

Submission of Information by Third Parties

Brazil

In Brazil, from the publication of the patent application until the end of the examination, third parties may present documents and information to subsidize the substantive examination (Article 31 of Law No. 9,279 of May 14th, 1996).

Frequently, interested third parties present documents found in the state of the art and report based on a substantive analysis on patentability. The subsidies are not published, but are incorporated into the administrative process for eventual public consultation. The filing of subsidies is free of charge.

The documents and arguments presented by interested third parties are considered by INPI patent examiners during the application substantive examination. Examiners usually comment in their opinions on the relevance of third party observations, taking advantage of the content of the subsidies as appropriate.

The filing of third party observations should not be confused with the administrative opposition proceedings prior to the grant of the patent (so called pre-grant opposition), available in some foreign legislation. It should be clarified that the participation of third parties in the substantive examination proceeding is limited to the presentation of information. No opportunity is given to the third party to file a letter in response to the examiner report or to participate in the review procedure in second administrative instance, as is usually done in the patent pre-grant opposition procedures of other jurisdictions.

The great advantage of this system is that it is faster than the pre-grant opposition procedures, which should allow for the opening of deadlines for the manifestation of all the parties involved in the process. In addition, through this mechanism, it is possible for third parties to participate in patent applications examination, in a simple and free of charge manner.