

# 2018

PROPOSALS FROM INDUSTRY

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FOR THE 2018 ELECTIONS

## INTELLECTUAL PROPERTY: AN AGENDA FOR INDUSTRIAL DEVELOPMENT

INDUSTRIAL,  
INNOVATION AND  
FOREIGN TRADE  
POLICY

# 34



*National Confederation of Industry  
Brazil*

**CNI. THE STRENGTH OF THE BRAZILIAN INDUSTRY**

**INTELLECTUAL  
PROPERTY:  
AN AGENDA FOR  
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# PRESENTATION

Brazil will take more than half a century to reach the gross domestic product per capita of developed countries, maintaining the average growth rate of the national Gross Domestic Product (GDP) registered in the last 10 years, which was only 1.6%.

The challenge for the country will be to at least double the rate of GDP growth in the coming years. To do so, one can not repeat policy errors that reduce the potential for expansion - which includes having a coherent agenda of economic and institutional reforms.

Government changes are special occasions for reflection on national goals and strategies. They are also opportunities for the country to leave the comfort zone and increase its development ambition.

The 2018 elections have a unique feature, which reinforces the meaning of this ambition. The end of the term of the next president and of the parliamentarians will coincide with the 200th anniversary of Brazil's independence.

We need to take advantage of this milestone to stimulate actions in order to eliminate the main obstacles to growth in the country and contribute to building a competitive, innovative, global and sustainable industry.

The 2018-2022 Industry Strategic Map, released by the National Confederation of Industry (CNI) earlier this year, presents an agenda to increase the competitiveness of industry and Brazil and to raise the population's well-being at the level of developed countries.

Based on the priorities identified in the Map, CNI offers 43 studies, related to the key factors of competitiveness. The documents analyze the obstacles and present solutions to the main national problems.

Consolidating a strong and competitive industry is essential for the economic and social development of a country. Industry has the power to stimulate other sectors, as well as being one of the main agents of technological innovation. In this way, it is important to promote specific and aligned policies for the segment.

Increasing innovation and its positive effects on development presupposes an effective system for the recognition of intellectual property rights. Without legal security to benefit from the gains of their inventions, companies will hardly invest in research and development.

This document presents proposals to provide agility and safety to the Brazilian model of industrial property. The results will be startups and companies encouraged to innovate, as well as able to raise funds and attract partners to their projects.

**Robson Braga de Andrade**

President of CNI



# EXECUTIVE SUMMARY

**Intellectual Property (IP) plays a decisive role in stimulating innovation and economic development.**

IP rights, when granted and used in a fair and balanced manner, by producers and users of technological knowledge, contribute to a faster dissemination of knowledge, facilitate technology transfer, innovation and generate development.

**The efficiency of the Brazilian IP system is directly linked to the proper functioning of the National Institute of Industrial Property (INPI),** body responsible for examining and granting industrial property rights. By granting these rights, companies have greater legal certainty to correctly value and transact their creations and innovations in the national and global market.

**The lack of INPI structure harms the Brazilian industry and international companies that could invest much more in innovation in the country.** Despite being a federal authority surplus, INPI is small and not very well equipped compared to other similar offices in other countries. This contributes to the body's lack of agility.

**INPI takes, on average, 10 years to examine a patent.** In some technological sectors, the average decision time exceeds 13 years, such as telecommunications and pharmaceuticals.

**In addition to the delay, the stock of unexamined patent applications (the so-called "patent backlog") exceeds 225,000 cases.** If nothing changes, it is estimated that there will be 350,000 applications awaiting examination in 2029.

The shortcomings of the system are well known and for many years there has been a discussion, with no practical results, about solving them.

**A strategy for structuring the INPI is necessary, including the adequacy of its technical quantitative and internal procedures.** It is the way for Brazil to have a safe and adequate environment in the area of intellectual property.

To remedy backlog, the dimensions of the challenge require extreme measures, such as the **automatic** granting of unopposed patent applications proposed by INPI in public consultation in 2017. **There is also the agenda linked to the relationship between intellectual property and illicit trade.** It is necessary to tackle smuggling and piracy by all legal means, including by expanding international cooperation, especially with the countries from which illegal goods originate or transit.

## Recommendations

1. **Ensure autonomy and operational improvement of the National Institute of Industrial Property (INPI).**
2. Decrease the **average patent examination time.**
3. Decrease the **trademark examination average time** and adhere to the **Madrid Protocol.**
4. Fight **crimes against intellectual property.**
5. Expand **Brazil's integration into the global intellectual property system.**

# 1 INTELLECTUAL PROPERTY AND INDUSTRIAL DEVELOPMENT

**The incentives that Intellectual Property (IP) protection offers for innovation contribute to economic development and generate benefits for the whole society.**

IP rights, when granted and used in a fair and balanced manner, by producers and users of technological knowledge, contribute to a faster dissemination of knowledge, facilitate technology transfer, innovation and generate development<sup>1</sup>.

IP, in its various forms, is strategic for companies of all sectors and of all sizes. Only after the granting of these rights do the companies have the legal certainty to correctly value and transact the goods in the national and global markets.

**For startups and technology-based companies, IP builds trust in investors, customers and other stakeholders and provides branding gains.** The recognition of IP of companies can leverage financing and serve as a guarantee for the establishment of partnerships and licensing.

**For innovative companies, IP operates on different fronts:** in a direct way, by creating temporary exclusivity, it protects the economic value of technological development; indirectly, provides opportunities for licensing and facilitates international insertion.

For other companies, **it allows access to knowledge and inventions, facilitating the technological catch-up process.**

**IP protection goes far beyond patents.** For companies that do not use the patent system, trade secrets can be critical. In addition, for business in general, market presence can be assured by means of the strength of the trademark or the ornamental aspect of the product, protected as an industrial design.

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1. According to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement, World Trade Organization), the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

According to the Organization for Economic Cooperation and Development (OECD), a robust IP system is critical for accessing international markets and has a significant impact on innovation performance in the economy (see chart below).

