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The Brazilian Patent System: Analysis of Law 9,279/1996

The Brazilian Patent System: Analysis of Law 9.279/1996

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Summary

This study analyzes the Brazilian Patent System from the perspective of Law No. 9,279/1996, which regulates rights and obligations related to industrial property. The research discusses the importance of this legislation in the context of technological innovation, economic development, and international harmonization promoted by the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights). Through a descriptive and analytical literature review, the study examines the historical evolution, legal foundations, and contemporary challenges of invention protection in Brazil. The results indicate that, although the law has modernized the patent system and strengthened legal certainty, obstacles such as lengthy administrative processes and an imbalance between inventors' rights and the public interest persist. The study concludes that continuous improvement of the system is essential to reconcile innovation protection with social access to knowledge and sustainable development.

Keywords: Industrial property; Patents; Law No. 9,279/1996; Technological innovation; TRIPS Agreement.

Abstract

This study analyzes the Brazilian Patent System from the perspective of Law No. 9,279/1996, which regulates the rights and obligations related to industrial property. The research discusses the importance of this legislation in the context of technological innovation, economic development, and the international harmonization promoted by the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights). This descriptive and analytical literature review examines the historical evolution, legal foundations, and contemporary challenges of patent protection in Brazil. The findings indicate that, although the law modernized the patent system and strengthened legal security, issues such as administrative delays and the imbalance between inventors' rights and public interest persist.

It concludes that the continuous improvement of the system is essential to reconcile innovation protection with social access to knowledge and sustainable development.
Keywords: Industrial property; Patents; Law No. 9,279/1996; Technological innovation; TRIPS Agreement.

1 Introduction

This study deals with the Brazilian Patent System, focusing on Law No. 9,279/1996, that regulates the rights and obligations related to industrial property in Brazil. This legislation represents a milestone in the consolidation of legal protection for inventions, utility models, industrial designs and trademarks, aligning the country with international standards established by multilateral agreements, such as the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), signed within the scope of the World Trade Organization (WTO).

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The general objective is to analyze the main provisions of Law No. 9,279/1996, in which refers to the granting, duration and limitations of patents, highlighting their implications for the technological development and national competitiveness.

Specific objectives include: understanding the historical and legal evolution of the system patents in Brazil; discuss the impacts of international harmonization promoted by TRIPS; and assess the challenges faced by the country in protecting industrial property in a context of growing globalization and technological innovation.

The aim is to answer the following guiding question: *how does Law No. 9,279/1996 contributes to the balance between stimulating innovation and the public interest in access to knowledge and technologies protected by patents?*

The study is justified by the strategic relevance of the patent system in strengthening of the knowledge economy, in the valorization of scientific research and in the encouragement of creativity industrial. Understanding its legal and economic foundations is essential to understanding how Brazil can promote an innovative environment that reconciles inventor protection with access social to technologies.

The research is relevant because the discussion about intellectual property is no longer a a topic restricted to the legal field and became part of the debate on sustainable development, technological sovereignty and social justice. The patent system influences sectors such as healthcare, biotechnology, software and energy, areas that determine the autonomy and scientific advancement of a nation.

The methodology used is based on a descriptive literature review and analytical, with consultation of legislation, international treaties, doctrines and scientific articles. The study also seeks to contextualize Law No. 9,279/1996 in light of its historical trajectory and the transformations brought about by TRIPS, allowing a critical view of the limits and potential of the Brazilian model of industrial property protection.

Thus, the proposed analysis aims to contribute to the understanding of the role of patents as legal instruments to stimulate innovation, but also as mechanisms of power economic and political, whose regulation requires constant balance between the right of exclusivity and the collective interest in scientific progress.

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2 Theoretical Framework

2.1 The Evolution of Patents

The intellectual property category encompasses a vast set of interconnected themes, all aimed at protecting the creations of the human intellect. Includes copyrights, trademarks, designs and industrial processes, invention patents, designations of origin, technology transfer agreements, and traditional knowledge. It is, therefore, a broad and dynamic field that follows the advancement of creativity and innovation.

Since the dawn of humanity, the search to meet needs and dominate the environment led to the development of techniques. Humans learned to manipulate clay, stone, and wood to create utensils, hunting tools and vessels, early expressions of inventive ingenuity (Suzman, 2021).

As the centuries passed, the need arose to protect these discoveries. The first known form of protection for inventions dates back to the Middle Ages, in Bordeaux, where granted licenses of up to fifteen years for industrial manufacturing and painting processes.

