



GRUPO DE TRABALHO SOBRE
PROPRIEDADE INTELECTUAL

The privatization of Brazilian Patent Office and the impacts of the right to health

In defense of the human right to health, the Intellectual Property Working Group (GTPI) of the Brazilian Network for the Integration of Peoples (Rebrip) - a collective of civil society organizations coordinated by the Brazilian Interdisciplinary AIDS Association (ABIA) – expresses its total disagreement with the proposed Provisional Measure, prepared by the Ministry of Economy, which foresees the extinction of the National Institute of Industrial Property (INPI). One of the biggest challenges regarding right to health today is access to medicines. The patent system has generated a world crisis of access to medicines, triggered by the high prices charged for improperly patented medicines. In order to effectively combat this threat it is fundamental to build a context in which there is a functional and structured patent system, aligned with social interests

Since its inception, GTPI has acted to ensure the existence of this context in Brazil, in order to preserve public policies for free of charge access to medicines within the Brazilian Public Health System – the SUS. For this reason, **GTPI strongly rejects the proposal for the extinction or privatization of the INPI.** This proposal radicalizes an ongoing process of dismantling a serious and thorough patent examination system, with due emphasis on the public interest.

For a number of years, there were several ongoing initiatives to undermine the quality of the examination performed in Brazil, such as taking advantage of the exam done in other countries, agreements to outsource the exam (Patent Prosecution Highway), procedures that preclude the working conditions of INPI examiners in favor of an alleged increase of productivity, among others.

According to the proposal prepared by the Ministry of Economy, INPI's functions would be incorporated into the Brazilian Agency for Industrial Development (ABDI), which would become the Brazilian Agency for Development and Industrial Property (ABDPI). In this transition, the INPI examiners, who are highly qualified and specialized professionals, would be relocated to other spheres of public administration, and some could eventually work at ABDPI. If this happens, there will be two problems.

The first one is the reduction of the number of patent examiners, aggravating an already grave picture of scarcity. In January 2019, the INPI had a staff of 323 examiners, for a universe of 208,000 patent applications, representing a ratio of 641 patent applications per examiner. In most developed countries, such as the US, Japan, and European countries, this ratio is 112 applications/examiner. There is consensus that more examiners need to be hired to ensure a functional patent system with a quality examination. The proposal of the Ministry of Economy, however, goes against the obvious and proposes that only a portion of the already insufficient board of examiners continue to perform this function at ABDPI.

This brings us to the second problem. Today, patent examination is an exclusive function of public administration. Therefore, at INPI all employees only enter through the public tender, guaranteeing exemption from private and private interests. Since ABDI is an entity linked to private initiative, the eventual hiring of new examiners would follow another logic, which



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could be made possible, for example, through the conclusion of agreements to outsource the exam or even hiring regimes shaped by business interests.

We anticipate two equally worrying scenarios. One in which the patent examination is even more deficient due to the lack of specialized technical staff. Another in which the examination is biased to meet particular interests, diverting the Brazilian patent system from a national strategy focused on promoting social and technological development. In both scenarios, we assume that big foreign companies will win, which will continue to bomb whatever patent examination body with low-quality patent applications, confident that regardless of poor quality, they will obtain monopolies in the country due to poor quality or lack of exemption from the examination.

In the pharmaceutical area, such monopolies will represent serious financial losses to the budget of SUS, the end of programs of free access to medicines and incalculable suffering for the Brazilian population, which will be deprived of access to essential medicines.

In a research conducted in 2019, GTPI identified a loss of around R\$ 1 billion Brazilian reais (around US\$ 300 million) in the period from 2002 to 2017, with only one unmerited patent granted for the drug lopinavir/ritonavir, used to treat HIV / AIDS. With this resource it would be possible to build 472 Emergency Care Units (UPAs), or 2,567 Basic Health Units (UBSs), or buy 5,965 ambulances, or pay for a year 3,246 Family Health Program (PSF) Teams.

We cannot accept that such losses multiply, making the realization of the right to health in Brazil unfeasible. This requires maintaining the autonomy of the INPI, increasing the number of public servants hired and increasing the rigor of the examination in strategic areas, such as the pharmaceutical sector. The INPI needs to be maintained as a public administration body, committed to acting in favor of the social interest and the technological and economic development of the country, as dictated by Law 9279/96, the Industrial Property Law (LPI).

One main argument of the Ministry of Economy is the need to reduce public expenditure and pau Brazilian public debt. We emphasize that these grounds for the extinction of the INPI are fragile, since the body is known to have a surplus and does not cause damage to the Union's budget. On the contrary, as disclosed in Technical Note SEI No. 8623/2019 / ME, the proposal would represent loss of revenue for the Union. Therefore, it seems that this initiative aims to pass the collection of the INPI to the private initiative, which is precisely the sector that should be regulated by the agency! In addition, by removing the INPI from the Union budget, there is room for other expenditure in calculating the spending ceiling, which is the option of an austerity-fanatical government. In this transition, the Ministry of Economy also proposes to allocate the existing financial surplus in the INPI Budgetary Unit for the payment of public debt, thus favoring the banking sector and once again placing private interests above social interest and national sovereignty.



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How we are?

The Working Group on Intellectual Property (GTPI) of the Brazilian for the Integration of Peoples Network - REBRIP, brings together various civil society organizations, social movements and related experts to the subject of intellectual property and access to health care in Brazil. The GTPI part of the public interest, working to mitigate the impact of patents in the population of guaranteed access to medicines and health. Are part of GTPI: Associação Brasileira Interdisciplinar de AIDS (ABIA – secretariat), Fórum Maranhense das Respostas Comunitárias de luta contra DST e AIDS (Fórum AIDS/MA), Rede Nacional de Pessoas vivendo com HIV e AIDS – São Paulo (RNP+/SP); Grupo Pela Vidda/Rio de Janeiro (GPV/RJ); Grupo Pela Vidda/São Paulo (GPV/SP), Grupo de Apoio à Prevenção da AIDS do RS (GAPA/RS); Grupo de Resistência Asa Branca (GRAB); GESTOS; Instituto Brasileiro de Defesa do Consumidor (Idec); Conectas Direitos Humanos; Federação Nacional dos Farmacêuticos (Fenafar); Médicos sem Fronteiras – Campanha de Acesso a Medicamentos (Brasil); Universidade Aliadas por Medicamentos Essenciais/Brasil (UAEM/BR); Rede Nacional de Pessoas vivendo com HIV e AIDS – São Luís do Maranhão (RNP+/MA); Grupo de Apoio à Prevenção da AIDS da Bahia (GAPA/BA); Fórum das ONGs/AIDS do Estado de São Paulo (FOAESP); Fórum de ONGs/AIDS do Rio Grande do Sul (Fórum RS); Grupo de Incentivo à Vida (GIV) e Associação Brasileira de Saúde Coletiva (ABRASCO).