### Intellectual Property in the view of the OECD

“Innovation plays a pivotal role in economic development: this is a key lesson of the past decades. The build-up of innovation capacities has been central to successful growth experiences. Emerging and developing countries have recognised that innovation is not just about high-technology products, but that innovation capacity has to be built into the early stages of the development process to gain the learning capacities that will allow “catch-up” to occur. The adoption of foreign technology requires adaptation to the local context, which in turn implies incremental innovation. These countries also need innovation capacity to address developmental challenges specific to their local contexts, such as providing access to drinking water or eradicating neglected diseases.

Intellectual property (IP) rights are important for building up these innovation capacities. IP creates exclusive rights for holders, which can result in substantial monetary rewards if the invention meets with market success. They are aimed at providing incentives to invent in fields relating to technology (patents), business (trademarks) and the arts (copyright). IP can serve innovation not only by providing direct incentives for inventions, but also by a number of indirect mechanisms: facilitating access to knowledge and inventions (e.g. by providing opportunities for licensing and disclosing information on inventions in patent documents), stimulating innovation by resolving information asymmetries (e.g. trademarks allow firms to signal the quality of their product), facilitating international competitiveness and trade (e.g. by strengthening knowledge transfer from international to local firms), and enhancing opportunities for access to finance (e.g. using IP as collateral for credit). IP is even more pivotal in the knowledge economy where intangible assets are critical.

National innovation performance depends on a variety of factors and innovation policy choices have substantial impacts. A policy area of potentially significant impact on innovation is the national IP system. The IP system allows a market-based economy to produce innovation while providing solid ground for other types of government intervention to be more effective. IP policy is in many cases a complement to other innovation policy instruments: It can be used to foster the commercialisation of public research, to give guarantees to inventors responding to public procurement (demand-side policies), to back access to soft loans or other public funding and so on. A solid IP system is also critical to accessing IP international markets [...]”

Source: OECD, 2014, p. 3.

**The interest of the Brazilian Industry in the subject has increased**, with the growing internationalization of the Brazilian companies and the insertion of the country in the global value chains. The greater search for protection and observance of IP rights shows that Brazil has had offensive interests in the matter, a scenario that did not exist decades ago.

Despite the increasing importance attributed to the topic by the productive sector, Brazil's IP indicators are not yet compatible with the country's position in the ranking of the world's largest economies.

**Brazil, the 8th largest economy in the world, is only the 16th largest patent holder, 12th in trademarks and 18th in industrial designs.**

### Chart 1 – Ranking of IP filings by origin (residents)

Ranking classification

Origin	Patents	Trademarks	Industrial Designs
China	1	1	1
USA	2	3	7
Japan	3	2	6
South Korea	4	9	3
Germany	5	6	2
Russia	6	8	22
France	7	4	9
UK	8	11	11
Iran	9	10	10
India	10	5	12
Italy	11	13	5
Netherlands	12	21	19
Switzerland	13	24	16
Turkey	14	7	4
Sweden	15	30	25
Brazil	16	12	18
Poland	17	20	14
Spain	18	15	8
Austria	19	33	21
Canada	20	16	43
Denmark	21	44	27
Belgium	22	32	31
Finland	23	46	35



**Chart 1 – (Continued)**

Origin	Patents	Trademarks	Industrial Designs
South Africa	24	35	39
Australia	25	17	23
Ukraine	26	23	13
Norway	27	47	47
Singapore	28	50	46
Saudi Arabia	29	57	51
Mexico	30	14	28
Israel	31	69	37
Malaysia	32	39	44
New Zealand	33	40	53
Romania	35	36	42
Czech Republic	36	34	30
Egypt	37	45	29
Argentina	38	18	38
Portugal	39	27	20
Hungary	41	48	40
Vietnam	45	19	26
Colombia	46	31	61
Philippines	51	37	41
Bulgaria	55	41	34
Morocco	56	42	15
Hong Kong (RAE)	58	28	33
Pakistan	59	29	49
Thailand	..	25	17
Indonesia	..	22	24

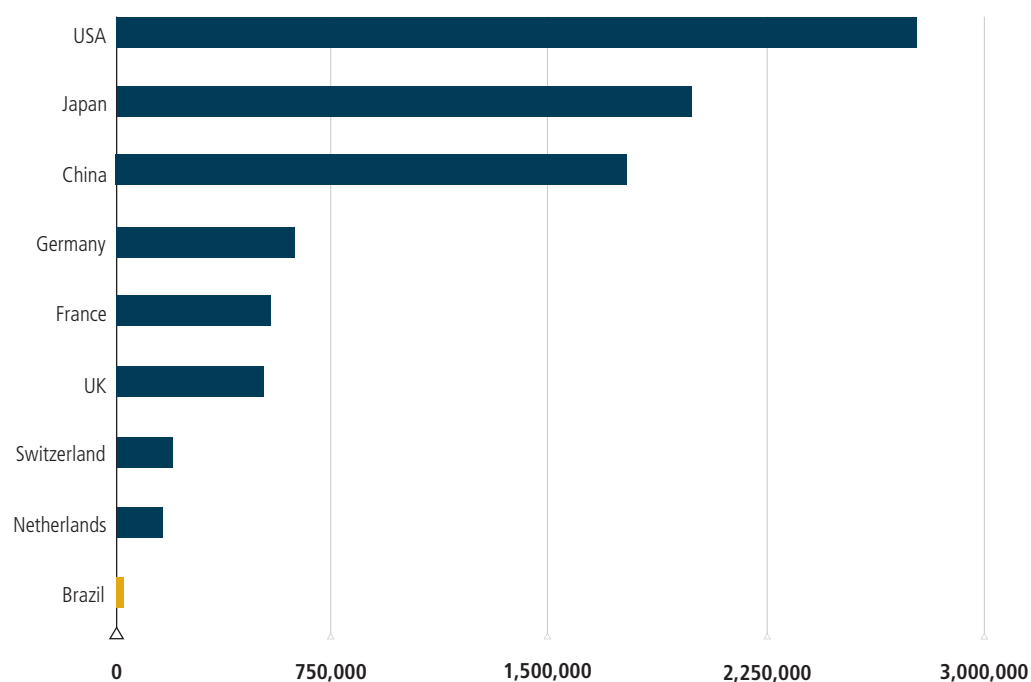
**Source:** World Intellectual Property Organization. World Intellectual Property Indicators, 2017.

