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EFFECTIVENESS OF THE PATENT AND DESIGN ENFORCEMENT ADMINISTRATIVE SYSTEM: THE PERUVIAN EXPERIENCE

*Contribution prepared by Mr. Diego F. Ortega Sanabria, Technical Secretary of the Directorate of Inventions and New Technologies, National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPi), Lima, Peru**

ABSTRACT

This contribution describes the administrative system in Peru for enforcing patent and industrial design rights. Substantive patent and design legislation is harmonized within the Andean Community, but countries have flexibility to adopt their own procedural rules regarding enforcement, which Peru has done. Enforcement is centralized in the Directorate of Inventions and New Technologies, part of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPi), and supported by a specialized Commission that investigates alleged infringements, conducts inspections, gathers information, orders precautionary measures and the cessation of infringing conduct, and issues final decisions that are immediately enforceable. The Commission's performance is evaluated according to two key indicators: the timeliness of decision-making and soundness of its decisions, which is reflected in the ratio of decisions upheld to those overturned in the second administrative instance: between 2020 and 2024, 86 per cent of the Commission's decisions were upheld.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

I. CHARACTERISTICS OF THE PATENT AND DESIGN ENFORCEMENT SYSTEM IN PERU

1. The patent and industrial design legislation applicable in Peru is common to all member countries of the Andean Community. Individual countries, however, have considerable flexibility in establishing their own procedural rules on the enforcement of patent and design rights.
2. In Peru, the national authority in charge of granting patents and industrial design rights for inventions and utility models, is the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), through its Directorate of Inventions and New Technologies. The Directorate includes a Commission that rules on and sanctions the infringement of these rights. This system was adopted to leverage the Institute's technical capabilities as a specialized agency in patent and design matters.
3. The Commission has the power to initiate investigations, through which it can conduct inspections and gather information. More importantly, it may impose precautionary measures (described below), and order the definitive cessation of infringing conducts. The Commission's final measures may include the imposition of a fine and the removal from commercial channels of the infringing products. Once final, these measures are enforceable and, therefore, must be complied with immediately.

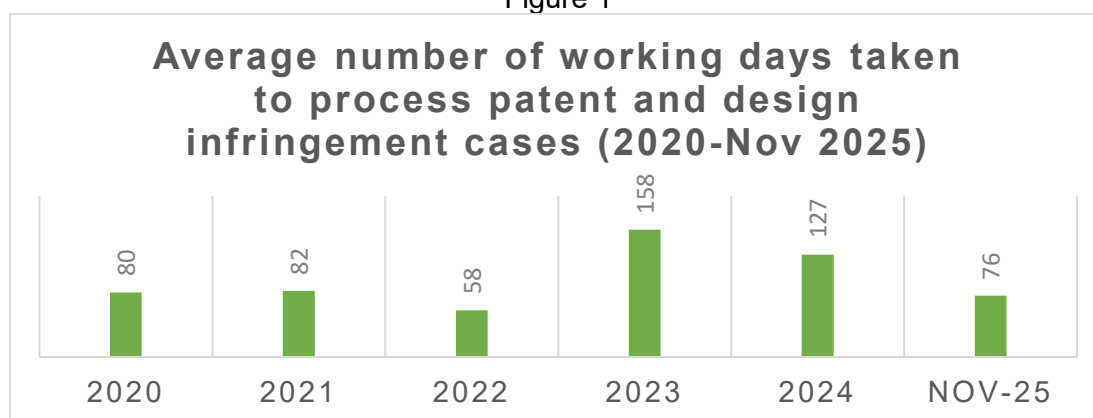
II. KEY PERFORMANCE INDICATORS OF THE COMMISSION'S WORK

4. To date, the Commission has achieved important milestones in terms of the speed of its processes and the soundness of its decisions.