However, the first recognized patent was granted in 1416, in the Republic of Venice, to Francisco Petri, who requested exclusive authorization to build twenty-four windmills powered by water power. In 1474, the Venetian Law became the first legislative landmark on the theme. The London Statute of Monopolies (1623) and the United States *Patent Act* (1809) consolidated the modern concept of patent, expanding the recognition of the inventor and his right to temporary exclusivity.

The internationalization of this protection gained momentum in the 19th century. In 1883, after years of debates and reviews, the Paris Convention was signed, the first international agreement on industrial property, reflecting the desire of inventors and investors for legislation uniform that would protect their ideas and capital. The original text was revised several times to keep up with technological advances and social transformations — Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958), Stockholm (1967) and amended in 1979 (Couto; Mendes, 2024).

Each signatory country of the Paris Convention maintains autonomy to legislate on the administrative details and the duration of patents, as long as it respects the general guidelines established.

The evolution of intellectual property protection is not limited to patents. In 1886, the Bern secured copyright on literary and artistic works, consolidating the protection

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international intellectual creation. As early as 1970, the Patent Cooperation Treaty (PCT), administered by the World Intellectual Property Organization (WIPO), created a unified patent filing system valid in multiple countries — today it has 144 members, including Brazil since 1978.

Another important milestone was the Treaty of Budapest (1977), concerning the deposit international standard for microorganisms and biological cultures, although Brazil is not yet a signatory.

In the 1980s, intellectual property became part of commercial discussions international. During the Uruguay Round of GATT in 1986, the TRIPS (Trade-Related Aspects of Intellectual Property Rights), which sought to harmonize the protection of patents and other intellectual rights within the scope of the World Trade Organization (WTO) (Santos, 2023).

Even after the emergence of TRIPS, WIPO maintained a central role in the study, formulation and coordination of global policies on intellectual property. It is its responsibility to promote international treaties, facilitate access to scientific and technological knowledge and encourage individual and corporate creativity — a balance between creator's rights and collective advancement of humanity (Soares, 1998).

In short, the history of patents is the history of human ingenuity itself: a a path that goes from the invention of the mill to the digital revolution, always mediated by the need for recognize, protect and share the creative power of thought.

2.2 The Historical and Legal Formation of Patents and Intellectual Property Rights

The legal evolution of intellectual property, in the strict sense *(stricto sensu),* can be comprised of three historical phases: the Ancient Period, the Mercantilist-Industrial Period and the Globalized Period. Each stage exerted a decisive influence on the configuration of current Rights of Intellectual Property (IPRs), establishing the legal and conceptual bases that support the protection of human creation.

In the Ancient Period, there was no structured legal system to support the information or inventions. Knowledge was restricted and linked to religious or state power; information of public, religious or military interest was considered relevant. Societies ancient times merged these aspects inseparably, which makes it difficult to identify a notion autonomous intellectual property. Even so, in Greco-Roman civilizations there are primitive evidence of the idea of authorship and the need to protect the creator against copying undue — a kind of “prehistory” of intellectual property.

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With the advent of Mercantilism, the intensification of trade and maritime routes across African coast (Barbosa, 2009) transformed technical knowledge into a strategic asset. The inventions and discoveries began to represent a competitive advantage among National States in formation. Navigation instruments, maps and industrial processes were kept as state secrets, and the privileges granted were not aimed at inventors, but at political elites and economic close to power.

The granting of patents, at the time, did not require novelty. They were political privileges, granted as rewards to courtiers, not in recognition of inventive merit. This explains, for example, why the right to reproduce books belonged to publishers — not to

—, allowing the government to control published content and concentrate revenue in the authors' sector editorial.

With the expansion of commercial activities and the flourishing of mercantile capitalism, the distinctive signs (such as brands and coats of arms) gained importance. They served to identify the origin of products and, later, they began to represent quality and prestige, paving the way for the modern brand concept.

The advancement of scientific and technological ideas culminated in the Industrial Revolution in the 19th century. XVIII, when England stood out as the birthplace of invention protection. Stability policy achieved after the Glorious Revolution and the existence of the Statute of Monopolies (1623) created an environment conducive to innovation. Patents became a central instrument for fostering to mechanical and industrial development (Suzman, 2021).

The conceptual transformation, however, took place in the 19th century, when the privileges came to be understood as property rights — a paradigm shift that consolidated the ideological basis of modern intellectual property.

In Brazil, this influence manifests itself with the opening of ports (1808) and the Charter of 28 of April 1809, which established the exclusive privilege for fourteen years to inventors and introducers of new machines and techniques (Brazil, 1809). The text reflected the attempt to follow the European model, granting recognition and protection to inventions, although still under strong state centralization.