In the world, there are approximately 10 million patents in force. Of this total, 25% are in the United States, 20% in Japan, 15% in China, 10% in South Korea, and 6% in Germany, to name the top five.

In Brazil, the number of patents in force does not exceed 30 thousand, or 0.03% of the total.

**If all patents pending for analysis were granted, Brazil would rank 9th in the ranking of countries with the most patents in force, close to Russia, Canada and Switzerland.** This position would be compatible with the country's participation in the world economy. Still, it would be very distant, for example, from the United Kingdom, with almost 500,000 patents in force.

**Graph 1 – Number of patents in force per country – 2016**



Source: Prepared by CNI, based on WIPO statistics database.

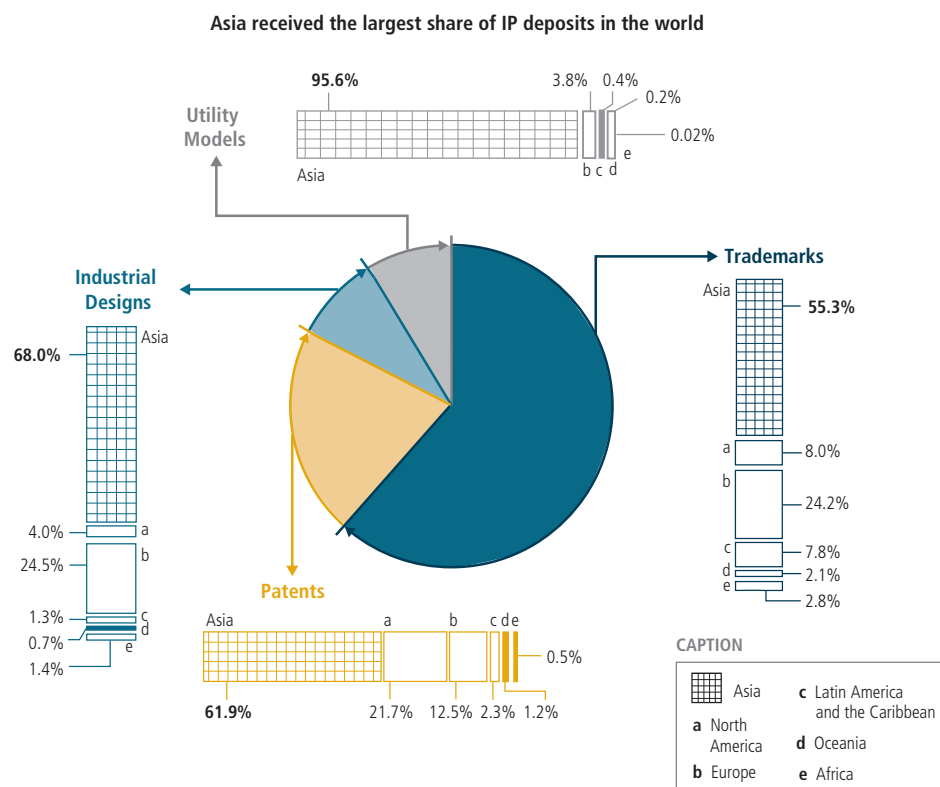


## 2 THE INTERNATIONAL SCENARIO AND THE EFFECTS OF THE 4TH INDUSTRIAL REVOLUTION ON INTELLECTUAL PROPERTY

The recent period reveals two major shifts in the international intellectual property scenario. The first, of a geographical nature, corresponds to China's emergence as the largest IP applicant. The second, of thematic order, refers to the increase of patent applications related to the enabling technologies of Industry 4.0.

The shift of industrial production to Asian countries coincides with the increase in applications for intellectual property rights in Asia, as shown in the picture below.

**Picture 1 – Percentage shares of IP filing activity by region (patents, utility models, trademarks and industrial designs)<sup>2</sup>**



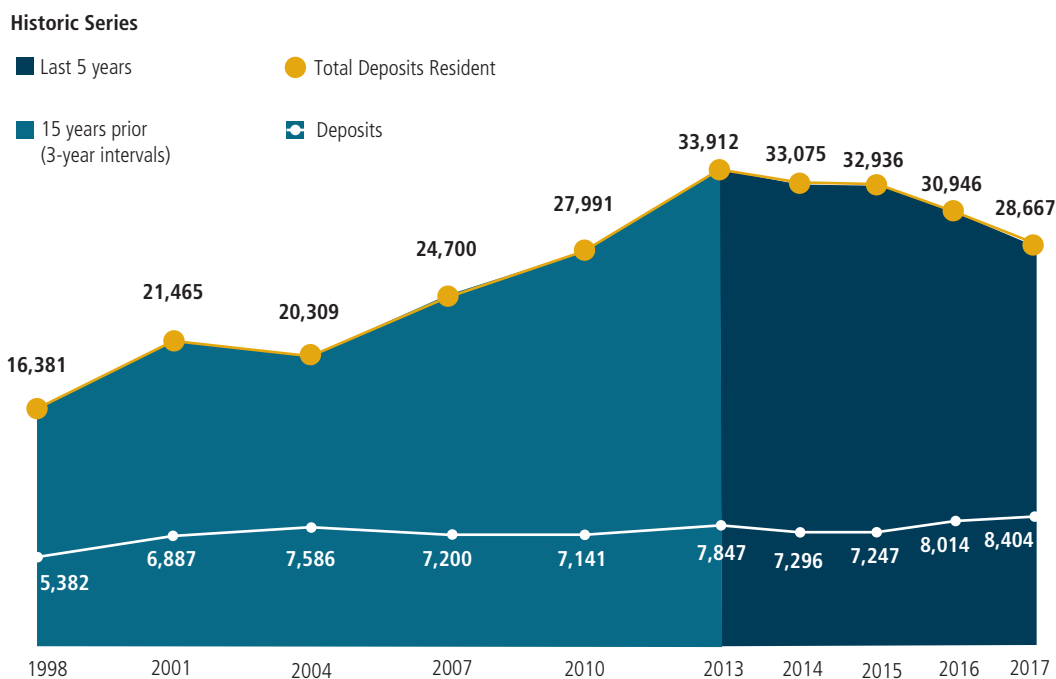
Source: WIPO statistics database – IP Facts and Figures.

