedade Intelectual, the panel moderator, added that "it is especially comforting for us all to see how INPI is thinking ahead and getting the tools to face these new challenges".

Laura Hammel from USPTO reminded that the Institute has over 12,000 people working with them, 8,000 of which are patent examiners. "It is impossible not to take AI into account and we have several task forces on working on that. One of these organized the conference "Artificial Intelligence: Intellectual Property Policy Considerations" to discuss the issue with all markets. We also have tools to help examiners in the preliminary steps of new technologies patents examinations and we work with the IP5", she stated.

Nic Jones from CIPA - Latin America Working Group Lead, considers the ABPI an excellent venue to broach such important issues. According to him, the number of patent applications for products and solutions regarding this '4th. Industrial Revolution' has been steadily increasing. It went up from 900 in 2011 to 4,000 in 2017, "which shows how updated we are in terms of new technologies", he concluded ◀◀

## Canadian experience in cannabis use regulation

▶ The challenges faced by Canada to establish criteria for protection of *Cannabis* spp. cultivation were very likely the same Brazil will have to face", said Agronomist Eduardo Fonseca from Moffat & Co., an office that operates in Brazil and Canada. Brazilian-born, residing in Ontario, Fonseca closely followed the Canadian experience in intellectual protection. The challenges include the definition of specific plant descriptors and the lack of varieties' references. In Canada, the criteria have not yet been fully established to evaluate DHE cultivars.

This was theme of the Congress pre-event held on Saturday, 24, "Reflections on the challenges of *Cannabis* cultivars protection: Canada experience", in a roundtable that had the participation of Maria Isabel Coelho de Castro Bingemer from Dannemann, Siemsen, Bigler & Ipanema Moreira, Priscila Mayumi Kashiwabara from Kasznar Leonardos Propriedade Intelectual and Camila Garcindo Dayrell Garrote from Demarest Advogados. According to Fonseca, since the legalization of *Cannabis* for medical use, in 2001, Canada has been making adjustment to the protection regulation.

In Brazil, ANVISA issued 2 Public Consultations in the Diário Oficial: one is about technical and administrative requirements for the cultivation of *Cannabis sativa* exclusively for medicinal and scientific use, and the other on specific procedures for registration and monitoring medications based on *Cannabis* spp., its derivatives and scientific analogs ◀◀

## Shall we learn how to negotiate?

▶ To turn the last Congress panels into a more practical activity, ABPI created the Business Best Practices Workshops. The workshop on "Negotiation Techniques" was chaired by Rodrigo Lang from BBI - Business Behavior Institute, that works with behavioral competences.

In his presentation, moderated by Marcello do Nascimento from David do Nascimento Advogados, Rodrigo set up a role play with 4 volunteers from the audience to show the main negotiation techniques. The dynamics proved what Lang already knew: that we Brazilians are strongly resistant to put forward proposals - and when we do, they are not to the point. Words like "...about such and such figures", "around..." and similar expressions make us lose negotiation power.

"There are two ways of negotiating: one is bargaining, which is instinctive, not technical, and disregards the other's interests; and the other is based on principle, whereby both parties may end up in a better position and may be sure that this is a more permanent scenario, as no one is willing to work with unstable contracts". He reminded that when you bargain in a negotiation, you will always reach a point where you lose control of the situation - a point also known as "the death spiral". From that point on, you start acting by instinct. The problem with that kind of negotiation is that it is pleasurable, he warned.

Lang recommends setting up negotiation teams, as the Japanese do, and have perfectly tuned teams. "I know no high-performance team that is not specialized and does not know exactly what they are doing", he said. It should operate much like the large teams involved in high impact

problems that affect society, as Swat and the Police Special Operations Squadron. "In fact, that is where I heard the statement - that may seem silly but makes all the difference: 'the obvious has to be pointed out'".

The ideal negotiation team has 3 people. The leader, who guards the strategy. He is the person who puts forward a proposal or exchanges information, makes concessions or expresses an opinion. Next to the leader sits the person who synthesizes the issue, asks questions, clarifies, supplies the leader with data, gains time, cools down spirits and constantly sums up the conversation. And there is the observer. He is silent most of the time, just observing and analyzing the other party's words and body language. He is usually the most experienced, able to look at the situation as a whole and understand how the pieces fit in the game ◀◀

## Partying, joy and networking

▶ As happens in every edition, ABPI Congress was not limited to technical presentations and learning. During breaks, going from one session to the next, during breakfast or lunch, there was always time for socializing and networking.

On Monday evening, during the party offered by associated offices, business talk was not allowed. With Johnny's Band music, congress participants danced, had drinks and finger food. Joy was in the air ◀◀





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