

### Brazil

In Brazil, the National Institute of Industrial Property (INPI Brazil) offers several types of fast-tracks for processes involving the protection of patents. Each of these fast-track options has its own fees and requires specific supporting documents to benefit from priority processing.

*Conditions & Fees:* On December 27, 2022, INPI Brazil published Ordinance No. 079.<sup>1</sup> which regulates the priority/fast-track processing of patent applications. Fast-track processing in Brazil only implies giving preference in the prosecution with respect to office actions. It does not change the examination procedure, and the quality standards for fast-track processed applications should be the same for any other patent applications.

The following fast-track options are made available to applicants by INPI Brazil:<sup>2</sup>

#### *Fast-track programs based on the type of applicant*

Title of the program	Fee (expressed in Brazilian reais)	Applicant	Supporting documents
Elderly applicant	Exempt from additional fees	A physical/natural person aged 60 or above	Official identification document
Handicapped applicant	Exempt from additional fees	A person presenting a physical or mental handicap	Report/certification from a doctor working for the public administration
Applicant with serious illness	Exempt from additional fees	A person presenting a serious illness	Report/certification from a doctor working for the public administration
Micro or small enterprise	R\$890,00 R\$356,00*	Applicant is an Individual Micro-Entrepreneur (MEI), Micro Enterprise (ME) or Small Enterprise (EPP)	Certificate issued by the Brazilian government indicating the classification of the enterprise
Science and technology institutions	R\$890,00 R\$356,00*	Applicant is a Scientific, Technological or Innovation Institution <sup>3</sup>	Certificate issued by the Brazilian government indicating the status of the institution
Startup applicant	R\$890,00 R\$356,00*	Applicant is a startup <sup>4</sup>	Certificate issued by the Brazilian government indicating the status of the applicant

\*with discount

#### *Fast-track programs based on a specific situation or condition*

Title of the program	Fee (expressed in Brazilian reais)	Situation/Condition	Supporting documents
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<sup>1</sup> The Ordinance is available at: <https://www.gov.br/inpi/pt-br/servicos/patentes/legislacao/legislacao/portaria-79-16-12-2022.pdf>.

<sup>2</sup> See INPI Brazil's Ordinance No. 079 cited above.

<sup>3</sup> As defined in paragraph V of Article 2 of Law No. 10,973 of December 2, 2004.

<sup>4</sup> As defined in Article 4 of Complementary Law No. 182/2021.

Release of public funding resources	R\$890,00 R\$356,00*	Applicant is requesting funding from Official National Credit Institutions or Development Agencies	Documents related to the request for funding <sup>5</sup>
Applicant claiming third-party infringement	R\$890,00 R\$356,00*	Request for priority processing made by applicant or patentee who has come upon evidence to the likelihood of the invention being used without authorization	Copy of document notifying the third party of alleged unauthorized use, which shall include a proof of receipt  Evidence of the alleged unauthorized use of the invention
Third party accused of infringement	R\$890,00 R\$356,00*	Request for priority processing made by a third party who has been accused by the applicant or patentee of unauthorized use of the invention	Evidence that the third party is being accused by the applicant or patentee;  Indication of a request for examination or for patent invalidation, demonstrating that the claimed invention is not patentable;  Clarification of any difference between the claimed invention and the subject matter under the third party's use <sup>6</sup>
Prior use	R\$890,00 R\$356,00*	Request for priority processing made by a third party claiming its prior user right	Evidence that the third party requester was exploiting all or part of the subject matter described in the patent application, prior to its filing or priority date;  Evidence that the patent application limits their right to continue the rightful exploitation of the invention;  Indication of a request for examination or for patent invalidation, demonstrating that the claimed invention is not patentable <sup>7</sup>
Public-funding-led technologies	R\$890,00 R\$356,00*	Application concerning an invention whose development was supported through public funding	The request for priority processing must be filed by the applicant containing the documents related to the receipt of public funding <sup>8</sup>

<sup>5</sup> Required documents specified in Article 15 of INPI Brazil's Ordinance No. 079 (contained in Industrial Property Magazine (RPI) No. 2712).

