


# Intellectual Property

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# BRAZILIAN CONTEXT

## BPTO's report notes an increase in the number of trademarks and patents filed in Brazil

According to the Monthly Report issued by the Brazilian Patent and Trademark Office (BPTO) in 2023, compared to 2022, there was an increase in the number of applications filed for geographical indications (22.7%), computer programs (16.1%), trademarks (6.4%), and patents (2.9%).

The BPTO also announced a 16.9% drop in the number of requests for registering technology agreements, and a 2% drop in industrial designs applications.

Additionally, the report demonstrated that Brazil is among the countries that filed the largest number of patents of invention in 2023 (20%), along with United States (30%), China (7%), Germany (6%), and Switzerland (5%).

The complete Report can be found [here](#).

## Trademarks filed with the BPTO become part of the Global Brand Database

Processes of trademarks filed with the BPTO are now part of the online trademark database created by the World Intellectual Property Organization (WIPO). Over 3,700,000 records were added from Brazil.

The database can be accessed through the link <https://branddb.wipo.int> and already has more than 63 million records from 76 different data sources.



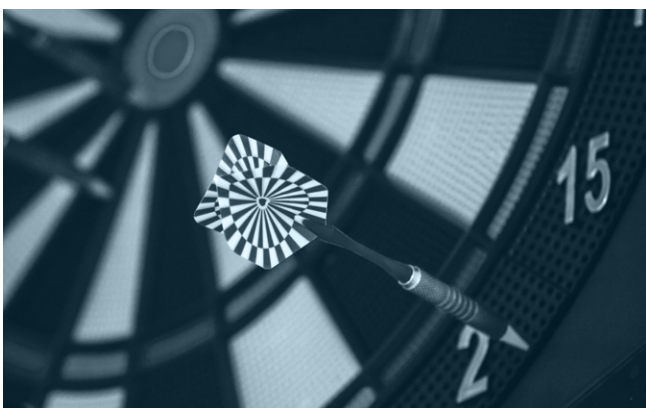
## BPTO publishes 2024 Action Plan with projects and goals

The BPTO has launched its action plan with goals and projects for 2024, including a reduction in the timeframe for analyzing applications and innovation plans in a wide range of areas.

The plan includes several performance goals for the office, definition of agendas for the year, strategic initiatives, and budget planning.

Among the strategic initiatives, some that draw our attention are **(i)** the continuation of studies to propose the modernization of the Brazilian Industrial Property Law; **(ii)** programs focused on innovation and sustainability within the industrial property field; and **(iii)** initiatives to use artificial intelligence (AI) to improve productivity, especially in trademarks analysis.

You can find the complete BPTO's plan [here](#).



## Lula signs laws requiring Brazilian content on TV and in movie theaters

On January 15<sup>th</sup>, 2024, President Luiz Inácio Lula da Silva approved Law No. 14,815, which changes Provisional Presidential Decree No. 2,228-1, regarding the Brazilian Film Policy, and Law No. 12,485, regarding the conditional access of audiovisual communication. With these modifications, the government intends to protect and recognize national works, as well as universalize access to national movies.

In sum, Law No. 14,815 extends, until December 31, 2038, the mandatory commercial exhibition of Brazilian cinematographic works - the screen quota policy on pay TV. Also, it is the responsibility of the Brazilian Film Agency (ANCINE) to determine suspensions and cease of unauthorized use of protected Brazilian or foreign works.

Law No. 14,814/2024, in turn, recreates the quota for commercial exhibition of Brazilian cinematographic works to extend the exhibition period until December 31, 2033, and sets fines of up to R\$2,000,000.00 in case of non-compliance with some provisions of this law.

# CURRENT AFFAIRS OF IP IN BRAZIL



## Works by Graciliano Ramos fall into the public domain

The complete work of writer Graciliano Ramos, who died on March 20th, 1953, fell into the public domain on January 1<sup>st</sup>, 2024, as 70 years have passed since the author's death.

Article 41 of the Brazilian Copyright Law (Law No. 9,610/1998) provides that the author's property rights last for 70 years from January

1<sup>st</sup> of the year following the author's death, and after this period the work falls into the public domain. In other words, from this date on, any interested party will be able to edit, adapt, publish and/or sell the author's works, regardless of authorization from his/her heirs, as long as the author's moral rights are respected.

# LEGAL CASES

## Collection of amounts for copyrights is not conditional on the purpose or making profits

According to the new ruling of Third Panel of the Superior Court of Justice (STJ), the collection of amounts for copyrights due to the performance of musical works at public events is not conditional on the purpose or making profits.

The controversy began with a lawsuit filed by the Central Office for Collection and Distribution (ECAD) against the city of Cerquillo (SP), as the city hall held public events with

the reproduction of songs without authorization from the authors and without collecting amounts due for copyrights.

As analyzed in Special Appeal (Resp) No. 2098063/SP, the direct or indirect profit motive is no longer a prerequisite for collecting amounts for copyrights, according to current legislation (Law No. 9,610/1998).

