4. Intellectual Property System

Overview on the Argentinean Intellectual Property System

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International Treaties governing IP law

Argentina is a member of the following IP Treaties, which prevail over local laws according to the Argentinean National Constitution:

- Paris Convention for the Protection of Industrial Property (1883);
- Berne Convention for the Protection of Literary and Artistic Work (1886);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);
- TRIPs, Trade-Related aspects of Intellectual Property Rights, (1995);
- WIPO Copyright Treaty (1996);
- WIPO Performances and Phonograms Treaty (1996);
- UPOV (International Convention for the Protection of New Varieties of Plants Protection, as its version of 1978),
- Argentina is not a member of the Patent Cooperation Treaty (PCT),
- Argentina is not a member of the Madrid System to file Trademarks.
- Argentina has not formally adhered to the Uniform Dispute Resolution Policy issued by ICANN and administered by WIPO in order to set disputes over local (ccTLDs) domain names.
- Argentina adopted the Locarno Agreement in May 2009, which sets forth the International Classification for Industrial Designs

Trademarks, Geographical Indications and Industrial Model & Designs

In general terms, Argentine trademark law and practice has been one of the most advanced in Latin America and considered similar to those of most European systems.
Almost any sign having distinctive power can be registered as a trademark including sounds, wrappings, packaging, advertising slogans, etc.
Currently it is taking around 2 years to register a trademark. Counted from its filing date, as long as no opposition is lodged by a third party or official action served by the local Trademark and Patent Office (INPI). In order to file an application, an address within the city of Buenos Aires must be provided, which usually is the one of the agent handling the filing. The classification of goods and services used by INPI is the Nice Classification Agreement handled by WIPO (Word Trade Organization).
A registered trademark confers certain rights nationwide for 10 years. It can be unlimited renewed if the trademark has been used within the last 5 years prior to its expiration. Among the rights conferred it is worth noting: filing administrative oppositions; commencing criminal protection against infringers, civil actions to cease in the use of a trademark including the recovery of damages; recordation at the local Customs ("Alert System"); as well as requiring "ex parte" and "inter parte" preliminary injunctions to stop infringing activities or to secure elements to be used at trial. Following some particular local judicial decisions, well-known and famous marks are protected in our country.

Local legislation establishing the registration of **Geographical Indications and Denominations of Origin** "IG&DOs") was fully implemented in 2009 with the enactment of National Decree 556/2009. It is worth mentioning the rise in the number of administrative and judicial decisions tackling different issues related to the registrability of IG&DOs as well as the coexistence between them and trademark rights.

Industrial Models and Designs are granted for 5 years from the filing date, which can be extended twice at the request of the title-holder over non technical ornamental features of industrial product, which comply with certain requirements such as novelty. The main advantage of this instrument over trademarks is that the registration process is less time consuming given that only the deposit o an application is required so no major substantive examination (other than the fulfillment of formal requirements) is conducted.

Patents, Utility Models and Plant Varieties Rights.

Patents confer certain rights to exclude others from using, making, selling, offering to sale and importing a patented invention subject to limited exceptions such as their use for non-commercial research, international exhaustion of rights, among others.

Since the enactment of the current patent law it has been discussed whether Argentina has already fully implemented the minimum standards established at TRIPs but since May of 2012 the arguments pointing out that such is not the case have soared. The reason is that on May 8, 2012 a joint resolution issued by the Ministry of Industry, the Ministry of Health and the National Institute for Industrial Property was published in the Official Bulletin, which approved a new set of guidelines for the examination of patent applications related to chemical-pharmaceutical inventions. This new guidelines have the effect of restricting the patentable subject matter in that industry and it may applied to biotechnological pharmaceutical inventions as well. According to most legal and technical experts in field this guidelines present many problems and lawsuits against its application are expected to arise in the near future.

Regarding all other technical fields**,** it is commonly recognized that the local patent system follows most of the trends seen in Europe, particularly regarding the exclusion of certain subject matter from patentability in areas like biotechnology, "business methods" and the like.
In Argentina, plants (protected through **right to plant varieties**), animals and genetic material existing in nature, as well as mere pieces of software (that are protected by **copyrights**) are all subject matter, in principle, excluded from patentability. Yet, it is advisable to consult with a local expert in order to confirm that a particular exclusion applies.