In this same period, copyright and trademarks matured as instruments to protect creators and entrepreneurs. From the 19th century onwards, with the advancement of cultural industry, the author began to have control over the exploitation of his work, while companies understood the economic value of distinctive signs.

The transition to the Globalized Period was marked by the signing of bilateral treaties and multilateral agreements that harmonized the protection of intellectual property among nations. The following stand out

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the Paris Convention of the Union (CUP), of 1883, aimed at the protection of inventions and trademarks industrialists, and the Berne Convention of 1886, which secured copyright on literary works and artistic. These treaties internationalized the protection system, but also limited the national sovereignty, creating dependence on international standards (Couto; Mendes, 2024).

The 20th century consolidated Intellectual Property Law as a pillar of the economy global. Technological acceleration has required new legal adaptations and, in recent decades, discussions about patents have intensified in the context of international trade.

In 1994, the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), negotiated within the framework of the World Trade Organization (WTO), redefined the global scenario of intellectual protection. The treaty sought to balance the rights of inventors with access to knowledge, but generated political tensions between developed and developing countries. The World Intellectual Property Organization (WIPO), although it has remained on the sidelines of these negotiations (Souza, 2005), ended up playing a fundamental role in the implementation and technical cooperation of the agreement.

The subsequent debate, known as TRIPS Plus, expanded the protection requirements, benefiting nations with greater technological power. Countries like Brazil began to defend a critical view of the impact of these standards on economic and social development, highlighting the contemporary challenge of balancing innovation, sovereignty and global justice.

In conclusion, the trajectory of intellectual property reveals legal progress and the reflection of the power and knowledge struggles that shape history. The patent, in essence, remains as a symbol of the encounter between the creative genius and the social pact that seeks to recognize and regulate the value of the invention.

2.3 Law No. 9,279/96

The inaugural legal framework for the protection of industrial property in Brazil dates back to the Alvará Royal Decree of April 28, 1809, issued by Prince Regent D. João VI, which granted privileges to inventors as a way to stimulate innovation and technical progress in the country. This document laid the historical foundations for the protection of inventions in Brazilian territory (Santos, 2023).

Over the following centuries, legislation evolved. Decree No. 16,264/1923 stands out, replaced by Decree-Law No. 7,903/1945, considered the first Property Code Industrial Property of Brazil. This, in turn, was revoked by Decree-Law No. 1,005/1969 and by Law No. 5,772/1971, which was also called the Industrial Property Code.

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The topic is governed by Law No. 9,279, of May 14, 1996, which provides on the rights and obligations relating to industrial property, covering the invention, the model utility, trademark and industrial design. The standard defines the procedures for granting patents, exclusive use rights and crimes against industrial property, modernizing the Brazilian legal system on the subject.

The enactment of Law No. 9,279/96 represented a historical turning point, replacing a previous code created during the exceptional regime, which reflected a Brazil that was still closed to international trade. The old legislation, outdated in the face of new challenges technological, did not offer legal security to investors and did not cover topics strategic such as pharmaceutical patents or biotechnological processes.

The new legal diploma therefore arose from an economic and political necessity, aligning the country with global trade demands and multilateral agreements following pressures internationally from the United States, which conditioned access to markets and technologies to strengthening the protection of intellectual property in Brazil (Suzman, 2021).

With this, Law No. 9,279/96 paved the way for new foreign investments, facilitated technological exchange and reduced the risk of trade sanctions, strengthening the country's insertion in the global economy.

Prior to the current law, the Industrial Property Code of 1971 (Law No. 5,772) was in force, which replaced the 1969 diploma. Unlike its predecessors, the 1971 code was debated in National Congress and had the participation of industry, specialized lawyers and sectors foreigners, being influenced by German legal technique and assistance from the Organization World Intellectual Property Organization (WIPO) (Paranaguá & Reis, 2009).

The Industrial Property Act of 1996 reaffirms respect for international treaties signed by Brazil and preserves the principle of reciprocity, guaranteeing equal treatment to nationals and foreigners domiciled in the country. Its scope encompasses creations applied to industry, trade and provision of services, recognizing protection for inventions, trademarks, designs industrial, geographical indications and competitive practices.

The promulgation of the Federal Constitution of 1988 established a new paradigm, incorporate the right to intellectual property into the economic development project and social development of the country. Article 3 of the Magna Carta, by determining as fundamental objectives the construction of a free, fair and supportive society and the promotion of national development, provided the basis for understanding intellectual property as an instrument of growth and social justice.

