

New BRPTO Instruction on Prioritized Examination of Patent Applications

Instruction # 151 of October 23, 2015

Establishes prioritized examination procedures on patent applications due to applicant's age or severe disease, as well as undue use of invention or when the patent is required in order to obtain promotion funds under the BRPTO.

Through the powers invested in him by internal regulations, and considering the provisions of both Statute # 9,279 of May 14, 1996 (Brazilian IP Statute) and article 159 of Administrative Rule # 149 of May 15, 2013, **THE PRESIDENT OF THE BRAZILIAN PATENT AND TRADEMARK OFFICE (BRPTO) DECIDES THAT:**

Article 1 – This Instruction provides for the prioritized examination of patent applications due to the applicant's age or severe disease, as well as for undue use of invention or when the patent is required in order to obtain promotion funds under the BRPTO.

Article 2 – Applicants that may request prioritized examination of patent applications include:

I – the applicant him/herself, in cases where:

- a. the applicant is proven to be at least 60 years-old;
- b. third parties reproduce the subject-matter of the patent application without the applicant's previous consent;
- c. promotion funds from promotion agencies or official national credit institutions are not obtained unless patent is granted, when such funds are cleared as economic subsidy, financing or corporate stake, or otherwise arise from mutual investment funds that will exploit the relevant product or process; or
- d. the applicant is a person with functional or mental disabilities, or has a severe disease, defined under both article 69-A, Sections II and IV of Statute # 9,784 of January 29, 1999 and article 4 of Executive Order # 3,298 of December 20, 1999.

II – third parties, when the applicant proves that such third parties reproduce the subject-matter of the patent application without the applicant's prior consent.

III – third parties that prove they hold the relevant patent application, patent, or technology pertaining to that patent application.

Article 3 – The only prioritized examinations that will be completed ex officio entail patent applications having a subject-matter provided for by Federal Executive Branch enactment declaring that the relevant patent calls for national emergency or public interest, under Article 2, Sections 1 and 2 of Executive Order # 3,201 of October 6, 1999.

Article 4 – The relevant person must use the free patent application request for prioritized examination.

Article 5 – The below documents will accompany the patent application request for prioritized examination:

I – when the request is made under above article 2, section I, line a, a copy of ID card or birth certificate;

II – when the request is made under above article 2, section I, line b:

- a. proof that the third parties are reproducing the subject-matter of the patent application without the applicant's consent; and
- b. a copy of the extrajudicial notice delivered to the party charged with undue reproduction of the subject-matter of the patent application, including proof of receipt, issued by the relevant applicant or duly designated attorney. This extrajudicial notice must expressly refer to the patent application number, the applicant name and the allegedly undue act.

III - when the request is made under above article 2, section I, line c:

- a. a copy of request of funds for development of patent subject-matter made to the promotion agency or credit institute; and
- b. a copy of the instrument setting out that funds will not be cleared unless the patent is granted.

IV - when the request is made under above article 2, section I, line d, a copy of the expert report, issued by the Federal, State, City or Federal District Public Medical Service including proof of applicant's medical condition;

V - when the request is made under above article 2, section II:

- a. a copy of the extrajudicial notification of patent application prioritized examination request, issued by the relevant applicant or duly qualified attorney containing direct reference to the patent application number, applicant name and alleged undue action, or proof that the relevant applicant is charging the applicant of the prioritized examination of patent application with reproducing the subject-matter of the patent application; and
- b. the filing of pre-grant opposition to the technical examination, in order to prove that patent application subject-matter is in the state-of-the-art.

Article 6 – When only one among several applicants carries out the procedures provided in this Instruction, the applicant must issue relevant instrument putting others on notice.

Article 7 – The person carrying out the procedures herein must hold power of attorney when he/she is not the relevant person, under article 216, paragraph 1 of Statute # 9,279 of May 14, 1996.

Article 8 – A committee of BRPTO officers will review patent application prioritized examination requests and the Patent Director will take the relevant decision.

Sole paragraph: This decision shall be published in the Electronic BRPTO Official Gazette.

Article 9 – The BRPTO Instruction # 68, of March 18, 2013 is now revoked.

Article 10 – This Instruction enters into force on the date it is published in the Electronic BRPTO Official Gazette.

Luiz Otávio Pimentel
President