Unfortunately, the prosecution of patents has been suffering expanding backlogs due to multiple reasons. Argentina is one of the few Latin American countries not members of the Patent Cooperation Treaty ("PCT"). The existing delay in conducting substantive examination of patent applications (especially in the fields of pharmaceuticals and biotechnology), extends the prosecution period up to 6-10 years. Therefore, the time to benefit from legal protection set forth in the Patent Law (20 years from the filing date) is shortened almost in half. Neither there are other legal alternative protections available such as provisional rights extending from the publication of the application up to the granting date that could be used against certain third parties that knew they were infringing the patent rights. From time to time the INPI has implemented administrative procedures to speed up the prosecution of applications but these actions have not resolved the main problem.

Another hot issue has been the restriction of fast and efficient legal actions to enforce patent rights through ex-parte preliminary injunctions in order to stop infringing activities, as established in article 50 and others of TRIPs. Such remedies have become more difficult to obtain after the amendment of the patent law in 2003 and the caselaw that followed afterwards. The main issue is that in order for "ex parte" preliminary injunctions to be granted and except for "exceptional circumstances", a neutral technical expert must be appointed by the court to inform whether there is a reasonable probability that the patent of the plaintiff is infringed and that, in case of being challenged by the defendant, it may be declared invalid. Other requirements to be met by the party requesting an ex-parte preliminary injunction is proving that

any delay in the grant of such measure may cause irreparable harm to the owner of the patent, which must be greater than the eventual harm caused to the defendant.

Argentine patent law provides with particular criminal and civil actions to enforce patent rights and also sets forth compulsory licenses in certain cases. They are when a patent has not been worked or any preliminary, effective and serious acts have been made in order to exploit the patent invention, except force majeure, within 3 years since the date it was granted; within 4 years since its filing date; when the exploitation of it has been interrupted during 1 year; as well as to stop the effect of anticompetitive conducts. Yet, no compulsory license has been granted up to date.

Utility models (also called “little patents”) are granted for 10 years from the filing date over new arrangements or shapes obtained or introduced in known objects for improving their use or their functionality.
The administrative procedure to prosecute their application is almost equal to that of patents, which means high complexity and costs; therefore, the number of utility model being filed has been relatively low.

Transfer of Technology (registration of licensing contracts for tax purposes)

The registration of contracts establishing licenses of trademarks, patents and other industrial rights as well as transferring technology, confers very important benefits in regard to the local taxation of royalties paid to foreign right holders.
Said registration is subject to an official fee of 0.025% over the whole economic value of the contract and currently demands at least 4 months until a tax certificate is issued.
It should be noted that Argentina has entered into Bilateral Treaties to Avoid the Double Application of Income Tax with more than 15 countries including Switzerland, Germany, Austria and Spain among others, which affords even greater tax benefits if said contracts are registered with the local Trademark and Patent Office (INPI).

Copyrights or authorial and related rights

They protect intellectual creations in the following areas: literary, scientific and artistic, software and layout designs of integrated circuits as well as the rights of performers, interpreters, producers of phonograms and broadcasting organizations.
Authorial rights lapse after certain number of years depending on the particular area, being the general copyright term for life extended for 70 years as from the first of January of the year following the death of the author. Registration is not required for purposes of recognizing the particular rights but it is advisable to do so, which is not expensive, having in mind the goal of

enforcing them in the most efficient and effective way, as well as to constitute proof in the country, avoid the suspension of patrimonial rights, etc.
Yet, certain activities of third parties are considered as non-infringing including those having academic, experimental for citing purposes, which must comply with the requirements established by the law.

Anti-Counterfeiting

Since April 2007 a system to record trademarks at the Local Customs has entered in force allowing its owners to be informed of any import/export/transit of goods declaring the use of the corresponding mark, authorial or related rights.

Upon the recordation of a trademark within the “Alert System”, digital notifications on the movement of goods across borders are delivered to the representative of a trademark owner so that the latter can exercise his rights of conducting a physical examination of the goods before they are released from the Customs.
It is worth noting that in almost all cases, once fake products are detected they are abandoned so that most of the legal costs involved in large administrative and judicial actions are ultimately avoided.
This system also gives trademark owners the opportunity of exercising greater control over the different contractual obligations set forth in their agreements with their foreign commercial representatives, although, parallel imports are allowed by local trademark law in Argentina.