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ADVOGADOS


# Intellectual Property.

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# BRAZILIAN CONTEXT

## Bill aims to amend the Brazilian Industrial Property Law to include AI ownership

On February 20<sup>th</sup>, 2024 new Bill No. 303/2024 was presented, aiming to amend article 6 of the Brazilian Industrial Property Law (Law No. 9,279/96) to include a new paragraph regulating the ownership of inventions generated through artificial intelligence (AI), thus having the following wording: *'In the case of inventions generated autonomously by an artificial intelligence system, the patent may be requested in the name of the artificial intelligence system that created the invention, the latter being considered the inventor and owner of the rights inherent to the invention.'*

The Bill will be discussed by the Brazilian Congress, which will be responsible for analyzing the merits and admissibility of the Bill, taking into consideration other aspects and impacts, such as civil liability of AI.



## “Pan” trademarks are sold at auction for R\$3.1 million

After the company that owned the famous Brazilian trademarks that identified the “Pan” chocolates went bankrupt in February 2023, with a debt of more than 260 million Brazilian reais, its trademarks were auctioned and sold for 3.1 million Brazilian reais to company Real Solar, located in the city of Goianinha, in the state of Rio Grande do Norte.

The acquisition covers all 37 trademarks owned by the company and registered before the Brazilian Patent and Trademark Office (BPTO) and which are composed by the word “PAN”, such as “Chocolápis Pan,” “bala Paulistinha Pan,” among others. The sale must still be approved by the Brazilian Court.

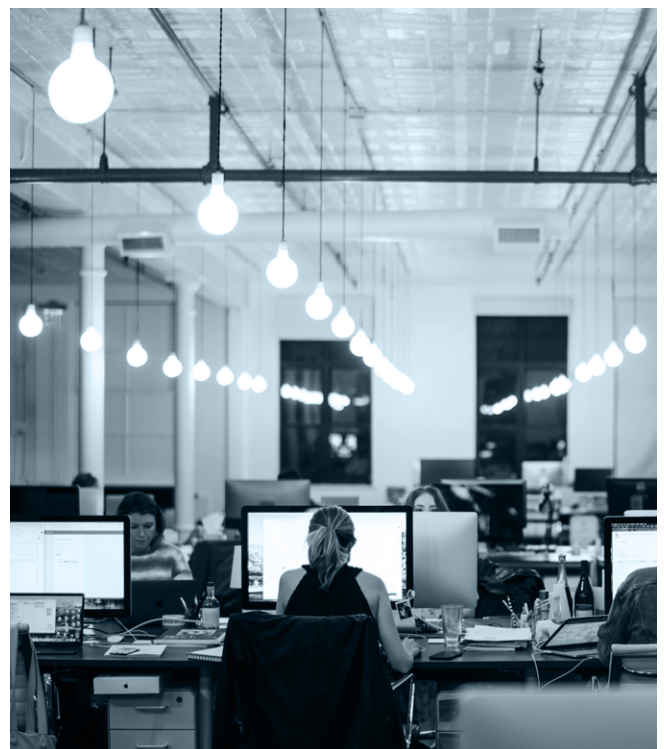
## BPTO proposal about Patent Cooperation Treaty is approved by WIPO

The Brazilian proposal seeks to optimize the process of digitizing applications in the international phase of the Patent Cooperation Treaty (PCT). Thus, once it is implemented, the receiving offices, such as the BPTO, will have three options:

1. continue to allow filing on paper or in electronic format;
2. accept only electronic filings, offering the WIPO International Bureau as an option for receiving paper filings; or
3. allow paper filings, but with the requirement that documents be submitted in electronic format within two months.

The proposal reduces the multitude of actions, such as the decision to assess when an exceptional case is accepted to be submitted on paper, and what the relevant parameters

are. In addition, the systematized options for electronic or paper format optimize the filing processes for the offices, as well as for the applicants.



# CURRENT AFFAIRS OF IP IN BRAZIL

## End of Ozempic patent in Brazil and its consequences for the Brazilian economy

The Brazilian patent owned by Novo Nordisk for semaglutide will expire in 2026. As this is the active ingredient of Ozempic, the price of the drug, whose unit costs today more than R\$1 thousand in Brazil, could be drastically reduced. In addition to being used for type 2 diabetes, the drug is used for fast weight loss.