[Source](#)



## Superior Court of Justice's decision: utility model may infringe patent

Under Special Appeal No. 2,046,456/SP, a manufacturer of ceramics sued another company, with the same business activity, for selling an object whose invention had been patented by plaintiff. However, during the dispute, defendant obtained the registration of a utility model patent (UM) of the invention object of plaintiff's patent. Thus, from Defendant's perspective, there was no violation of rights, since utility models are improvements in effect or functionality and may represent improvements in elements already protected by third-party patents.

However, the Third Panel of the Superior Court of Justice understood that the mere granting by the BPTO of a utility model patent does not exclude the possibility of patent infringement of the main invention. After all, the granting of a utility model patent grants its holder the right to exploit their creation and prevent third parties from using it, but they are not authorized to use, without authorization, a third party's invention that is part of the object in which the improvement was implemented.

The Superior Court of Justice returned the case for the court of origin to analyze the existence of infringement of industrial property rights. Please see the full ruling [here](#).





## Construction company will have to indemnify competitor for violating trade dress

In a recent decision, the 1<sup>st</sup> Reserved Chamber of Business Law (Court of Justice of the State of São Paulo) maintained the understanding of the 2nd Business Court and Arbitration Conflicts of the Capital and ordered a construction company to pay damages due to violation of a competitor's trade dress, since its product (grout) was sold in a package that was similar to the one sold by its competitor.

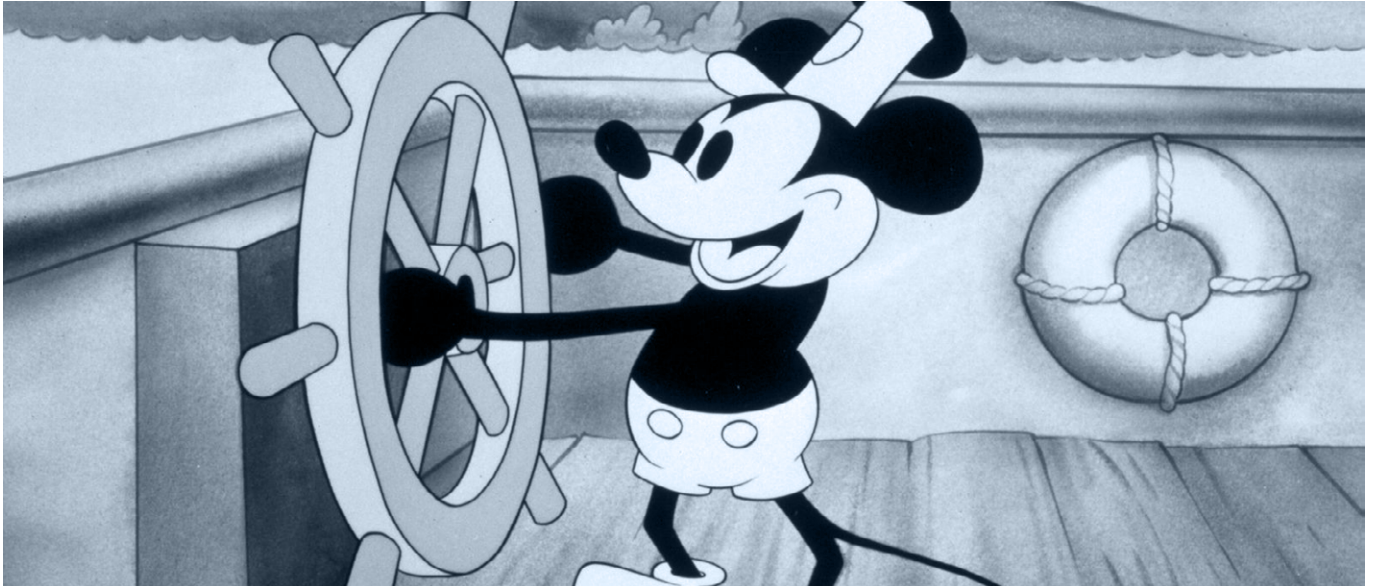
In the court decision, the Superior Court of Justice's understanding on the topic was recalled and reiterated: *'In this sense, the Superior Court of Justice has already made*

*a decision: (...) Despite the absence of an express provision in the Brazilian legal system regarding trade dress protection, it is undeniable that the Brazilian legal framework provides support for the image set, especially because its usurpation is hampered by unfair competition repression.'*

The damages to be paid by the company that identifies its product by brand "ColorFlex" was set at R\$ 10,000.00 and, in the case records, the condemned company did not defend itself against the claims of trade dress violation.



# IP ABROAD



## Mickey Mouse becomes a horror movie character after expiration of Disney's copyrights

Within 24 hours of the first Mickey Mouse movie entering the public domain, two horror movies were announced with the famous mouse as the main character in their plots.

However, according to analysts, Disney will be monitoring cases of excess in relation to the use of its character, since only the first Mickey Mouse movie entered the public domain, and not the colorful character of later Disney movies, such as "Fantasia", from 1940.

## Uniqlo sues Shein in Japan for violating its rights over the "Round Mini" bag

The Japanese company Uniqlo recently filed a lawsuit against company Shein after discovering that the latter was selling, on its platform, a bag similar to the "Round Mini" model, a success of the Uniqlo brand and widely known on social media.

According to Uniqlo, the sale of products that imitate its merchandise constitutes a violation of its intellectual property rights.



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