



Intellectual Property in the Global Political and Economic Context

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## Innovation is the axis of economic growth

“Valorisation of the individual, liberal postures – hope to overcome the crisis rests with that”, said journalist William Waack yesterday during the inaugural address of the XXXVII ABPI International Congress on Intellectual Property. In his analysis of the country’s current situation, the journalist stressed the need to invest in innovation as the way out for the serious economic and political crisis the country is experiencing. “Knowledge generation is the differential that explains why some countries have gone far while others lag behind”, he said.

In her opening address to an audience that filled four rooms of the hotel’s Convention Center, ABPI President Maria Carmen de Souza Brito had already referred to this topic, albeit in a more assertive tone. “Innovation is the



central axis around which economic growth and countries development revolve”, she said.

As he took the floor, the President of INPI -Brazilian Institute of Intellectual Property- indicated that radical measures will be taken to decrease backlog, particularly the patents’ backlog. “The INPI has not responded fast enough to patent applications”, he admitted.

Next to Ms Maria Carmen Brito, Luiz Otávio Pimentel, Cândida Caffé, Laurent Thibon, Maria del Pilar Troncoso, Paulo Parente Marques Mendes, José Luis Londoño, Ricardo Pinho and Marcello do Nascimento were also sitting at the opening table of the Congress. ■

## The growing importance of pre-event Commissions meetings

At each consecutive ABPI Congress edition, the pre-event Association’s Commissions meetings are turning into an event in themselves with more and more participants registering to attend. In this year’s Congress, 14 panels have gathered experts from all areas of Industrial Property to debate relevant issues on Industrial Property in Brazil and abroad.

Judges, lawyers and INPI representatives discussed issues on trademarks, patents, biotechnology, copyright, technology transfer and franchising, intellectual property and sports.

The pre-event meeting of the Commission on Fight Against IP crimes discussed Internet Piracy challenges and solutions, a topic that attracted a large crowd. ABPI invited American expert Daniel Ackerman of the US Consulate and Attorney Guilherme Magalhães Martins to discuss this topic. Other panelists were Gustavo Cesário from FGV and lawyers Igor Donate de Araujo and Felipe Cornea Rocha.

The panel on Ruling 70/2017, which deals with annotation and registration of technology transfer contracts, also drew many participants. Panelists included Dirceu Teruya from INPI, Fabiano Barreto from CNI, and lawyers Cândida Caffé, Karina Müller and Flávia Rebello. ■

## Intellectual Property as an antidote to crisis

INTERVIEW: **Maria Carmem de Souza Brito**

*In a world where global value chains intersect more and more, the traditional International Congress on Intellectual Property in Rio de Janeiro will bring a wide debate on the effects of global political, economic and social changes on the Intellectual Property system. In this interview, the President of ABPI Ms. Souza Brito talks about the main themes to be discussed in Plenary Sessions and Panels of the Congress.*

**What can be expected from the debate on “Intellectual Property in the current international and political context”?**

**Maria Carmen de Souza Brito:** This is in fact the common thread that runs through all plenary and panel sessions of the Congress. The very first panel will discuss and analyze international political and economic changes, Brexit and the US withdrawal from TPP.

**How does the current political and economic instability impact on innovation in Brazil?**

**MCSB:** Naturally, we have seen national and foreign investments shrink but the main concern remains political instability. The current situation is harming our economy. INPI officers' forecast is that the average number of 33,000 patent applications a year will decrease to 27,000 by the end of 2017. But one should bear in mind that in the face of adversity Intellectual Property remains a powerful antidote to companies - and this will be clearly felt once the crisis is over. It is like making an insurance for the future.



**Brazilian standing in the global innovation index is not among the top positions....**

**MCSB:** We are well behind in terms of patents, but paradoxically we rank quite well in scientific papers publication, especially in the agricultural and biotechnology areas. According to the list of scientific publications published in *Scimago & Country Journal Rank*, Brazil ranks first in Latin America for papers published between 1996-2015 and 15th in the global ranking.

**Do companies know too little about the patents system?**

**MCSB:** There is very little knowledge about the IP system. Cases of companies - even patent holders - that do not make the best of their patent portfolio are not just a few. And that portfolio might be their strongest asset. By the way, the Congress will host a scientific panel on IP portfolio management.

