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THE GROWN-UP BRIC

INNOVATION & BRAND EXPANSION IN BRAZIL

Brazil's Rapidly Expanding Middle Class and Complex IP System Create Opportunities, Challenges

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BRAZIL IS SIMULTANEOUSLY
A HYPER-GROWTH MARKET,
A LEADER IN IP ENFORCEMENT
AND A **HOTBED OF INNOVATION**.

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OVERVIEW

Clever acronyms can be misleading. Take BRIC, for example, the term coined in 2001 by Jim O'Neill, Chairman of Goldman Sachs Asset Management, which has become a catch-all for the emerging market nations of Brazil, Russia, India and China. Over the last decade, the BRIC moniker became a universal symbol for steady growth and outsized investment risk. But these opportunities and risks vary greatly from one BRIC country to the next.

That unique opportunity is perhaps most pronounced in Brazil. Like the other BRIC nations, this country of 190 million saw stratospheric growth over the past decade. It grew to be the world's fifth-largest economy, in terms of GDP, in 2010[1] and is expected to grow an average of 4.2 percent by 2015[2]. Unlike the other BRIC nations, its growth has been within a well-formed business and legal infrastructure that has roots back to the early 1800s when Brazil became the fourth country to enact a patent law.

For over 200 years, Brazil held itself up as a model of innovation and protector of IP. It was a founding member of the Paris Convention, which was one of the first IP treaties in the world and established a union for the protection of industrial property in 1883. Later, Brazil became a member of the Patent Cooperation Treaty of 1978.

The full impact of these early efforts to establish Brazil as a noteworthy IP contributor were delayed for many years due to political upheaval in the nation. A military coup, followed by decades of dictatorship and international trade sanctions, isolated the country from realizing its full potential and stalled foreign investment in Brazil for many years. More recently, as the nation's democracy has taken shape and efforts to stimulate growth and reduce poverty are beginning to succeed, Brazil stepped into the limelight as a hotbed of new growth and opportunity.

The country's evolution is best captured in the 2011 inaugural speech of Brazilian President Dilma Rousseff:

"We have achieved much in these past eight years. But much remains to be done. And it was the belief that we can do more and better that convinced the Brazilian people to bring us to this point. Now is a time to work; now is a time for union. Union in favor of education for children and the youth; union on behalf of high-quality healthcare for all; and union to ensure the security of our communities. Union, so that Brazil can continue to grow, generating jobs for current and future generations. Union, so that we can, indeed create more and better opportunities for all."

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1 Latin Trade, March/April 2011 Vol. 19 No. 2

2 BAMRUD, J 2011, 'Brazil: Latin America's Superpower', *Latin Trade (English)*, 19, 2, pp. 32-40

Over the last 30 years, Brazil has transformed itself into a serious global player. It has made major strides in its efforts to raise millions out of poverty, creating a new middle-class population increasing domestic consumption – a key driver for the country's growth.

Today, Brazil's $1.9 trillion USD economy accounts for 41 percent of Latin America's total GDP and surpassed France as the world's fifth-largest economy, as measured by GDP in 2010[3].

Brazil's economy is expected to grow an average of 4.2 percent in the five-year period of 2011-15, according to a Latin Trade analysis of IMF projections. That compares with 2.8 percent in the United States and 1.7 percent in Europe[4].

LINGERING RISKS

All of this growth is not without its share of risk. Recent influxes in foreign investment have created serious inflation concerns in Brazil. By some accounts the Brazilian real is now the world's most overvalued currency[5] and the country's central bank cut interest rates in August 2011, reversing course after a solid year of interest rate hikes.

The country's robust legal system also poses unique challenges for businesses looking to secure patent protection in the region. While the Brazilian patent office, the National Institute of Industrial Property as it's known, is steeped in history, it is currently facing a backlog of over 150,000 applications[6] and it is not uncommon for patent approval to take 8-10 years. The patent office has taken concrete steps to streamline processing, including an upgrade to its computer system and a pledge to significantly increase the number of patent examiners it currently employs. Still, with a patent pendency time of 8-plus years, Brazil can be a tough market to navigate for outsiders not accustomed to this type of delay.

The country also continues to suffer from corruption. According to Transparency International's Corruption Perceptions Index (2009), Brazil ranked 75th out of 180 countries. Corruption is perceived to be widespread in Brazil and businesses are expected to encounter corruption while bidding for government contracts[7].

