

Expedited patents in Brazil

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For all legal effect, the Industrial Property rights conferred by a patent are considered to be chattels and they afford their owner the right to prevent an unauthorized third party from producing and selling, amongst other commercial activities, the patented object, for twenty years counted from its filing date at the Brazilian Patent and Trademark Office. The exclusivity provided by a patent has always been respected and it has legal support in Brazil, being even applied and ratified in the Courts, in situations of interpellations and violations.

However, the long time to obtain a patent used to be discouraging and, at times, even an impediment to individual inventors and the business community. For instance, according to Brazilian PTO's Activity Report for year 2017, **pharmaceutical** and **telecommunications** patents took approximately **14 years** to be granted by the PTO counted from their filing dates (**FIGURE 1**). Many technologies have become obsolete, or they have been discontinued without even enjoying their patent protections. This delay in patent examinations is commonly known by the term **backlog** and it was justified by a series of structural and personnel problems faced by the PTO.

This has changed! And for the better!

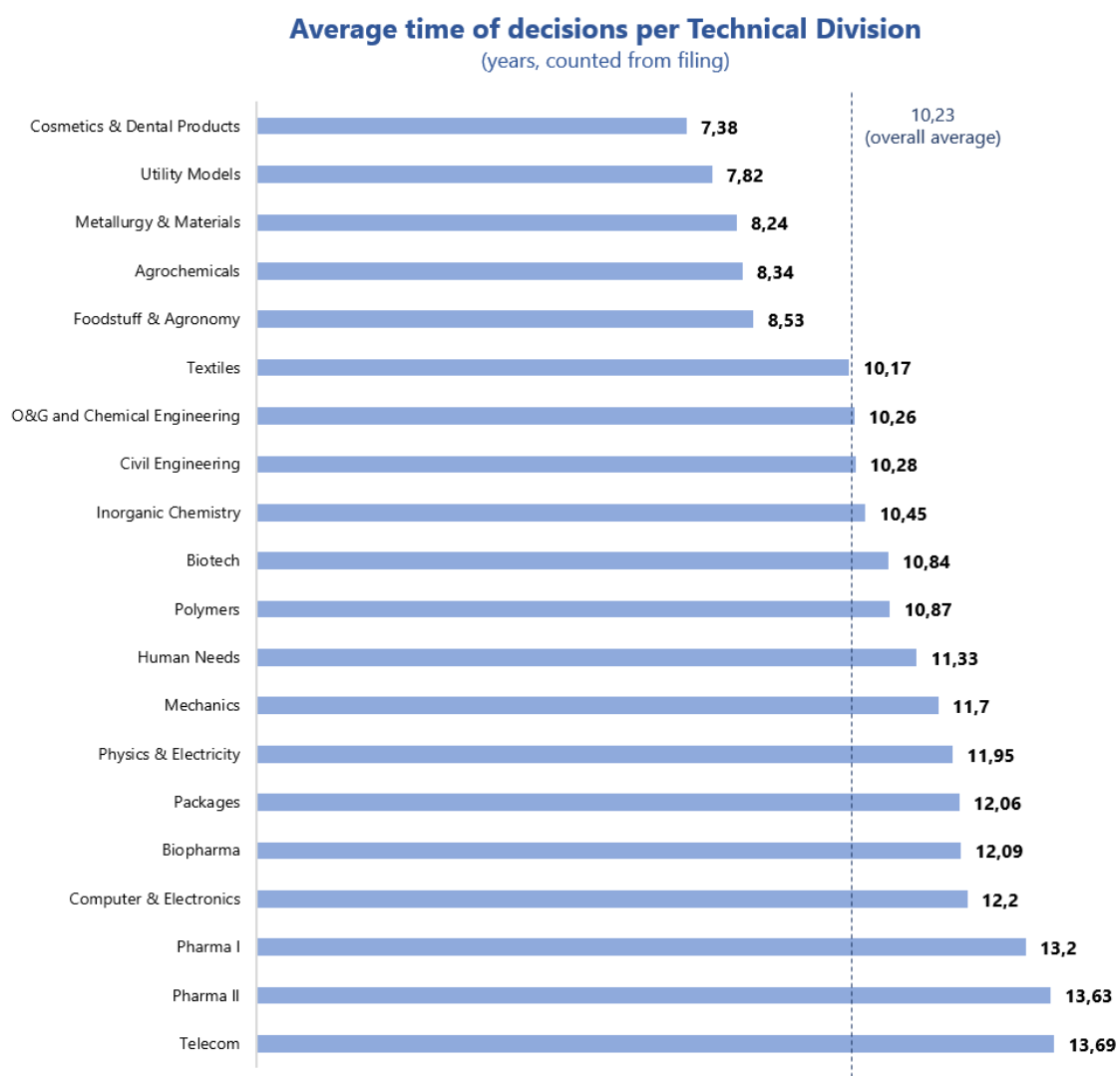
Several measures have been adopted by the Brazilian PTO in recent years, with the purpose of trying to reduce the backlog, with a focus on increasing people management, improving organizational management, improving official regulations and increasing international cooperation. On August 01, 2019, the PTO's **Plan to Combat the Backlog** came into effect, whose objective is to reduce substantially the number of patents having examination requested and decision pending, within a period of two years. The official regulations on this plan provide for a simplified procedure regime on the examination of patent applications, basically through a type of indirect international cooperation by means of using foreign counterpart examinations. The success of the plan was so great that its extension is still in force.