Ace Capital has prepared a report on the possible impacts of the price reduction of the active ingredient on the economy and companies in the Brazilian market, from the food market to the fashion, clothing, and retail markets.



# LEGAL CASES

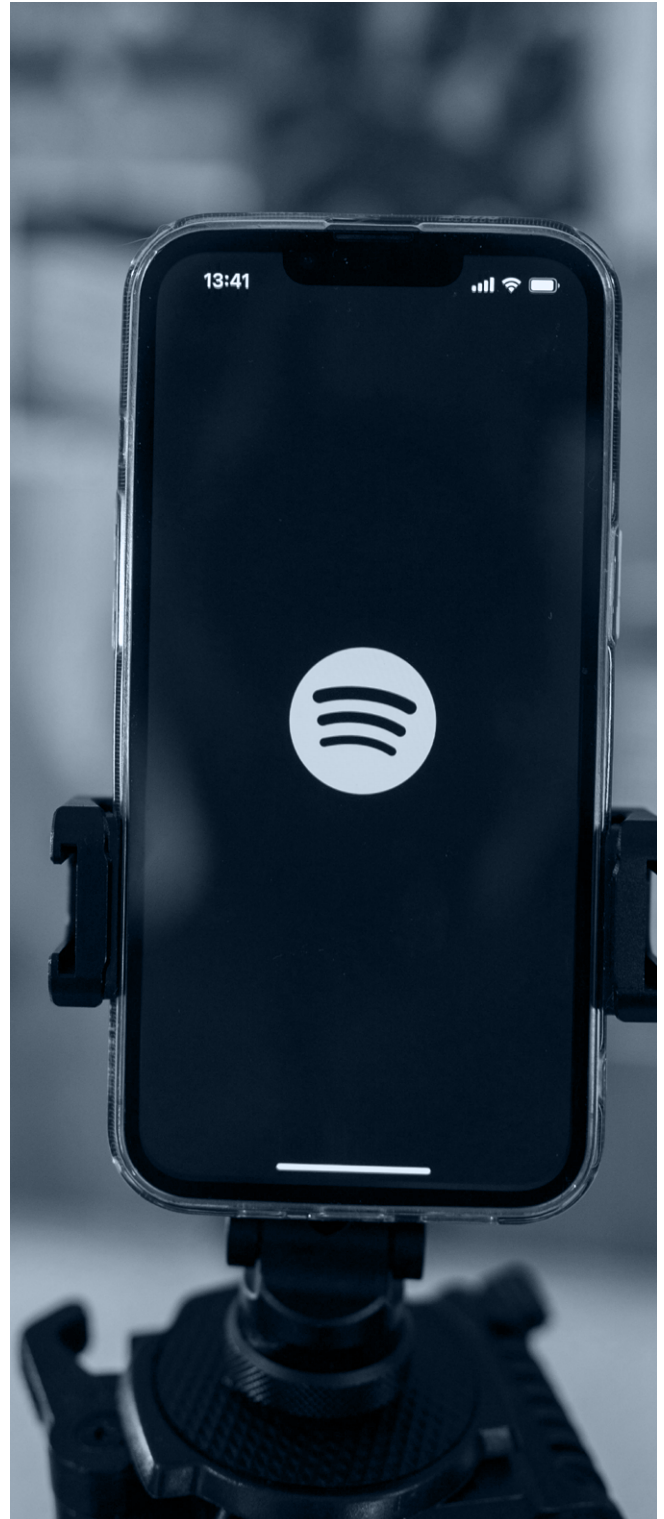
## Apple hit with EU \$2 billion fine in lawsuit against Spotify

After a lengthy lawsuit between Apple and Spotify, which started in 2019, Apple will have to pay 1.8 billion euros (US\$1.95 billion) in fines for thwarting competition between music streaming rivals.

Regulators from European Union (EU) declared that Apple illegally used its Apple Store domain to exclude/hinder purchases of music streaming services of rival apps.

Music streaming apps that were on the Apple Store would have been prevented by Apple from informing their users about cheaper purchasing options outside the Apple Store app. Apple denies these allegations and sustained that the company will appeal from this decision, since no evidence of damage to consumers was found.