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Law No. 9,279/96 is also linked to the international obligations assumed by Brazil with the signing of the TRIPS Agreement *(Trade-Related Aspects of Intellectual Property Rights),* in under the World Trade Organization (WTO). This agreement was signed under strong pressure from developed countries, which demanded that Brazilian standards be adapted to global protection rules, especially in the pharmaceutical, food and biotechnology sectors, where patenting was not yet expected.

During the legislative process, some amendments of a socio-environmental nature were proposals, highlighting those of then Senator Marina Silva, which sought to make the Law of Industrial Property with the Convention on Biological Diversity (CBD). One of the amendments suggested the inclusion of a paragraph providing that patent applications related to knowledge traditional and biological resources should contain documentation detailing the geographic origin and ethnicity of the material used, as well as proof of fair and equitable sharing of benefits with local communities and indigenous peoples.

Such proposals, however, were rejected, resulting in dissonance between Law No. 9.279/96 and the CBD, which represented a setback for the country in terms of the protection of traditional knowledge and sovereignty over biodiversity. If Brazilian legislation had incorporated these guidelines, it could have become an exemplary instrument of balance between technological innovation and environmental justice.

Thus, although Law No. 9,279/96 was a notable advance in Brazil's integration into the international intellectual property system, it left open important gaps in what concerns the protection of traditional knowledge and the sharing of benefits (Santos, 2023).

In summary, Law No. 9,279/96 consolidated Brazil as a legal and economic actor relevant in the global industrial property scenario, but continues to raise debates about the need to harmonize the interests of technological innovation with the preservation of rights collective and environmental, in line with the constitutional and international principles that govern sustainable development.

2.4 The Legal and Constitutional Evolution of Intellectual Property in Brazil

The classical conception of property, for centuries, was limited to the possession of material goods — lands, objects, tangible riches. However, as humanity advanced in technical and scientific complexity, the notion of property expanded to encompass the immaterial. The human intelligence, transformed into inventions, brands and artistic creations, began to generate goods of economic and symbolic value, demanding new forms of legal protection (Suzman, 2021).

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Technological development and globalization have made it clear that intangible assets are fundamental assets for the progress of nations. In this scenario, concepts such as “property intellectual property”, “industrial property”, “author’s rights” and “inventor’s rights” became coexist, often in a confusing way, although they refer to different branches of protection.

While *intellectual property* is a genre that encompasses different categories of rights, *industrial property* is the type most focused on inventions, brands and models applicable to economic activity. Thus, contemporary analysis divides intellectual property into three groups:

1. Copyright, which protects literary, artistic and scientific works, as well as such as computer programs and scientific discoveries. It also includes the rights related, which protect the interpretations and performances of artists, phonograms and broadcasting broadcasts.

2. Industrial property, which includes invention and design patents utility, trademarks, industrial designs, geographical indications and the repression of unfair competition.

3. Sui generis protection, aimed at the topographies of integrated circuits, cultivars and traditional knowledge.

In Brazil, Law No. 9,279/96, known as the Industrial Property Law (LPI), establishes in its article 2 that the protection of rights relating to industrial property, considering its social interest and the technological and economic development of the country, it is given through:

I – Granting of invention and utility model patents;

II – Granting of industrial design registration;

III – granting of trademark registration;

IV – Repression of false geographical indications;

V – Repression of unfair competition.

The main purpose of this protection is to ensure the individual right to exclusivity and stimulate technical progress and national economic development. Legal ownership guarantees the creator a prominent position and security over his invention, while the State ensures that the social use of this innovation contributes to the collective good.

The 1988 Federal Constitution reinforces this orientation by linking the protection of intellectual property to the social interest and national development, in the technological spheres and economic. The constitutional text recognizes that encouraging creation and innovation is an instrument essential for the country’s progress and for reducing inequalities (Couto; Mendes, 2024).

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In addition to the legal dimension, there is also a social function inherent to property industrial. As Santos (2023) highlights, this function manifests itself in promoting loyalty competitive — that is, ensuring that innovation and creativity are rewarded, but without harm free access and market balance.

Thus, the protection of intellectual property in Brazil is not limited to the defense of private interests, but constitutes a strategic part of the national development policy. It is up to the State to foster innovation and ensure that knowledge — as the driving force of progress — be accessible, productive, and beneficial to society as a whole.

The trajectory of intellectual property thus reveals the transition from material possession to valorization of creative thinking, consolidating itself as one of the pillars of development sustainable and technological of the 21st century.