<sup>6</sup> Required documents further explained in Article 17 of INPI Brazil's Ordinance No. 079.

<sup>7</sup> Required documents further explained in Article 18 of INPI Brazil's Ordinance No. 079.

<sup>8</sup> Required documents specified in Article 19 of INPI Brazil's Ordinance No. 079.

Technology made available in the Brazilian market	R\$890,00 R\$356,00*	The invention has been licensed, offered for sale, imported or exported in the Brazilian market	Evidence that the technology is in the market (itself or imbibed)
Patent families first filed in Brazil	R\$890,00 R\$356,00*	The invention being claimed belongs to a patent family whose earliest application was filed in Brazil	Evidence that the patent family was first filed in Brazil
Request from the Brazilian Ministry of Health	Exempt from additional fees	Patent applications concerning pharmaceutical products and processes, equipment and/or materials for use in health-related fields, which have been assisted by the Brazilian Ministry of Health for being considered as strategic with regard to the Unified Health System (SUS)	Request for priority processing must be made by the Ministry of Health
Public interest or national emergency	Exempt from additional fees	Patent application covered by an act of the Federal Executive Power that declares an emergency of national or public interest	<i>Ex officio</i> <sup>9</sup>

\*with discount

#### *Fast-track programs based on the type of technology*

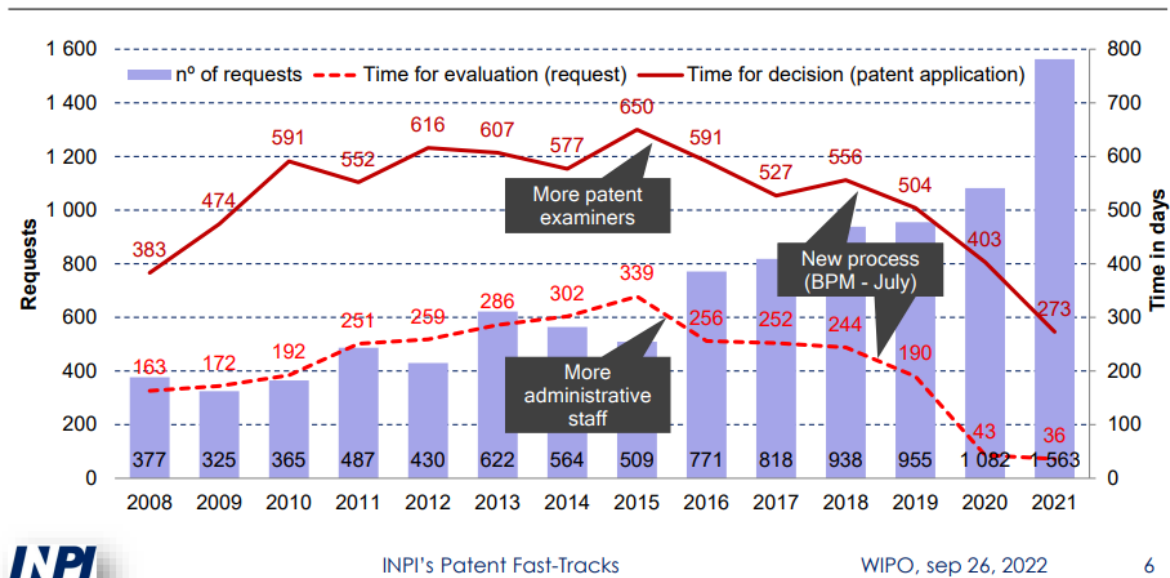
<b>Title of the program</b>	<b>Fee (expressed in Brazilian reales)</b>	<b>Type of technology</b>	<b>Supporting documents</b>
Green technology	R\$890,00 R\$356,00*	Invention related to green technology	Statement by the applicant explaining the relation to green technologies <sup>10</sup>
Health care technology (AIDS, Cancer, neglected or rare disease)	R\$890,00 R\$356,00*	Pharmaceutical products and processes, equipment and/or materials for the diagnosis, prophylaxis and/or treatment of Down Syndrome, Acquired Immunodeficiency Syndrome (AIDS), Cancer, rare or neglected diseases and public health emergencies of national importance	Statement made by the applicant, explaining the invention's relation to these diseases or conditions
COVID-19 care technology	R\$890,00 R\$356,00*	Technology that relates to COVID-19 care	Statement made by the applicant, explaining the invention's relation to COVID-19