This penalty reinforces the European Union's position as the world's most aggressive regulator for the technology sector. In recent years, EU has passed laws on data privacy, competition in the sector, moderation of online content, and AI.



## Brazilian Superior Court of Justice issues ruling on copyrights in movie theaters

On February 20th, 2024, the Brazilian Superior Court of Justice (STJ in Portuguese) has issued an important decision for the film and music industry, in which movie theaters, including Cinemark, a famous movie theater chain, which was a party to the lawsuit in question, must pay copyrights for the music used in movies displayed in their theaters.

The decision, issued by the Fourth Panel of the STJ, recognizes the legitimacy of the

Central Office for Collection and Distribution (Ecad) to collect the payment of copyrights on behalf of artists throughout the country, in compliance with Law No. 9,610/1998 (Brazilian Copyrights Law), even in cases where court decisions have become final, such as Cinemark's case. Therefore, the decision also sets an important precedent for other chains of movie theaters that refused to pay copyrights.

## STF maintains decision against Bayer on payment of R\$1.3 billion for undue collection of royalties

The Brazilian Supreme Court (STF in Portuguese) rejected an appeal against a decision from the Court of Justice from the state of Mato Grosso (TJ-MT) and ordered Bayer to pay 1,3 billion reais in court due to the undue charging of royalties by Bayer for the exploitation of a patent expired in since 2018.

The decision on the lawsuit filed by the Association of Soy and Corn Producers of the state of Mato Grosso (Aprosoja-MT), benefits soy producers, who were being charged by Monsanto – the company that acquired Bayer – for an expired patent.

In its defense, Bayer claims that this patent is waiting for the BPTO to analyze an exten-

sion request - a discussion generated with the declaration of unconstitutionality of the sole paragraph of article 40 of the Industrial Property Law, which extended the term of patents due to delays in patent analyses by the BPTO. It is worth noting that the [Supreme Court's decision](#), published on May 14<sup>th</sup>, 2021, had immediate effects on patents granted from that date onwards, but retroactive effects on patents related to pharmaceutical products and processes and equipment and/or materials for use in healthcare, whose terms would be adjusted accordingly.

The discussion regarding the extension of the term of Bayer's patent is not the subject of such lawsuit ruled by STF.

# IP ABROAD

## Artificial Intelligence Act approved by EU

The European Parliament has approved the Artificial Intelligence Act, a groundbreaking legislation aimed at regulating artificial intelligence (AI) technologies commercialized or used in the European Union. The Act sets out rules governing the development, deployment, and use of AI systems, focusing on transparency, accountability, and human oversight. It introduces a risk-based approach,

classifying AI systems into four categories based on their potential risks, with higher-risk systems subject to stricter requirements.

Additionally, the Act establishes a European Artificial Intelligence Board to oversee its implementation and enforcement, ensuring that AI technologies in the EU adhere to ethical standards and respect fundamental rights.

## New copyright lawsuits against OpenAI

In the United States, new lawsuits have been filed against OpenAI (developer of ChatGPT) by publishers and media companies. Once again, the use of copyrighted works to train OpenAI's chatbots has led to claims for compensation and the removal of materials from AI systems' database.

The lack of indication of authors and copyright owners of works that base the content created by AI, and the use of protected works without prior authorization are the publishers' main arguments. Meanwhile, in the lawsuit filed by the New York Times at the end of last year, the

defense presented by OpenAI alleges that the New York Times hacked ChatGPT to obtain evidence of copyright infringement, including through practices that violate OpenAI's terms of use.

Although the decisions of the mentioned cases have not yet been published and there are no specific rules on the use of AI in Brazil, it is certain that the use of copyrighted work by third parties, without prior authorization, can be challenged and eventually taken to court in Brazil as well.



## Frida Kahlo: IP infringement lawsuit

Frida Kahlo Corporation, the company that owns the trademark rights and copyrights of artist Frida Kahlo and her works, has filed a lawsuit before the US courts against online sellers that market products and publish advertising materials with unauthorized reproduction of Frida Kahlo's intellectual property assets.

The lawsuit, filed at the beginning of March of this year, requests compensation for the revenues earned by the counterfeiters due to their marketing of the irregular products or, alternatively, compensation of 2,000 dollars for each unauthorized use of Frida Kahlo trademarks.





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