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3 http://www2.goldmansachs.com/gsam/advisors/education/viewpoints_from_chairman/viewpoints-pdfs/brazil_is_now_the_5th_largest_economy.pdf

4 BAMRUD, J 2011, 'Brazil: Latin America's Superpower', *Latin Trade (English)*, 19, 2, pp. 32-40

5 http://professional.wsj.com/article/SB10001424053111904716604576544722103262938.html?mg=reno-secaucus-wsj

6 http://www.ustr.gov/sites/default/files/uploads/reports/2009/NTE/asset_upload_file837_15458.pdf

7 Brazil: Country Analysis Report – In-depth PESTLE Insights, Datamonitor, May 2010

INNOVATION & BRAND EXPANSION IN THE BRAZILIAN ECONOMY

So what does all of this mean for multinational firms who are weighing emerging market opportunities? Who are the lead innovators currently operating in Brazil and who is moving most aggressively into the market? How are brand owners protecting their investments in the country?

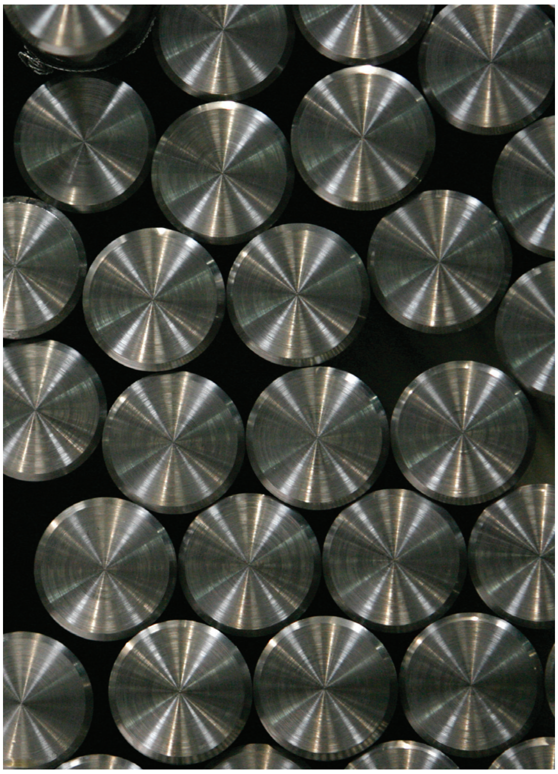
To answer these questions, we conducted a comprehensive analysis to chart the underlying data driving the Brazilian economy and identify the best practices that companies are using to achieve success in the region. We have tracked patent activity, scientific literature citations and trademark registrations over the last decade to benchmark current levels of innovation and brand expansion. We have compiled commentary from leading patent and trademark attorneys to spotlight opportunities on the road ahead. Our research finds that although early leaders in the region have already become well-established, Brazil continues to present significant opportunities with less overt risk to brand owners than its BRIC counterparts.

REUTERS/Ivan Canabrava

METHOD

Data for this World IP Today special report was aggregated using the Thomson Reuters Derwent World Patents Index® (DWPI℠) database, for patent research, and SAEGIS™ on SERION™ from Thomson CompuMark, for trademarks, to identify global innovation and brand activity in the Brazilian marketplace.

Researchers analyzed the total number of published applications and granted patents from 2001 to 2010. Trademark data was analyzed from 1990 through 2010. The analysis tracked trademark registrations worldwide.



REUTERS/Ina Fassbender

INNOVATION BY THE NUMBERS: PATENT ACTIVITY IN BRAZIL

"Brazil has been doing fantastically for the last five years; it's been the real quiet giant among emerging market countries," says Steven J. Kuehl, Principal Technologist and Global IP Coordinator at Whirlpool Corporation.

Accordingly, his firm was one of the top 10 patent assignees in Brazil in 2010 and the country accounts for 33 percent of its global market share.

"A combination of shifting demographics among the middle class, tremendous natural resources, plenty of ports for shipping and lots of intellectual capital have made Brazil a key market for Whirlpool Corporation. In fact, we leverage a great deal of of the engineering work we do in Brazil globally," explains Mr. Kuehl.

The Brazilian government does a great deal to nurture this type of thinking among large corporations by providing several incentives to companies who invest in R&D. These include tax incentives for R&D, government grants, government-sponsored equity investments and instantaneous depreciation for R&D investments.

