

ARGENTINA

MEMORANDUM OF UNDERSTANDING ON THE PATENT PROSECUTION HIGHWAY PILOT PROGRAM FOR INDUSTRIAL PROPERTY OFFICES THAT ARE MEMBERS OF THE PROSUR-PROSUL INDUSTRIAL PROPERTY COOPERATION SYSTEM

By virtue of this document, the National Institute of Industrial Property (INPI) of Argentina, the National Institute of Industrial Property (INPI) of the Federative Republic of Brazil, the National Institute of Industrial Property (INAPI) of the Republic of Chile, the Superintendence of Industry and Trade (SIC) of the Republic of Colombia, the Ecuadorian Institute of Intellectual Property (IEPI), the National Directorate of Intellectual Property (DINAPI) of the Republic of Paraguay, the National Institute for the Defense of Competition and Intellectual Property Protection (INDECOPI) of the Republic of Peru, and the National Directorate of Industrial Property (NCPA) of the Republic of Uruguay, hereinafter referred to as the "Participants";

RECOGNIZING the importance of strengthening cooperation among participating States in the field of intellectual property;

COGNIZANT that protecting inventions through patent systems is fundamental to strengthening the economy of the region in which their various States are located;

CONSIDERING that economic globalization has led to the processing of an ever-growing number of patent applications;

CONVINCED that conducting rapid, economical and high-quality patent examinations will increase the profits that accrue to both patent applicants and the industrial property authorities;

DESIRIOUS of promoting cooperation between the intellectual property offices of participating States;

Have agreed as follows:

1. Objective

- 1.1. Participants intend to initiate a Patent Prosecution Highway (PPH) Pilot Program (PPH), within six months following the signing of this Memorandum of Understanding (MOU), to expedite patent applications (including Patent Cooperation Treaty (PCT) applications at the national level) filed in participating States.
- 1.2. Participants also intend to extend the Patent Prosecution Highway (PPH) Pilot Program referred to in paragraph 1.1 above to utility model applications filed in countries that conduct patent examinations.

2. Implementation

- 2.1. The pilot program will be based on the Mottainai principle, which requires that if the Office of Earlier Examination (OEE) determines that an application is patentable, the Office of Later Examination (OLE) shall ensure that the applicant is afforded accelerated examination provided that, in addition to the requirements set out in guidelines prepared by the Participants:
 - (a) there is sufficient consistency in the claims set out in both applications; and
 - (b) the search and examination results of the OEE are made available to the OLE.
- 2.2. Similarly, under the pilot program, international PCT work products (WO/ISA and WO, IPRP, IPER/IPEA) developed by the National Institute of Industrial Property in Brazil and the National Institute of Industrial Property in Chile shall be considered as OEE search and examination results.

3. Preparation of guidelines.

Prior to the commencement of the PPH Pilot Program. Participants will prepare operational guidelines for the Pilot Program, defining the conditions, procedures and requirements referred to in paragraph 2.1.

4. Evaluation and monitoring

- 4.1. After commencement of the PPH Pilot Program, Participants will do everything possible to assess and share information annually on its implementation status.
- 4.2. Participants may consider modifying the conditions, procedures or requirements based on the results of such assessment.
- 4.3. Should the conditions, procedure or requirements be modified, the guidelines shall be amended accordingly and the amendments shall be published on the web site of every Participant.

5. Consultations

Participants may be consulted at any time to address any matters related to the implementation or interpretation of this MOU.

6. Duration

- 6.1. The PPH Pilot Program will last for three years and may be extended for an additional one year, by written agreement of the Participants.
- 6.2. Participants may assess the results of the PPH pilot program to determine whether it is being fully implemented and how it should finally be implemented after the trial period.

7. Amendments

- 7.1 This MOU may be amended at any time by written consent of the Participants, specifying the date on which such amendments will become effective.

8. Withdrawal

- 8.1. Any Participant may withdraw from this MOU, after giving three months' prior written notice to the other Participants.
- 8.2. Withdrawal from this MOU will not affect the conclusion of patent examination processes initiated during its validity.

9. Suspension

- 9.1. A Participant may suspend the application of this MOU if an excessive number of filed PPH applications impedes the smooth running of its intellectual property office. This safeguard mechanism may be triggered only if the decision to suspend the PPH system is formally communicated to the other Participants three months prior to such suspension.

10. Final provisions

- 10.1. No provision of this MOU may be interpreted as requiring Participants to engage in any activity prohibited by their respective national laws. Implementation of this MOU shall be subject to the provision of funds and staff by the Participants.
- 10.2. Participants hereby reaffirm their autonomy to apply their own applicable national laws and public policies.

Signed in the city of Rio de Janeiro, on May 6, 2016, in eight original copies in Portuguese and eight original copies in Spanish, all being equally authentic.

[Signature]

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President

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Statement by INPI of Brazil and IEPI of Ecuador

The National Institute of Industrial Property (INPI) of Brazil and the Ecuadorian Institute of Intellectual Property (IEPI) hereby express the following reservations with respect to this Memorandum of Understanding signed on May 6, 2016:

I. Policy reservations

The ratification and implementation of this MOU in Brazil and Ecuador is subject to approval by the ministries or secretariats to which these institutes are linked or attached.

II. Technical reservations

In the first year of the PROSUL PPH Pilot Program in Brazil and Ecuador, the following shall be eligible for participation in the program:

- I. Applications from patent families whose oldest patent application (filing or right of priority) was filed in a PROSUR country.
- II. Applications filed in any PROSUR member country acting as receiving organ under the PCT.

[Signature]

Dr. Luiz Otávio Pimentel

President
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Mr. Hernán Nuñez Rocha

Executive Director
Ecuadorian Institute of
Intellectual Property (IEPI)