INTELLECTUAL PROPERTY BULLETIN

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INTELLECTUAL PROPERTY

ONE STOP SERVICE

JULY | 2020

BRAZIL

Recommendations due to Madrid Protocol implementation in Brazil

Brazil adhered to the Madrid System, in force as of October 2, 2019.

It is highly advisable to appoint attorneys to monitor pending cases or new trademark applications filed through the Madrid System since the Trademark Office (INPI) will not send all relevant communications to the World Intellectual Property Organization (WIPO). For instance, oppositions will only be published in the Intellectual Property Gazette and applicants could miss the opportunity to reply.

We have also noted some discrepancies or mistakes in the scope of coverage translation, once published by INPI and they may only be corrected if an attorney requests their correction.

Finally, according to local industrial property law, all foreign trademark or patent applicants and owners must have an attorney. Therefore, it is advisable to appoint an attorney to handle all cases and file the applicable powers of attorney.

CHILE

Chilean Ministry of Finance files a tax reduction initiative for purchase of intangible assets

The proposal is one of the measures sought to revive the economy, as agreed with the opposition on June 14, seeking a tax reduction on patents, licenses, sales agreements, orders of purchase and contract work.

With this initiative the government intends to stimulate investigation in the country, extending investment support of physical assets and tax benefits to the digital economy and technological development.

BACK

COLOMBIA

Council of State rules that relative nullity actions related with trademark registrations may be withdrawn

By means of a ruling of March 4, 2020, the Council of State reiterated its ruling of October 28, 2017, accepting the withdrawal of nullity actions regarding relative nullity actions.

The Court sustained that relative nullity actions seek to contest the issuance of administrative acts that disregard subjective interests, limiting the controversy to a particular and concrete interest.

Consequently, there are no grounds to forbid their withdrawal since they are not related with the interests of the consumer public or those of competitors.

COLOMBIA

SIC and WIPO execute the ARD International Cooperation Agreement

The Superintendence of Industry and Commerce (SIC) as the Colombian Intellectual Property Authority executed the cooperation agreement for the promotion of alternative dispute resolution methods (ADR) on industrial property matters with the World Intellectual Property Organization (WIPO).

This agreement seeks a mutual collaboration between the two entities for the promotion and implementation of the ADR in four steps: (i) ADR promotion to users, (ii) instruction of industrial property specialized arbitrators, (iii) use of WIPO's administration case center, and, (iv) the application of the "WIPO eADR" platform.

BACK

COLOMBIA

The Colombian Health Authority's laboratory was certified by WHO for its compliance with Good Practices for Pharmaceutical Quality Control

After a thorough review process, the World Health Organization (WHO) certified that the Colombian Health Authority's Pharmaceutical and Other Technologies Physical-Chemical Laboratory meets the standards of Good Practices for Pharmaceutical Quality Control.

This certification involved a verification of the structure, organization, analytical conditions, equipment, human resources, quality systems (including audits), industrial safety, documents and records used by the Colombian Health Authority.

The certified laboratory is dedicated to perform physicochemical analysis of medicines, cosmetics, dietary supplements, biological products, phytotherapeutic products and household hygiene products. Citizens and entrepreneurs may now have certainty that the sanitary control in the country is being conducted with the highest international quality standards.

The importance of this certification is that it positions the Colombian Health Authority's laboratory at an international level, as a laboratory of reference that complies with international standards of good practices. Consequently, the results obtained in this laboratory may be endorsed by other WHO member countries.

The only other countries that have this certification in Latin America are Brazil, Mexico, Peru and Uruguay.

BACK

COLOMBIA

The National Copyright Authority explained the copyright payment conditions for commercial establishments open to the public

The National Copyright Authority (DNDA) explained the copyright payment conditions for public communication of works in commercial establishments open to the public.

On the one hand, the authority stated that the setting of fees for the public communication of works is an eminently private activity, in which state agents do not intervene. Notwithstanding the above, the tariffs must be proportional to the income obtained by the user from of the works, performances or phonograms. Similarly, there are a series of criteria for setting the tariffs when it is not clear what income the user will acquire with the exploitation of the work. Once the tariff has been set, it is used as a basis for negotiation between the owner of the rights or his agent, so the final value paid by the user must be the result of an agreement between the parties.

However, within the framework of the isolation measures promoted by the National Government, three scenarios can occur in relation to the payment of copyright or related rights for the public communication of works: (i) use without a license, (ii) absence of use but existence of a valid license, and, (iii) absence of use without a license.

In the first scenario, the copyrights holder or his agent has the right to charge for the exploitation of the work. In the second event, the parties may renegotiate the terms of the license on the grounds of absence of use. Finally, if there is no use and the user does not have a contract or authorization in force for the payment of exploitation rights, it is not possible to charge.

BACK

COLOMBIA

Draft Resolution that seeks to implement the semantic standard and coding for medical devices for human use is published for comments

On July 6, 2020 the Ministry of Health published a draft Resolution by which it seeks to regulate the implementation of the semantic standard and coding for medical devices.

This regulation is addressed to the following actors and participants in the health sector: manufacturers, holders and importers of medical devices for human use authorized by INVIMA; natural or legal entities that request authorization from INVIMA to manufacture or import vital non available products; Benefit Plan Administration Entities; Health Promotion Entities of the contributory and subsidized regimes and those that administer additional health plans; health service providers; Departmental, district and municipal health secretariats, institutes and administrative units in any form of care and contracting; entities attached to and linked to the administrative sector of health and social protection that handle medical devices in their operation and make payments for health care, in any form of care and contracting; insurance companies that issue policies for traffic accidents, hospitalization and surgery or any other health protection and occupational risk managers.

