

## Is Patent Term Adjustment in Brazil Currently Possible?

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Ph.D. in Law from the Ludwig-Maximilians-Universität in Munich, having conducted her research on the implementation of the TRIPs Agreement in Brazil for the pharmaceutical industry at the Max Planck Institute for Innovation and Competition. She also served as a guest researcher at the Institute of Intellectual Property (Chizaiken) in Tokyo.

### Abstract

The provision in the Brazilian patent statute providing for a minimum patent term of 10 years as of its granting has been declared unconstitutional by the Brazilian Supreme Court.

Around 5678 patents have been affected with the decision's retroactive effects towards patents covering pharmaceutical products, processes and equipment, and materials "for use in healthcare".

In the decision, despite rendering the provision unconstitutional, all the Justices agreed that applicants and patentees had a loss due to the BRPTO's delays: between 2014 and 2018, most patents have taken more than 10 years in prosecution and, for areas like biotechnology, pharmaceuticals and telecommunications, the average was 14 years. However, the majority of Justices concluded that applying a general rule without considering the specific circumstances of each case violated the Federal Constitution..

Based on those groundings, over 50 lawsuits have been filed to date seeking time compensation for the BRPTO's delays in prosecuting the applications.

Concurrently, discussions in Congress continue, as Bill of Law #2,056/2022 seeks to provide for a patent term adjustment (PTA) mechanism to compensate for the BRPTO's delays.

The presentation seeks to provide an overview of the ongoing discussions in the country to compensate patentee's for losses caused by delays in patent examination.