REUTERS/Ricardo Moraes

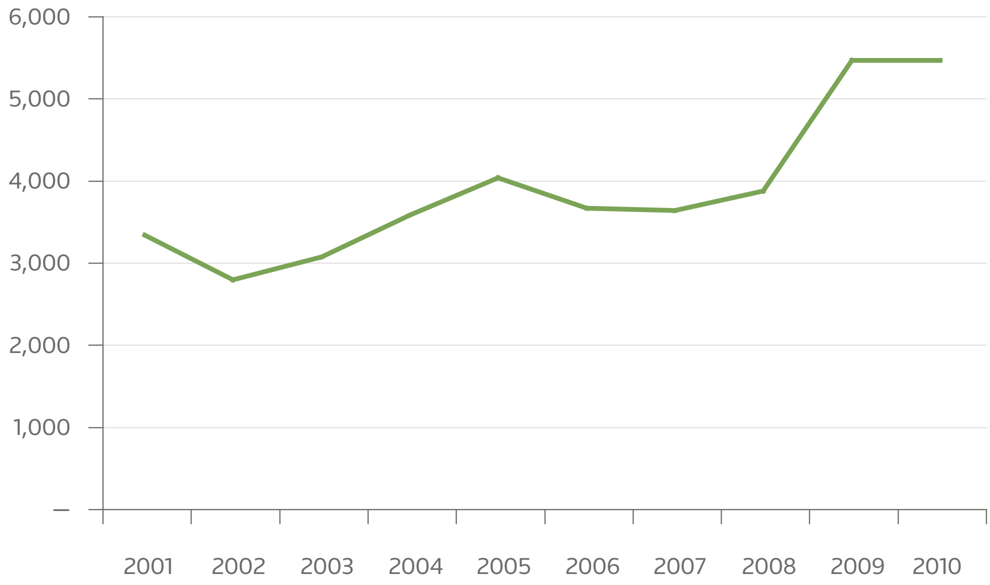
STEADY GROWTH IN BRAZILIAN PATENTS

The direct impact of these types of initiatives can be seen in patent filing data over the last nine years. The total number of unique inventions issued in published patent applications and granted patents in Brazil grew 64 percent from 2001 to 2010.

On the global stage, this trend of growth in Brazilian innovative activity is overshadowed by the meteoric growth of China. Patenting activity surged over 2,600 percent in China during the same period. However, as Figure 1 below indicates, Brazil is noteworthy for its significant growth during the economic crisis of 2008 to 2009.

NUMBER OF UNIQUE INVENTIONS IN PATENT APPLICATIONS AND GRANTED PATENTS (2001-2010)

FIGURE 1



Source: Thomson Reuters Derwent World Patents Index (DWPI)

TOP ASSIGNEES: UNIVERSITY/INDUSTRY COLLABORATION

Further illustrating Mr. Kuehl's point about the impressive base of intellectual capital in Brazil, an examination of patent assignees reveals that 27 percent of all patents in Brazil are owned by universities[8]. This phenomenon, which is also seen in China, is the direct result of steps taken by the Brazilian government to improve cooperation between universities and industry. It is also reflective of the slow approval times for Brazilian patents. Businesses may find it difficult to create market opportunity with an eight-plus year pendency period, since technology can become obsolete even before a patent grants. Figure 2 depicts the top 10 patent assignees in terms of volume of innovative applications and granted patents between 2001 and 2010 in Brazil.

2001-2010 INNOVATIVE BRAZILIAN PATENTS (BASICS - PATENT APPLICATIONS AND GRANTED PATENTS)

FIGURE 2

Document Count	Patent Assignee
415	Petrobras Petroleo Brasil SA
394	Unicamp University Estadual Campinas
235	University Sao Paulo USP
143	Fundacao Amparo A Pesquisa Do Estado
139	University Federal Minas Gerais
125	Semeato Ind & Comercio SA
88	Maquinas Agric Jacto SA
84	Vale Do Rio Doce Co
81	Usiminas Usinas Sider Minas Gerais
79	Comissao Nacional Energia Nuclear

Source: Thomson Reuters Derwent World Patents Index (DWPI)

8 http://investinbrazil.biz/industry/research-and-development/research-and-development-industry, accessed 10 July 2011

More recently, multinational manufacturing firms have ramped up their Brazilian patenting activity. Figure 3 illustrates how Electrolux and Whirlpool Corporation were among the top 10 patentees in 2010.