\*with discount

<sup>9</sup> This fast-track program is further explained in Article 14 of INPI Brazil's Ordinance No. 079.

<sup>10</sup> Applicant must point to a specific item considered to be "green technology", within Annex II of INPI Brazil's Ordinance No. 079.

## Fast-track results



On December 27, 2022, INPI launched Phase IV of the PPH Program, governed by Ordinance No. 78<sup>12</sup>, of December 16, 2022, published in the Industrial Property Magazine (RPI) No. 2712. The main features of phase IV are as follows (Table 1):

**Table 1 – Phase IV of the PPH.**

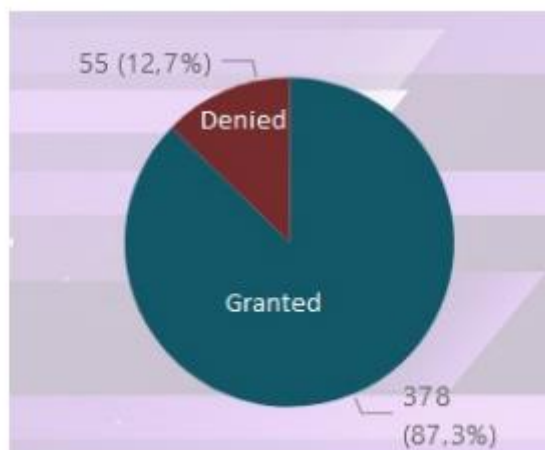
Phase IV (*)
Up to 800 total requests per year
Up to 250 requests per IPC Section per year
1 request per applicant per week
Fee refund in standard cases and for requirements that exceed the stipulated limits
No appeal is admitted in the event of refusing entry

(\*) - acceptance of positive opinion on patentability for inclusion of application in the PPH.

<sup>11</sup> Further information on statistical data can be found on INPI Brazil's webpage, available at: <https://www.gov.br/inpi/pt-br/servicos/patentes/tramite-prioritario/estatisticas-gerais>.

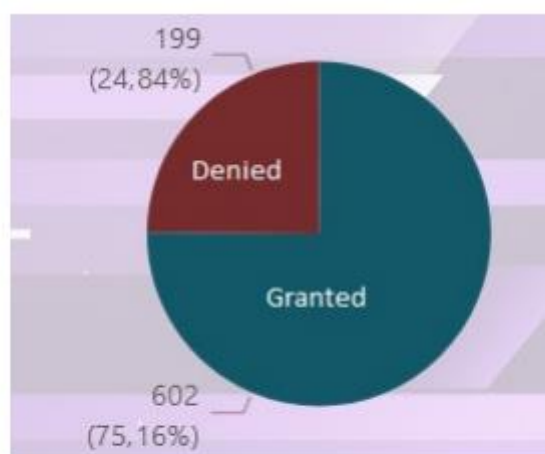
<sup>12</sup> The Ordinance is available at: <https://www.gov.br/inpi/pt-br/servicos/patentes/legislacao/legislacao/portaria-ndeg78-16-12-2022.pdf>.

In the context of the PPH, INPI signed two Memorandums of Understanding (MOUs) in 2023. The first was with the Finnish Patent and Registration Office (PRH) and the second with the Canadian Intellectual Property Office. Figure 2 shows details of the decision for the PPH modality in 2023.



**Figure 2 – Decision for the PPH modality in 2023.**

Finally, Figure 3 presents data relating to the decision for all priority types in 2023:



**Figure 3 – Decision for all modalities of priority in 2023.**