2. North American offices do not provide protection for utility models, so they are not included in the indicators for this kind of right.

**By 2015, China became the first country to receive more than one million patent applications in a single year.** The number is close to the sum of all applications filed in the United States, Japan and South Korea in the same year.

To highlight the growth, in 2001, the Chinese office received just over 30,000 patent applications. Coincidentally, the same average number of applications that INPI receives annually.

**Graph 2 – Patent filing activity in Brazil (invention + utility models)**

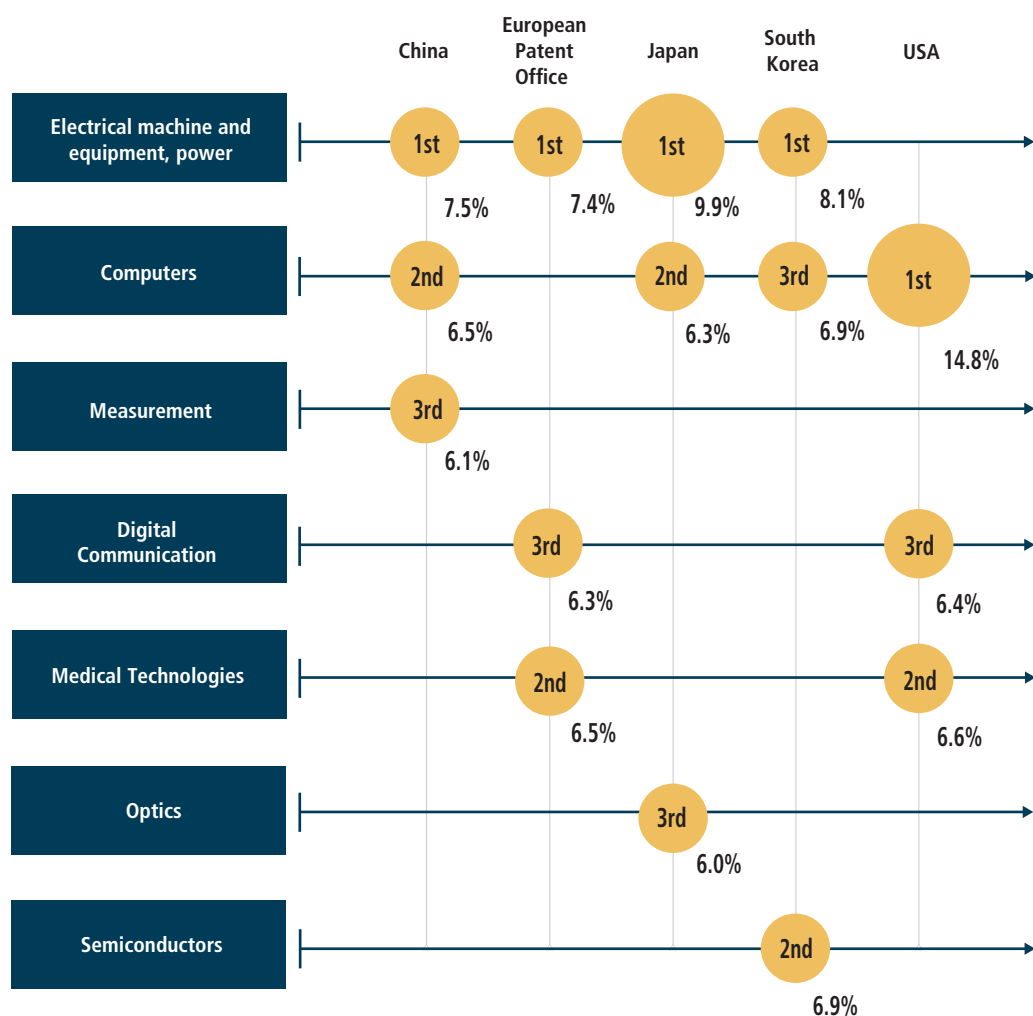


Source: INPI – Activities Report, 2017.

**The period of greatest growth in the use of intellectual property in Asia also reflects the digitalization of the economy, with the dissemination and widespread use of digital technologies, including in the industrial production.**

The main protected technologies in the largest intellectual property offices in the world are already those related to the digitization of the economy.

**Graph 3 – Three main technological fields in each of the five largest national patent offices, 2012-2014**



Source: WIPO statistics database – IP Facts and Figures.

**Most patents related to Industry technologies 4.0 are concentrated in Europe, the USA and Japan.** The indicators also show that there are a large number of patents coming from South Korea and China, concentrated in some large companies of Information and Communication Technologies (ICTs).

In Brazil, this change in IP indicators towards new technologies is not yet observed.

**The ability of Brazilian industry to compete internationally will depend on the ability to promote digital transformation, and an effective IP system can contribute to the technology catch-up process.** The IP system plays a key role in the process of technological advancement, whether through licensing of protected technologies or learning with technologies in the public domain.

**A fragile IP system can raise the costs of access to technologies and capital and even render them unviable.**

Digitization brings new challenges to the IP system. One of the effects of the digitalization of the economy in the industry is the shortening of the development, production and life cycles of the products. Although the average time for analysis of a patent application to international standards can be significantly reduced, it is necessary to consider whether this will be sufficient to effectively protect products with estimated life cycles of two or three years.

**Finally, it will also be necessary to update laws on the protection of knowledge, information, confidential data and personal data** to meet the needs of new industrial production models.