**How do you assess the services currently provided by INPI?**

**MCSB:** Undoubtedly, INPI has taken administrative measures to improve the services provided to IP users and adopted practices to reduce backlog in patent and trademarks procedures. However, hiring new examiners, for instance, depends on federal government approval and the ritual is extremely bureaucratic and morose. As in other government bodies, INPI's budget was cut by 40%. This is still subject to review, since cuts impact directly on innovation and the capacity of economic recovery. INPI should at least have some autonomy on the application of its own resources.

**How will the Congress reflect the concern about disseminating IP to future generations?**

**MCSB:** ABPI is implementing a program for young lawyers and technical area experts, which was started under Elisabeth Fekete's administration and implemented under my presidency. The program, “jovens @associados” (young associates) intends to acquaint IP students and novice lawyers with the daily activities of the Associations. Also, during the Congress there will be a panel on IP education, to discuss initiatives to disseminate knowledge about and awareness of IP importance.

**Arbitration and mediation of conflicts involving intellectual property assets is another topic to be discussed during a specific panel of the Congress. Why has this topic become so important?**

**MCSB:** Simply because extra-judicial mechanisms are faster, less expensive and much more feasible for all parties involved. Court proceedings are slower and Courts are overflowing with cases. In five years, 212 domain name cases were filed with CASD-ND, ABPI's domain names chamber. Currently, in the sphere of SACI-Adm the chamber is the main alternative used by parties in conflict resolution cases. ■

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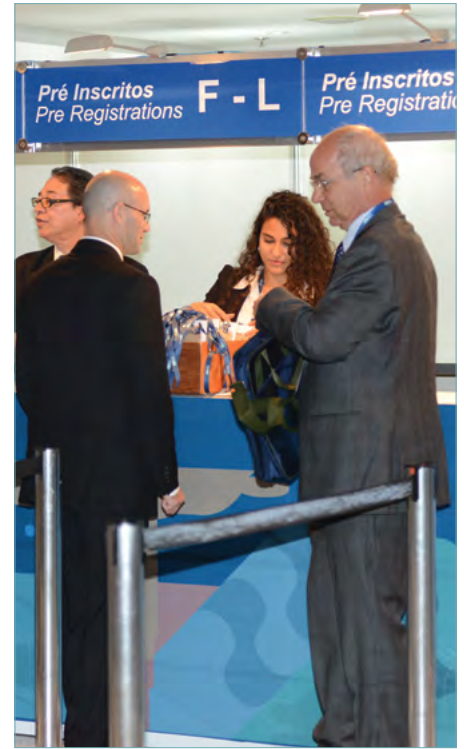
# ABPI Chamber jump-starts the disputes over Internet domain names

Since the beginning of its operations 5 years ago, ABPI's domain name disputes resolution chamber (ABPI CASD-ND) stands as the main chamber for parties that seek to resolve conflicts in the sphere of the Internet Conflicts Administration System (SACI-Adm). According to data recently published by Nic.br, as of May 2017, 122 disputes had been resolved as compared to 53 resolved by WIPO and 3 by the Canada-Brazil Chamber of Commerce (CCBC). Not only this is the least expensive procedure amongst accredited chambers, but also ABPI's CASD-ND has been very fast in conflict resolution, with procedures averaging 63 days.

The topic will be discussed this Monday, 21, on the first day of the event, in Panel V – “Domain Name – conflict resolution under the Internet Conflict Resolution Administrative System (SACI), Mediation or Arbitration.” **Panelists include NIC.br legal director, Kelli Angelini, Experts Tatiana Campello, from Demarest Advogados, and Marcelo Dias Gonçalves Vilela, from Portugal Vilela Almeida Behrens Direito de Negócios. The Director of CASD-ND, Maria Cristina Cortez, will act as moderator.**

With over 4 million domains registered until July this year, the virtual environment has proven potentially vulnerable to domain name conflicts. Court proceedings, which are lengthier and costlier, and may take up to 5 years to be resolved, are not a feasible alternative. The evidence is in the fact that of the 480 names submitted to SACI, only 9 ended up in court. “This shows the efficacy of the system to resolve domain name disputes”, says Cristina Cortez.