As a result of said Plan to Combat the Backlog, the number of patents having examination requested and decision pending **dropped by more than 80%** and the number of granted patents **almost quadrupled**. It is worth to stress that the IP rights conferred by a patent only exist and are valid after grant by the PTO. Pending patent applications only give an expectation of such IP rights.

In **2021**, Brazilian patent applications took about an impressive **5 years** to be decided, counted from the request for their examinations (**FIGURE 2**)!! This average of time was at the level of almost 9 years in 2015. In said same year of 2021, the average time in Europe, which PTO (the EPO) represents one of the references in the world in efficiency in patent examination, was 3.5 years, demonstrating the admirable commitment and efforts of the current management of the Brazilian PTO and that Brazil is heading towards levels of world excellence! Also in **2021**, for instance, data from the Patent Department of the Brazilian PTO showed an average of time of approximately **6 years** between the request for examination and issuance of a decision on **pharmaceutical** and **telecommunications** patents.

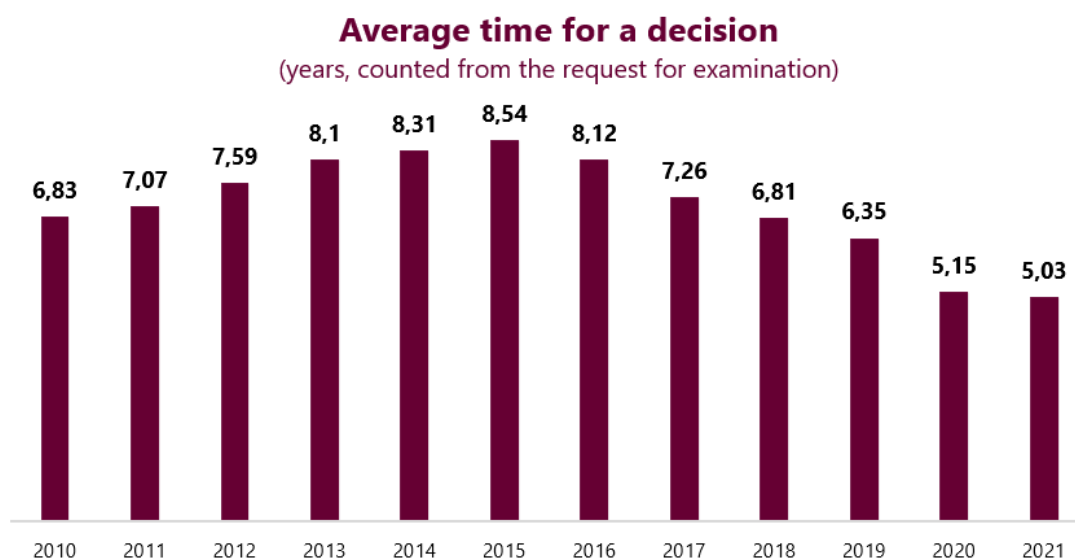
The turning point regarding celerity in obtaining a patent in Brazil may attract more filings of patent applications with the PTO, in addition to shaking the competitive environment and stimulating R&D activities.

FIGURE 1



Source: Figure prepared by the author from the figure of page 19 of *Relatório de Atividades do INPI 2017* (Brazilian PTO's Activity Report 2017). DIRPA/INPI, 2017.

FIGURE 2



Source: Figure prepared by the author from Figure 1 of *Indicadores Tempo de Decisão Técnica e Número de Decisões* (Indicators on Time of Technical Decisions and Number of Decisions). DIRPA/INPI, Abril de 2022.

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