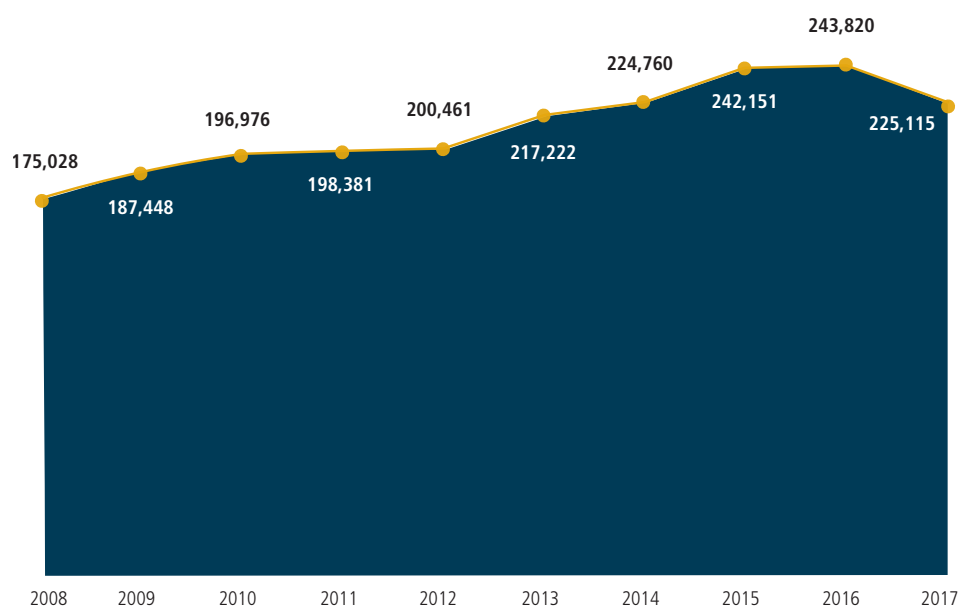
## 3 THE REALITY OF THE BRAZILIAN INTELLECTUAL PROPERTY SYSTEM

### 3.1 The slowness of the National Institute of Industrial Property (INPI)

The slowness in the analysis and granting of rights by INPI leads to an environment of doubtfulness and legal certainty, which damages companies and muddles the business environment. A study by London Economics (2010) estimates that an additional year of pending at the three largest patent offices - the European, the Japanese and the North American - represents losses of \$ 10 billion in the global economy.

In Brazil, the stock of unexamined patent applications (the so-called “patent backlog”) exceeds 225,000 cases. If nothing changes, it is estimated that there will be 350,000 applications awaiting examination in 2029.

Graph 4 – Pending Patents



Source: INPI – Activities Report, 2017.



**INPI takes, on average, 10 years to examine a patent.** In some technological sectors, the average decision time exceeds 13 years, such as telecommunications and pharmaceuticals.

In South Korea, the average examination time for a patent is 2.9 years, in China 2.8, in Japan 5.3, in the United States 3.5 and in Europe around 5,3 years.

While INPI has almost 500 patent applications awaiting examination per examiner, the United States has 67 applications per examiner, Japan has 103, South Korea has 184 and the European Office has 91.

**Chart 2 – Indicators of the performance of IP offices in the analysis of patent applications – 2018**

Office	Backlog	Examiner	Backlog/ Examiner	Filings/ Year	Final office action
USA	549,741	8,160	67.3	605,571	3.5
Japan	175,290	1,702	103	318,381	5.3
Europe	409,049	4,451	91	159,353	5.3
China	n/a*	10,302	n/a*	1,333,503	2.8
South Korea	154,378	836	184.6	208,830	2.9
Brazil	225,115	458	491.5	28,667	10.2

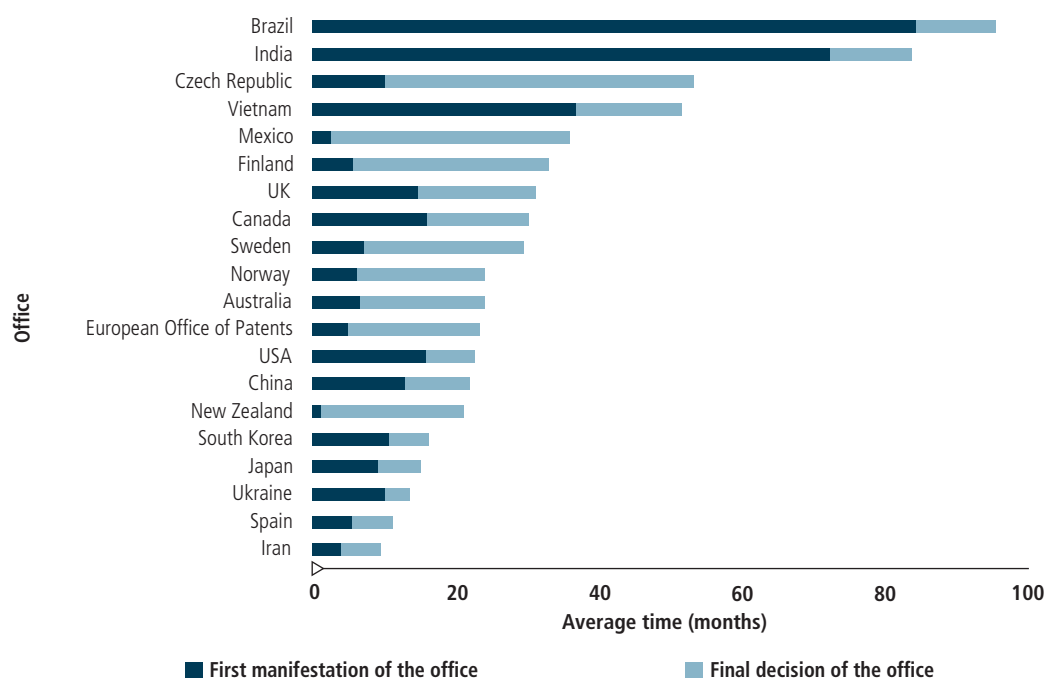
**Source:** Prepared by CNI, based on data from IP5 (2016).

(\*) n/a: not available.

In addition, other countries, whose patent offices are much more efficient than INPI, had already been implementing measures to reduce patenting time since the beginning of the decade. In Brazil, only in 2017 an increase in INPI's efficiency was observed, which resulted in a decrease in the number of patent applications pending final decision. However, the efficiency increase observed in 2017 has little effect on the size of the accumulated delay.