2.5 The Impact of the TRIPs Agreement on the Reform of the Patent System in Brazil

Entry into force of the Agreement on Economic, Social and Cultural Aspects of Intellectual Property Rights Trade -*Related Aspects of Intellectual Property Rights* (TRIPs) represented a watershed in global patent regulation. Under the aegis of World Trade Organization (WTO), TRIPs established international parameters mandatory legal protection of intellectual property, obliging signatory countries to harmonize their internal legislation in accordance with minimum standards of protection and supervision.

In Brazil, TRIPs triggered a reform of the intellectual property system. After its signature, the country began to modernize the legal framework with new laws that regulated patents and computer programs, cultivars and other forms of technological expression and creative. Law No. 9,279/96, which replaced the old Industrial Property Code, is a direct result this adaptation to the international scenario.

The TRIPs Agreement covers a broad spectrum of rights, including copyright, trademarks, geographical indications, industrial designs and, in particular, patents, which have passed to have more uniform rules throughout the world (Suzman, 2021). Among its pillars, two stand out fundamental principles of the WTO:

– National Treatment, which prevents national products from receiving more favorable treatment favorable than imported products;

– Most Favored Nation, according to which any advantage granted to a country must be extended to all other signatories to the agreement.

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These principles ensure predictability and equality in commercial relations international, making the patent system more stable and integrated into global trade.

A crucial point of TRIPs is the obligatory nature of the result: Member States are free to choose the means of implementation, but must ensure the effectiveness of protection intellectual. This flexibility allowed each country to adapt the agreement to its legal reality and economic, without disrespecting international commitments.

In relation to patents, TRIPs determined minimum terms of protection, criteria for novelty, inventive step and industrial application, in addition to requiring that national laws offer effective means to curb violations. This imposed on developing countries, as Brazil, the challenge of balancing the protection of inventors with the need for access to essential technologies in the pharmaceutical and biotechnology fields.

Regarding the application of TRIPs, developed countries were obliged to adopt its standards immediately, starting January 1, 1995, while developing countries had up to five years to adapt. In the Brazilian case, some doctrines differ as to the date exact date of its validity: some authors argue that the agreement came into effect in 1995, with the creation of the WTO; others, that in 2000, at the end of the transition period (Couto; Mendes, 2024).

The fact is that, after the signing of TRIPs, no Member State could issue standards in disagreement with its provisions. In this sense, Law No. 9,279/96, enacted shortly after the consolidation of the agreement, already reflected the need for compatibility with the guidelines international standards, regarding the granting of patents and the protection of geographical indications (Santos, 2023).

Therefore, TRIPs redefined the scope of patents in Brazil and consolidated the integration of country to the global innovation system, promoting legal security, attracting investments foreigners and stimulating national technological competitiveness. It marked Brazil's transition from a restricted and fragmented protection regime to a modern model aligned with standards international, in which the patent became a strategic instrument of development economic and scientific.

Conclusion

The analysis of the Brazilian Patent System, in light of Law No. 9,279/1996, shows that the legislation represented a significant advance in the consolidation of industrial property in the country, aligning Brazil with international standards and strengthening legal security for inventors and companies. By regulating more precisely the rights and duties related to patents, the law

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provided a more favorable environment for technological innovation and the transfer of knowledge, essential aspects for national economic and scientific development.

However, the study also demonstrates that the Brazilian patent system faces structural challenges that transcend the legal text. Among them, the slowness of examination processes at the National Institute of Industrial Property (INPI), the limitations budgets of the agency and the tensions between the right of exclusivity and the public interest. These factors still compromise the effectiveness of the system and make it difficult to balance protection and access to knowledge.

The incorporation of the parameters of the TRIPS Agreement represented a milestone in internationalization of Brazilian legislation, but also imposed new dilemmas. The strengthening of protection of intellectual property rights has brought benefits to foreign investment and normative standardization, but accentuated technological inequalities between developed countries and developing. In this context, Brazil needs to continue seeking legal and policies that ensure their technological sovereignty and the democratization of innovation.

Therefore, it is concluded that Law No. 9,279/1996 is an indispensable instrument for modernization of the national industrial property system, but it requires constant updating and improvement. Building a balanced model depends on legislation and strengthening institutional, the valorization of scientific research and the formulation of public policies that encourage innovation without restricting social access to knowledge.

In summary, the patent system must be understood as a protection mechanism economic and as an instrument of human and technological development, capable of promoting creativity, stimulate scientific progress and contribute to a more sustainable future and equitable.

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