INTELLECTUAL PROPERTY

CLIENT ALERT

MARCH/2019

NEW DECISION CODES ON REQUIREMENTS REGARDING ACCESS TO GENETIC HERITAGE AND SEQUENCE LISTING

The Brazilian PTO presented clarifications regarding the new patent decision codes 6.6.2 (Formal Office Action - access to genetic patrimony) and 6.6.3 (Formal Office Action - sequence listing), published in the Brazilian Official Bulletin number 2511.

The granting of patent applications obtained from access to the National Genetic Heritage (PG) or Associated Traditional Knowledge (CTA) is conditioned to the registration or authorization of access obtained from the Genetic Heritage Management Council (CGEN) (Law No. 13,123/2015, Article 47).

The new decision codes 6.6.2 (Formal Office Action - access to genetic heritage) and 6.6.3 (Formal Office Action - sequence listing) were created to replace the requirements on access to Genetic Heritage and submission of Biological Sequence Listing previously included in the decision code 6.6 ("other official actions"), which is based on Article 34 of the Brazilian Industrial Property Law. The Office Actions with dispatch code 6.6.2 and 6.6.3 will not be published automatically, as usually carried out in the publication of the Formal Office Action dispatch code 6.6.1.

In specific cases, a new Formal Office Action on access to Genetic Heritage may be issued using decision code 6.6.2, regardless of whether the application has previously received a Formal Office Action of this nature (Formal Office Action 6.6 or 6.6.1), such as: in cases of response in which there was access to genetic heritage, but this access is still in the process of regularization with the CGEN; if in the act of filing it was informed that there was access, but the registration number or access authorization obtained from the CGEN was not presented; applications that were filed on paper and, at the time of filing, it was not informed whether or not there was access to the genetic heritage. The responses to 6.6.2 and 6.6.3 are mandatory within 60 (sixty) days from the date of publication, otherwise the application will be archived.

Our Intellectual Property team is available should any questions arise on the matter.

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