**The length of time between filing and the final decision on the granting of patents in Brazil is among the longest in the world.** However, the time between the first manifestation of the INPI in the process (first office action) and the final decision is relatively short.

**Graph 5 – Average time for the first office action and average time for the final decision of the office 2016**



Source: World Intellectual Property Organization. World Intellectual Property Indicators 2017.

**The time for the first office action corresponds to the average time (months) elapsed between the examination request and the first manifestation of the office.** In Brazil, the examination of the patent application must be requested by the applicant or by any interested party within 36 months from the date of filing, under penalty of having the application dismissed. When applicants are not required to apply for the examination, the average time is calculated from the date of filing until the date of the first office action.

**The waiting time for the final decision of the office corresponds to the average time (in months) elapsed between the request for examination and the final decision.** When applicants are not required to apply for the examination, the average time is calculated from the date of filing until the date of the final decision. The pending time calculations by the offices may vary due to differences in their procedures.

The slowness of the INPI is mainly explained by the accumulation of applications in the stock and not by the delay of the examination itself.

**There is need for pragmatism.** A sustainable solution, in a reasonable time and at an acceptable cost, will require extraordinary measures designed to reduce the volume of applications pending analysis.

Structural interventions, such as optimization of processes and the hiring of more employees, will be essential so that the INPI may be able to analyze the average flow of patent applications, avoiding the need to resort to extraordinary solutions again.

## 3.2 Inefficiency generates impacts on the country's image

The inefficiency of the intellectual property system and illicit trade are damaging to the country's image by inhibiting investments and creating risks of trade tensions.

**Brazil has remained on watch lists and is poorly ranked in international indexes** that take into account respect for intellectual property and the fight against the illicit market.

**Fighting trade in smuggled and pirated products is a challenge** for an economy that wants to expand its international presence and stimulate innovation.

**These practices have a negative effect on the sales and profits of the affected companies and, at the same time, have restrictive effects on the collection of taxes, health and public safety.**

In addition, they result in an obstacle to Brazil's international insertion and discourage foreign investment in the country, especially those involving transfers of technology.

The improvement of the Brazilian intellectual property system will be important in the process of Brazil's adherence to the Organization for Economic Cooperation and Development (OECD)<sup>3</sup>.

## 3.3 Intellectual property legislation in Brazil

In Brazil, industrial property rights and obligations are set forth in Law 9,279 of May 14, 1996, known as the Industrial Property Law (LPI).

Within the legislative body, throughout the 22 years of LPI, they have introduced several bills with proposals to change it. Despite this, there were few changes in LPI, demonstrating its stability.

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3. More information on the country's adherence to the OECD can be obtained at CNI (2018b).

**The low number of judicial inquiries, especially on the constitutionality of the LPI, shows that there is legal certainty, at least in relation to what the law establishes.**

**However, the number of cases questioning the INPI's slowness is growing.** The Judiciary has demonstrated its unconstitutionality of waiting, as it violates the a reasonable length of proceedings provided for in the Constitution and the principles of reasonableness and administrative efficiency.

**The main contribution that can be made in the legislative sphere is the establishment of measures to strengthen the INPI.** This will be possible by means of instruments that assure its financial and administrative autonomy, promoting the execution of the revenues obtained by the provision of its services to managerial and administrative mechanisms. This change, for example, will allow the staffing of the institute to be adjusted, the career review of servants essential for the improvement of its efficiency, and the gradual reduction of the deadlines for the granting of IP rights.

## 3.4 Adherence to the Madrid Protocol – an opportunity

**Brazil must adhere to the Madrid Protocol.** The Madrid Protocol is an international treaty that provides trademark protection in the various member countries by means of a single registration with the World Intellectual Property Organization (WIPO), simplifying the process and reducing costs.

**Reducing the deadlines for examining a trademark application is a necessary condition for Brazil's accession to the Madrid Protocol.** The INPI takes, on average, 24 months to examine an application for trademark registration. This deadline should be reduced to a maximum of 18 months.

In 2017, the Executive Branch sent the text of the Protocol relating to the Madrid Agreement concerning the International Registration of Trademarks for consideration by the National Congress.

Parallel to the Congressional authorization for Brazil's adherence, INPI must comply with the procedures of the Protocol and reduce the average time of examination of trademark applications.

**Brazil's adherence to the Madrid Protocol will benefit, in particular, small and medium-sized Brazilian companies,** which will have their trademarks protected abroad more easily.



## 4 RECOMMENDATIONS FOR BRAZIL'S INTELLECTUAL PROPERTY AGENDA

**Despite the problems identified, the Brazilian IP system has undergone significant transformations.** International cooperation and elimination of bureaucracy in processes have intensified. Historical impasses have been remedied, such as the definition of the roles of Anvisa and INPI in the analysis of patents for pharmaceutical products and processes.

**There is a need for extraordinary measures.** These advances, in addition to recent gains in productivity and the hiring of new servers, have shown that the solution for the stock of patent applications requires extraordinary measures, which should be combined with the continuous implementation of measures that prevent the recurrence of the accumulation of applications.

