

Patent Accelerated Examination Routes

*Brazilian PTO (INPI),
patent backlog and
policy proposals*



1 BACKLOG

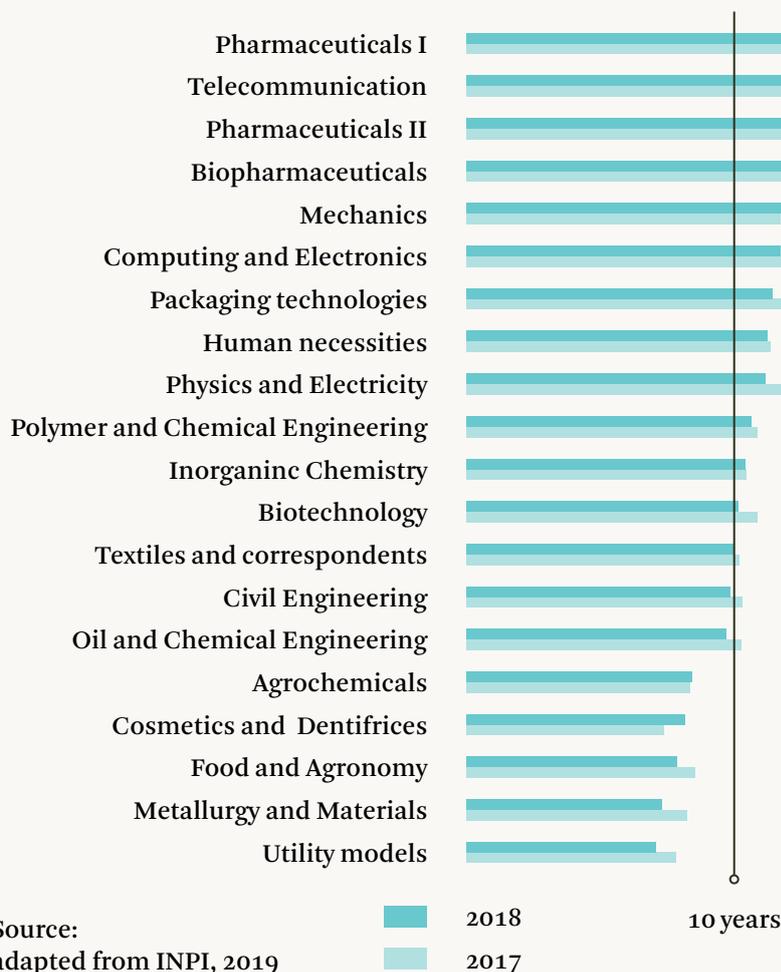
2 ROUTES

PATENT BACKLOG

ONE OF THE MOST relevant complaints the Brazilian government faces regarding innovation public policy (especially referring to Patents), is the huge backlog of applications pending for examination before the Brazilian Patent and Trademark Office (*Instituto Nacional da Propriedade Industrial*, hereinafter “INPI”) is of approximately 10 (ten) Years.

Although in theory a profitable federal agency, the sum of taxes received by the INPI do not revert to its own benefit. Instead, federal government allocates it elsewhere and the INPI is challenged with scarce human and technical resources and no self-management of its own budget.

**INPI TECHNICAL DECISION AVERAGE TIME (YEARS)
BY TECHNOLOGICAL AREA**



In view of those issues, the INPI management searched, through the years, to offer other options to foster innovation in Brazil, avoiding pushing away our country from the global patent protection map.

Among other policies, the INPI felt to be advantageous to have some routes for accelerated examination.

Those special routes, which we will see in more detail below, are not free of critique. On the one hand, some argue that by creating too many exceptions, the INPI is only delaying a much needed political definition or strategy to attack the backlog issue upfront. On the other hand, those are fair attempts, by the INPI, to make some selection of what is more urgent, either from a

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public interest point of view (such as the case of green technologies or public health), or simply to enhance competitiveness and protect those who are investing in innovation (i.e., patents under infringement).

Economic and political considerations aside, we find useful to anyone interested in the Brazilian patent system to have those routes summarized here, to be aware of them and to use them whenever strategically advisable. In some cases below, we have had the examination period shortened as much as to a total period of one (1) year, for instance.

WE HAVE CURRENTLY in Brazil 7 (seven) categories of accelerated examination, each one having specific requirements. Those categories are:

1. Traditional Accelerated Examination Routes (INPI Resolution n. 151/2015)

Traditional categories are: i) applicant with age equal or superior to 60 years; ii) Object of patent application is under infringement by third parties; iii) Patent grant is condition for applicant to receive financial resources; iv) Applicant is a person with physical, mental disability or a serious illness.

2. Green Technologies (INPI Resolution n. 175/2016)

Category destined to patent applications related to environmentally-friendly technologies and/or with a sustainable approach. The “Green Technologies” available for this examination route are listed in accordance with “IPC Green Inventory”, published by World Intellectual Property Organization (“WIPO”).

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3. Public Health
(INPI Resolutions n. 80/2013 and 217/2018)

Category destined to patent applications related to pharmaceutical products or processes, equipment and materials of public health interest (for example, a patent involving a process for preparation of vaccine for dengue disease)

4. Brazilian Priority
(INPI Resolution n. 212/2018)

Category destined to patent applications which are part of a **patent family** initiated in Brazil (Brazilian priority application) and its counterpart is being prosecuted, at least, in one foreign country.

5. Small Companies
(INPI Resolution n. 211/2018)

Category destined to patent applications in which at least one of the applicants is a “small company”, as defined by Brazilian Law.

6. Science and Technology Institutes (“STI”s or “ICT”s)
(INPI Resolution nº. 220/2018)

Category destined to patent applications in which, at least one of the applicants, is a “Science and Technology Institute”, as defined by Brazilian Law. Usually, Universities are classified as such.

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7.

Patent Prosecution Highway – “PPH” (several INPI Resolutions with foreign countries and organizations)

INPI Presidency is on an effort to celebrate a number of PPH Agreements with several countries around the world.

PPH agreements promote work-sharing and enable patent applicants to request accelerated processing in the national applications, where patent examiners can make use of the work products (such as examination report already performed and respective cited previous art) from the other Patent Office which agreement was celebrated.

The INPI already celebrated PPH agreements with: i) United States; ii) Japan; iii) *Sistema de Cooperação sobre Aspectos de Informação Operacional e Propriedade Industrial – “PROSUL”* (comprises 9 Latin American countries); iv) European Patent Office – “EPO”(comprises 38 European countries); v) China; vi) United Kingdom; and vii) Denmark.

In case you are interested in receiving additional information regarding any of the accelerated examination categories listed above, please feel free to contact us at patents@remer.com.br.

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