The draft covers medical devices, including biomedical equipment, in vitro diagnostic reagents and vital non available products. Notwithstanding the above, it expressly excludes customized medical devices and medical devices with risk classification I and IIa, as well as health registrations of in vitro diagnostic reagents with risk classification I.

On the other hand, it seeks to create the IDM, a public national code which allows the specific identification of each one of the medical devices of human use.

One of the most important obligations that it contains is the loading of information from the semantic standard for health registrations, marketing permits or authorizations of medical devices for human use. In this regard, applicants or holders of said authorizations carry out a procedure before INVIMA to achieve the IDM coding of their device.

We will keep you updated on any developments.

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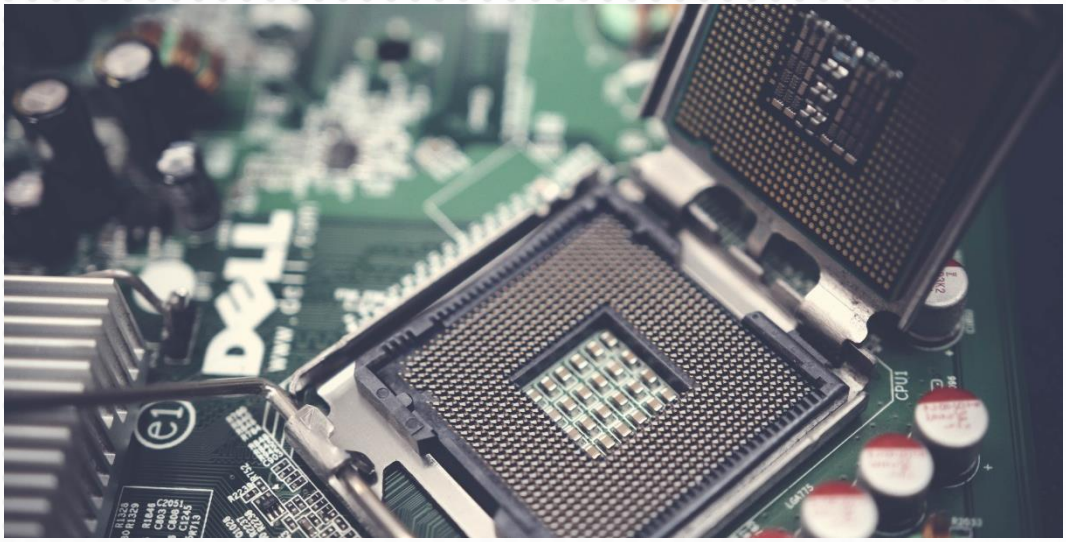

COLOMBIA

Draft Resolution to simplify patent applications is published for comments

On June 25, 2020 the Patent Office published for comments a draft Resolution to modify Title X of its Sole Circular letter.

This regulation aims to simplify patent applications by eliminating some provisions and clarifying others. We would like to highlight the following:

- It clarifies that additional fees must always be paid in formal examinations for the inclusion of more than 10 claims, thus, modifying the rule that states that "where the application contains more than ten (10) claims and the additional fee has not been paid, only those covered by the fee paid at the time of the examination of patentability provided for in Article 45 of Decision 486 shall be examined."

- It seeks to eliminate the payment for patentability examinations of utility model patents, when an invention patent is converted into a utility model after the payment of the patentability examination. Similarly, it clarifies that if the conversion of a utility model patent into an invention patent is made after the payment of the patentability examination, only the difference between the fee for the utility model and the invention patent examination will have to be paid. This implies a reduction of the applicable fees for the conversion procedures of new creations that benefits applicants.

- Additionally, it includes amendments regarding divisional applications, amendments to claims and non-patentability requirements.

We will keep you updated on any developments.

BACK

COLOMBIA

Decree seeking to ease health registration application requirements is declared unconstitutional

By means of ruling C-155/2020, the Colombian Constitutional Court, as the entity entrusted to assert the integrity and supremacy of the Constitution, ruled that articles 1 and 2 of Decree 476 of 2020 were unconstitutional. The Decree was issued under the state of emergency declared by the President on the grounds of the Covid-19 pandemic, with the intention of ease health registration application requirements.

The Court argued that the President had the faculties to regulate this matter without the need of declaring a state of emergency. However, understanding the current situation, the effects of the ruling will be enforceable three months after its issuance.

BACK

MEXICO

Amendment to Mexican Copyright Law

Amendments to several provisions of the Mexican Copyright Law were approved by Congress and published in the Official Gazette of July 1st.

The idea is to harmonize and adapt the provisions contained in the Mexican Copyright Law with those in the WIPO Copyright Treaty (WCT), WIPO and Phonograms Treaty (WPPT), Marrakech Treaty To Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Handicapped, the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP) and the United States-Mexico-Canada Agreement (USMCA).

The main points are the following:

- Incorporation of the right of making available in relation to copyright and related rights.
- Incorporation of technological measures for the protection and management of digital rights, together with sanctions for their circumvention and avoidance.
- Exemptions for Internet service providers and implementation of a "Notice and Take-Down" procedure.
- Strengthening of measures and mechanisms for access to various forms of work for the benefit of people with hearing or visual disabilities.
- In any trial in which a record, annotation or inscription in the registry is challenged, the Institute will be a party and the Federal Court of Administrative Justice will rule.

The mentioned amendment entered into force the day after its publication in the Official Gazette and the federal government has 180 days as of the entry into force of this Decree, to implement the necessary regulatory adjustments.

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