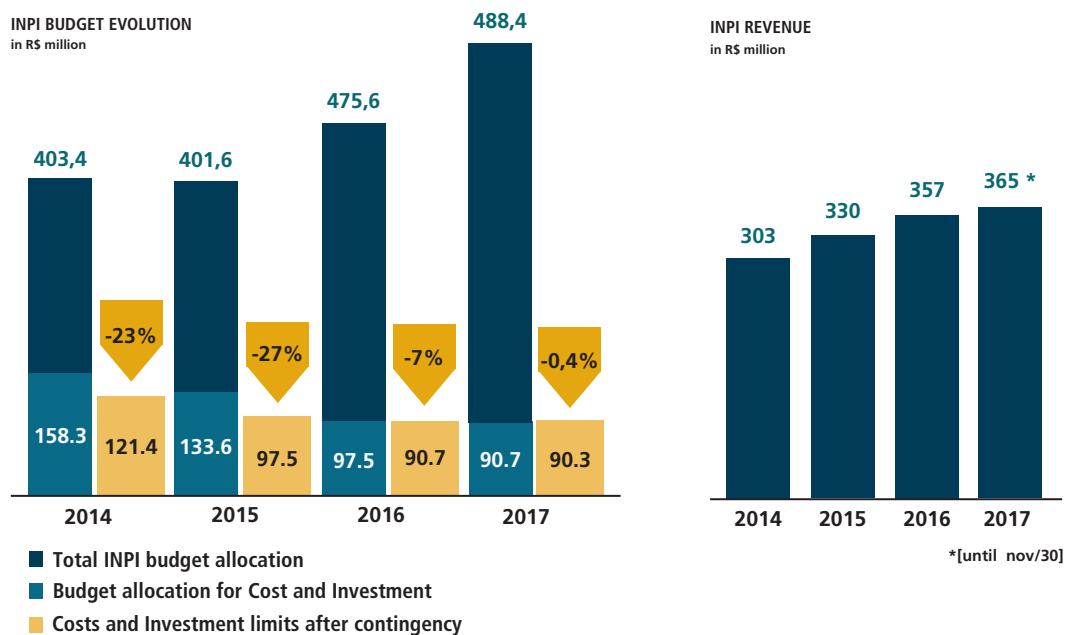
**An example is the proposal presented by INPI on July 31, 2017, through Public Consultation 02/2017, which seeks to address the problem of patent stock.** However, it does not exempt structural reforms capable of ensuring efficiency and providing the Institute with the conditions to manage the regular flow of requests.

### 4.1 Ensure the autonomy and operational improvement of the National Institute of Industrial Property of Brazil

INPI has a good technical reputation and international recognition. In 2017, the institute had its status as an International Searching and International Preliminary Examining Authority (ISA/IPEA) renewed for another 10 years under the Patent Cooperation Treaty (PCT).

Despite being a federal authority surplus, INPI is small and not very well equipped compared to other similar offices in other countries. This contributes to the body's lack of agility.

**Graph 6 – Evolution of INPI’s budget 2014-2017 (in R\$ million); INPI Revenue 2014-2017 (until November 30)**



Sources: LOA 2017, MDIC  
 Source: INPI – Activities Report, 2017.

In order for Brazil to have a safe and adequate environment in the area of intellectual property, it is necessary to implement a strategy of structuring the INPI that includes the adequacy of its technical quantitative and its internal procedures. Adequacy should seek to increase agility in receiving, examining and publishing the results of applications for trademarks, patents, industrial designs and other types of industrial property rights.

**Recommendations:**

- **guarantee the administrative and financial autonomy of INPI** so that the surplus resources generated by the services of the institute can be reinvested in its structuring, expansion, provision of services with adequate quality and deadlines to guarantee the country’s competitiveness;
- **to adapt the general framework of professionals of the entity to the standards of IP5<sup>4</sup>**, including for the other areas of examination of industrial property rights (trademarks, industrial designs and technology transfer agreements) and for the administrative sector of the institute, with a view to the shortcomings already mentioned and the forecast of growth of the demand for INPI services in the coming years.

4. IP5 is the name given to the block of the world’s five largest intellectual property offices. The members of the IP5 are the European Patent Office (EPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), the China Intellectual Property Office (SIPO) and the United States Patents and Trademarks Office (USPTO).

## 4.2 Decrease the average patent examination time

**The length of time between filing and the final decision on the granting of patents in Brazil is among the longest in the world.**

INPI takes, on average, 10 years to examine a patent. In South Korea, the average examination time for a patent is 2.9 years, in China 2.8, in Japan 5.3, in the United States 3.5 and in Europe around 5,3 years.

**A sustainable solution, in a reasonable time and at an acceptable cost, will require extraordinary measures designed to reduce the volume of applications pending analysis.** Structural interventions capable of guaranteeing efficiency will be fundamental so that INPI may be able to analyze the average flow of patent applications, avoiding the need to resort to extraordinary solutions again.

### **Recommendations:**

- implement an extraordinary solution to remedy the stock of pending patent applications for analysis, pursuant to Public Consultation 02/2017 (Annex 1);
- reduce patent processing time at INPI for a maximum of four years within a four-year management period;
- promote the automation of internal examination processes;
- adjust the number of examiners with immediate hiring and training of professionals, while promoting a review of examiners' careers to enable retention of new technicians under competitive market conditions; and
- establish technical cooperation agreements with international offices to expedite the analysis of patents, without losing the INPI's autonomy in the final decision on granting these rights.

## 4.3 Decrease the trademark examination average time and adhere to the Madrid Protocol

**Brazil must adhere to the Madrid Protocol.** The Madrid Protocol is an international treaty that provides trademark protection in the various member countries by means of a single registration with the World Intellectual Property Organization (WIPO), simplifying the process and reducing costs.



**Reducing the deadlines for examining a trademark application is a necessary condition for Brazil's accession to the Madrid Protocol.** The INPI takes, on average, 24 months to examine an application for trademark registration. This deadline should be reduced to a maximum of 18 months.

In 2017, the Executive Branch sent the text of the Protocol relating to the Madrid Agreement concerning the International Registration of Trademarks for consideration by the National Congress.

Parallel to the Congressional authorization for Brazil's adherence, INPI must comply with the procedures of the Protocol and reduce the average time of examination of trademark applications.

**Recommendations:**

- reduce the trademarks processing time at INPI to a maximum of 18 months, a necessary condition for joining the Madrid Protocol;
- adhere to the Madrid Protocol, a treaty facilitating the application for the filing of trademarks in industrial property offices in the signatory countries simultaneously;
- promote the automation of internal examination processes; and
- adjust the number of examiners with immediate hiring and training of professionals, while promoting a review of examiners' careers to enable retention of new technicians under competitive market conditions.

## 4.4 Fight crimes against intellectual property

**Smuggling, piracy and other infringements of intellectual property compromise the functioning and creation of formal sector enterprises,** discourage innovation and go against consumer rights.

**This situation also affects Brazil's ability to attract investments and technologies and subject the country to commercial tensions.** Brazil has remained on watch lists and occupies low positions in the international rankings on intellectual property, as for example in the Special 301 Report and Notorious Market List.