A. TIMELINESS OF DECISION-MAKING

5. Under Article 24 of the [Legislative Decree No. 1075](#), which approves complementary provisions to Decision No. 486 of the Commission of the Andean Community, the maximum time allowed for resolving a legal action against infringement of patents and design rights is 180 working days (around 10 months). The Commission has met that obligation since its inception.
6. The Commission strives to decide all cases within the statutory time limits and, indeed, to resolve them in the shortest time possible, without prejudice to the parties' right to due process. Since 2020, the average processing time for such cases has always been less than the statutory limit (figure 1); between 2020 and 2022, the average was less than half of that limit, an achievement also repeated in 2025. In 2023 and 2024, the average case resolution time increased because of temporary operational constraints.

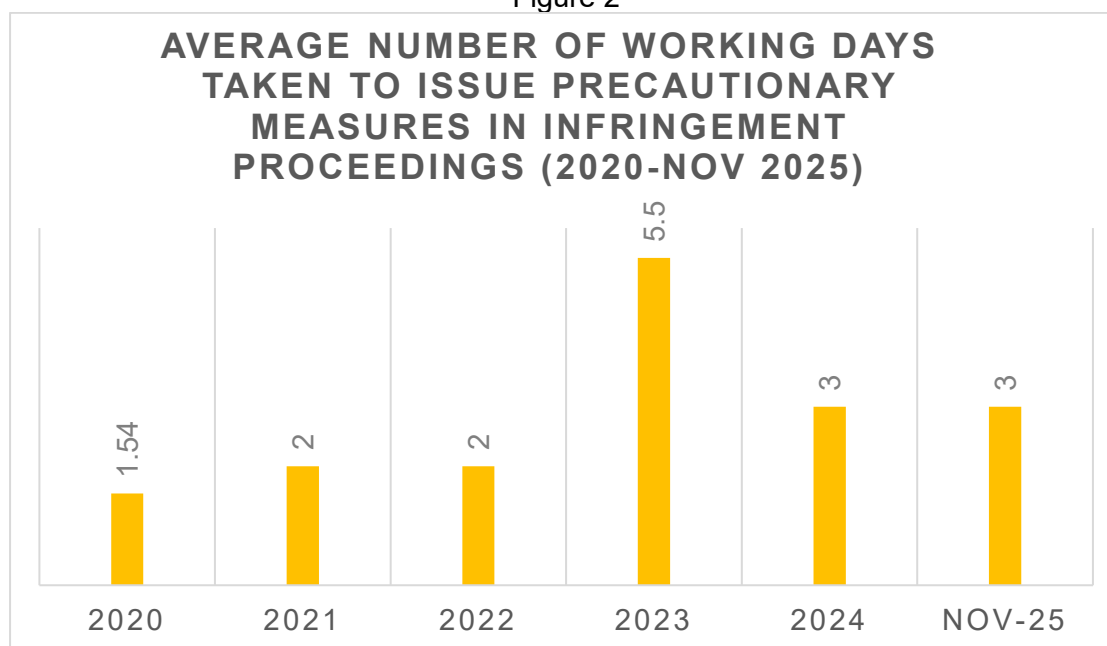
Figure 1



Source: Commission of the Directorate of Inventions and New Technologies.

7. To ensure the effectiveness of its final decisions, the Commission has the power to issue precautionary measures, including prohibitions on the sale, offering, use or import of the allegedly infringing goods. Those measures are adopted expeditiously and do not require the payment of any fee or the provision of any financial counter-guarantee. The average time for the adoption of precautionary measures since 2020 has always been less than 10 working days, and in most cases, equal to or less than three working days (figure 2).

Figure 2



Source: Commission of the Directorate of Inventions and New Technologies.