The more frequent disputes concern *cybersquatters* – undue appropriation of well-know or similarly spelled brand names; and *typosquatting*, which are registrations with minor spelling mistakes. However, not always registration of a domain name similar to an existing brand name or logo is submitted in bad faith. CASD-ND director said there is a growing number of more complex cases, where both parties may be legitimate and bad faith is not always obvious. On a recent dispute involving two merchants selling bike wear, CASD-ND expert ruled on keeping the domain name with the current holder, since both companies operate in the same business and had the right to use the words, considering that it describes a generic and common activity. ■



## Foreign visitors to the Congress

More than 100 foreign visitors have already registered at the ABPI XXXVII International Congress on Intellectual Property.

Coming from Europe, South and Central America, Asia and the United States, company officers and representatives of Intellectual Property offices and bureaus from 20 countries confirm the importance of Rio de Janeiro as a destination for large events, reaffirming the position of ABPI Congress among the top events of its kind in Latin America.

The theme “Intellectual Property in the current political and economic context” will be debated in panels of experts, businessmen, justices, consultants, lawyers and government authorities, and directors of national and international institutions such as AIPLA – American Intellectual Property Association AND ASIP - Asociación Interamericana de la Propiedad Intelectual.

Several private research centers, and national and international companies like Motion Pictures Latin America, Braskem, Microsoft, Fiat, Monsanto and Syngenta, to name a few, will also be represented at the Congress. ■



Domain Name chamber trains experts during pre-event meeting at the XXXVII Congress

## The New CPC and Intellectual Property

INTERVIEW: **Marcelo Mazzola**  
Dannemann Siemsen law firm

*In force since March 18, 2016, the new Code of Civil Procedure (CPC/15) has introduced profound changes and innovations that will directly impact industrial property. Lawyer Marcelo Mazzola, partner at Dannemann law firm and master in procedural law by UERJ, talks about some of the issues that will be discussed in the panel "The new Code of Civil Procedure – an evaluation of controversial issues that will directly touch upon IP themes after its implementation", where he will act as moderator.*

### What are the advantages of procedural conventions in industrial property lawsuits?

**Marcelo Mazzola:** In the field of Industrial Property – a complex theme with broad economic implications – introduction of a general negotiation clause (article 190 of the CPC) allows to tailor future litigations. At the time the contract is executed, for instance,

parties may agree to the chosen forum, the alternative conflict resolution mechanism (mediation, conciliation and arbitration), the choice of the expert, splitting procedural expenses, waive calling technical assistants, and the maximum number of opinions on a given subject, among other. Procedural conventions may also be agreed upon during the suit, allowing parties to stipulate changes in procedure to adjust for specificities of the cause, and agree on their respective onus, powers, facultative and procedural obligations.

### What is new in the field of interim tutelage?

**MM:** Under "interim tutelage" the CPC/15 has unified all anticipated and precautionary tutelage. The requirements remain the same, namely, the probability of right and the danger of damage and risk to the useful outcome of the process. The legislator also foresaw the possibility of granting tutelage based on evidence, which is independent from the danger of damage (art. 311). Another new addition is the possibility of oral argument

when a bill of review is filed against interim tutelage. This valorizes oral arguments, maximizes lawyers' work before the court and ensures participatory contradiction.

### What are the benefits of anticipating evidence on industrial property lawsuits?

**MM:** First, let it be clear that the new procedural law allows parties to present evidence in advance – provided there is real cause for concern about the impossibility of checking or verifying facts during the lawsuit; the evidence may help facilitate conflict resolution; the previous knowledge of facts may justify or prevent the case from being taken to court (art. 381). This change is positive for, depending on the provided evidence, litigations may be avoided and a consensual solution found between parties, preventing further onus and wearing work for all involved. On the other hand, since the evidence is not subject to merit judgement, the procedure will likely be concluded sooner. ■

## Exhibitors display IP SOLUTIONS

The first day of the Congress was also a day for networking. During the cocktail for exhibitors, participants were exchanging business cards, noting down telephone numbers and engaging in casual talk. The 19 stands displayed products and state of the art services specially developed for intellectual property needs.

This year's exhibition included stands from Brazilian and foreign Associations, which organize gatherings of the intellectual property segments from all around the world.

The following stands were in this year's exhibition: ABAPI; AIPLA; AIPPIU; ANPEI; ASIPI; ASP; CNI; CompuMark; Darts-IP; INPI; iTechLaw; LdSoft; LeadersLeague; LES Brasil; Marca Sul; Parker's da Educação; Qualcomm; Questers and Wolters Kluwer. ■



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