The trade routes of smuggled and pirated products are complex and subject to change. There is the challenge of monitoring a border which corresponds to over 2 million square kilometers (equivalent to 27% of the national territory), throughout 11 states of the Federation, with 10 countries of South America.

**The complexity of Brazilian borders shows that international cooperation must be strengthened**, as well as good governance and cooperation between the multiplicity of national bodies involved.

**An example of an initiative in which the Brazilian government should engage is the Latin American Anti-Contraband Alliance (ALAC)**, a forum for discussion among the public and private sectors of the region. This organization seeks to address the growing social and economic problem caused by the spread of contraband in Latin America.

**It is also necessary to reform the Brazilian Penal Code with regard to Crimes Against Industrial Property**, which cause damages to industry, affecting the various industrial sectors, such as food and beverages, toys, electronics, medicines, tobacco, textiles, among others. There are bills, with advanced procedures in the National Congress, for which the support and the engagement of the Executive Branch is fundamental<sup>5</sup>.

#### **Recommendations:**

- tackle smuggling and piracy by all legal means, including by expanding international cooperation, especially with the countries from which illegal goods originate or transit;
- expand public actions to prevent and fight smuggling, piracy and crimes against intellectual property to promote institutional security, restrain unfair competition and protect investments;
- prepare and strengthen the institutions directly involved in the fight against smuggling and piracy;
- strengthen and support the actions of the National Council for Fighting Piracy of the Ministry of Justice (CNCP-MJ), through appropriately structured and trained repression organizations;
- support the consolidation and strengthening of the Latin American Anti-Contraband Alliance (ALAC), a forum for discussion among the public and private sectors of the region;
- strengthen the Judiciary Power and its administrative bodies to ensure speed and legal certainty in defense of IP rights in Brazil; and
- adjust Brazilian criminal law to the complexity of criminal prosecution, taking into account the rapid technological advance and the new forms of reproduction of protected works, and to the extent of damage to intellectual property holders, consumers and society.

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5. CNI advocates the approval of PL 333/1999, introduced by Antônio Kandir (PSDB/SP), which "amends and adds articles to Law 9,279 of May 14, 1996, which regulates rights and obligations related to industrial property". The project is among the proposals selected for the 2018 Industry Legislative Agenda.

## 4.5 Expand Brazil's integration into the global intellectual property system

**Brazil needs to deepen its integration in the international environment, contributing proactively to the discussions and proposals on the intellectual property system in the world,** taking positions compatible with its maturity in the topic, in order to favor the business environment.

**Adherence to treaties and agreements is the key.** Adherence to international treaties and agreements in the field of trademarks, industrial designs and geographical indications and the establishment of technical collaboration agreements among INPI and other IP offices worldwide contribute to the country's greater integration into the global intellectual property system. In addition, it contributes to accelerate the granting of rights, without losing its sovereignty.

In addition to the Madrid Protocol, there are a number of treaties which may facilitate the international insertion of Brazilian intellectual property.

### **Recommendations:**

- adhere to the Hague Agreement, which is intended to facilitate the deposit of industrial design in industrial property offices in the signatory countries simultaneously;
- adhere to the Lisbon Agreement, an international registration system which makes it possible to obtain protection of a designation of origin (DO), a particular type of geographical indication (GI), in all Member States simultaneously;
- adhere to the Singapore Treaty, which standardizes procedural aspects of trademark registration and licensing in signatory countries; and
- participate actively in international IP forums, especially the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), taking positions that favor Brazil's international competitiveness.

# ANNEX

## Annex 1 – National Institute of Industrial Property

Public Consultation 02/2017 - Proposal for an act on the simplified procedure for the granting of patent applications.

MINISTRY OF INDUSTRY, FOREIGN TRADE AND SERVICES

NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY

PRESIDENCY

Rua Mayrink Veiga 9, 27º andar, Centro, CEP 20090-910, Rio de Janeiro, RJ

[ACT] No. \_\_\_\_\_, \_\_\_\_\_ 2017.

Provides for the simplified procedure for the granting of patent applications.

Article 1 This [ACT] provides for the simplified procedure for the granting of patent applications.

Sole paragraph. The simplified procedure shall not apply to applications for Certificate of Addition of Invention, divided applications and applications for pharmaceutical products and processes.

Art. 2 The admission of the patent application in the simplified procedure will be notified in the *Revista de Propriedade Industrial - RPI* (Industrial Property Gazette) when the following conditions are met:

I - Protocol for the filing of the patent application or application for entry into the national phase carried out up to the date of publication of the [ACT];

II - Applications published or with a request for advance publication up to 30 days from the date of publication of this [ACT];

III - Request to examine the patent application up to 30 days from the date of publication of this [ACT];

IV - Payment of the annual fees;

V - There is no publication of a technical examination opinion, pursuant to art. 35 of Law 9,279 of 1996.

Art. 3 From the publication of admission of the patent application in the simplified procedure begins the ninety-day period for the publication of its granting.

Art. 4 The request that received subsidy substantiated by third parties within the term of art. 3 of this act or before the publication of admission shall be excluded from the simplified procedure.

Sole paragraph. The patent application will be excluded from the simplified procedure at the request of the applicant itself within the term of art. 3°.

Article 5 The patent application shall be granted as published or notified upon entry into the national phase.

Art. 6 The patent certificate will be issued with exceptions to the prohibitions of arts. 10 and 18 of Law 9,279 of 1996.

Article 7 The National Institute of Industrial Property shall issue rules to regulate the simplified procedure for the granting of a patent application.

Art. 8 This [ACT] shall come into force on the date of its publication.

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# LIST OF INDUSTRY PROPOSALS TO THE 2018 ELECTIONS

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28. Natural Gas: market and competitiveness



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38. Brazilian Investments Abroad: remove obstacles to the market
39. Trade Defense: a fair trade agenda
40. Export Financing and Guarantees: supporting exporters more effectively
41. Brazilian Foreign Trade: Trade Facilitation and Cutting the Red Tape
42. Customs Documents: foreign trade without constraints
43. Sectoral Industrial Policy: concepts, criteria and importance (this document will be disseminated during a specific seminar dedicated to the topic)

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