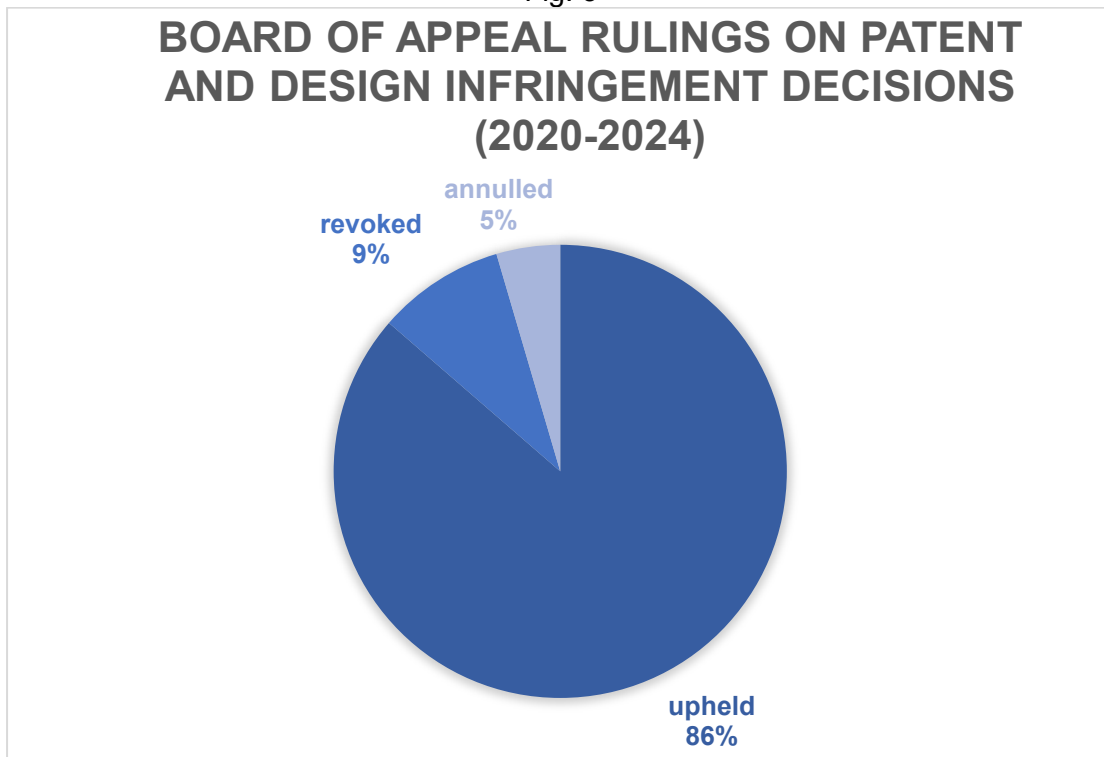
B. SOUNDNESS OF THE DECISIONS

8. Only the soundness and high technical quality of the Commission's decisions can generate credibility and legal certainty for its users. Its decisions result from a technical-legal process that draws on the experience of lawyers and patent/design examiners. Once the defendant responds to the grounds for the proceeding brought against him/her, the case is referred to a patent/design examiner to analyze whether the product in question falls within the scope of protection of the right. The examiner issues an opinion that is considered by the Commission to resolve the matter.

9. The Commission was the first Andean authority to adopt and develop the doctrine of equivalents to assess whether a patent has been infringed; therefore, the protection conferred by the right is not limited to the sole literal wording of the claims. Other important criteria have also been developed, such as "simultaneity of all elements" (in order to determine that an infringement has occurred, the asset in question must present all the elements defined by the claims, either literally or by equivalence) and "tacit waiver of the scope of protection" (even if a special embodiment is mentioned in the description, it will not be protected if the applicant did not include it in the claims).

10. One way to measure the soundness of the Commission's decisions is through the ratio of decisions upheld to those overturned in the second administrative instance by the Intellectual Property Board of Appeal of INDECOPI. Between 2020 and 2024, the Board upheld 86 per cent of the Commission's decisions, revoked 9 per cent and annulled 5 per cent (figure 3).

Fig. 3



Source: Commission of the Directorate of Inventions and New Technologies.

III. CONCLUSION

11. The mechanism for enforcing patents and design rights in Peru has proven an effective tool in the defense of those rights. The presentation at the eighteenth session of the World Intellectual Property Organization (WIPO) Advisory Committee on Enforcement (ACE) will include greater detail on the operation of the Commission and its results, so that the initiatives carried out by Peru might be replicated in other jurisdictions.

[End of contribution]