2010 INNOVATIVE BRAZILIAN PATENTS (BASICS - PATENT APPLICATIONS AND GRANTED PATENTS)

FIGURE 3

Document Count	Patent Assignee
36	University Sao Paulo USP
35	Petrobras Petroleo Brasil SA
25	Unicamp University Estadual Campinas
15	Electrolux Do Brasil SA
14	University Federal Minas Gerais
14	Whirlpool SA
13	University Federal Do Parana
13	University Federal Do Rio Grande Do Sul
11	Marchesan Implement & Maquinas
11	Usiminas Usinas Sider Minas Gerais

Source: Thomson Reuters Derwent World Patents Index (DWPI)

Mr. Kuehl, of Whirlpool, explains further: "Whirlpool leverages competencies from around the world. Right now, we are seeing fantastic industrial design coming out of Brazil – it is very modern and elegant. We're also seeing tremendous innovation among our engineering staff working to build worldwide efficiencies. I personally would agree with predictions that by 2020, Brazil will be on par with China and the US in terms of economic prowess."

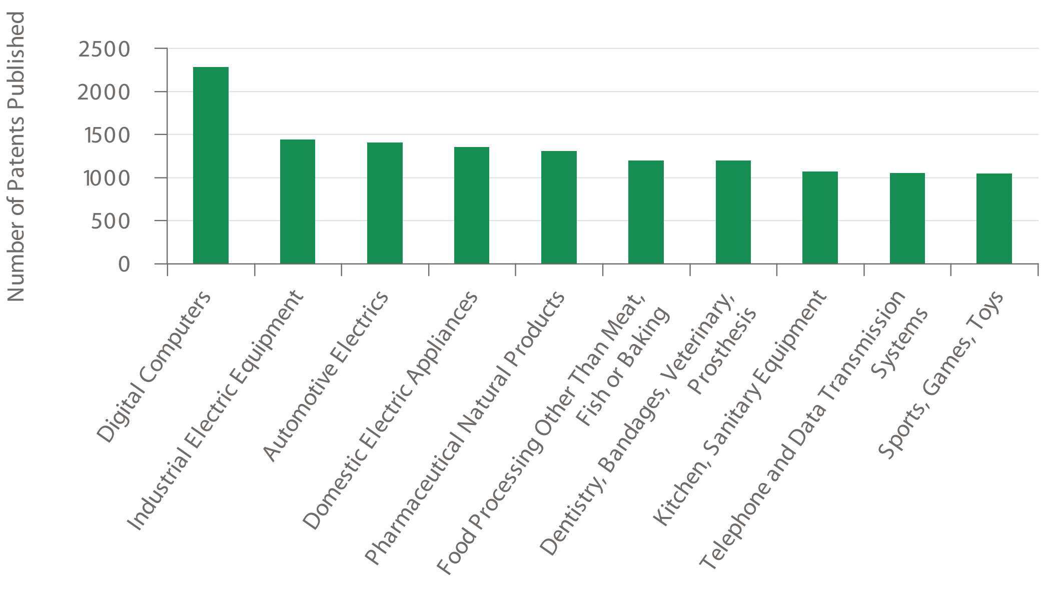
TOP TECHNOLOGY AREAS

The steady growth of the middle class in Brazil has been a key driver of innovative activity in the region. Gabriel F. Leonardos, a partner with Momsen, Leonardos & Cia., a law firm specializing in patents, trademarks and technology licensing, with offices in Rio de Janeiro and São Paulo, explains: "The economic growth of Brazil over the last five years is bringing people that were previously at levels of extreme poverty into the middle class. There are 190 million people in Brazil and, eight or nine years ago, 100 million of them were below the poverty line. Now that number is less than 20 million. Brazilian companies are taking advantage of that growth."

The trend is evident in the top technology areas in terms of volume of published applications and granted patents with Brazilian priority. As indicated in Figure 4, digital computers, automotive technology, domestic appliances and pharmaceuticals were among the top categories between 2001 and 2010.

TOP TECHNOLOGY AREAS IN BRAZIL (2001-2010)

FIGURE 4



Source: Thomson Reuters Derwent World Patents Index (DWPI)

Mr. Kuehl, of Whirlpool, elaborates on his company's approach to the changing demographics in Brazil: "Our Brazilian Brands, Brastemp & Consul, have approximately 40% of the market share in Brazil and are strong within all of South America. But we're starting to see more and more competition in the space; a lot of eyes are on the country now as a hotbed of growth and we need to stay nimble to maintain our leadership role."

REUTERS/Paulo Whitaker

PATENT QUALITY OVER QUANTITY

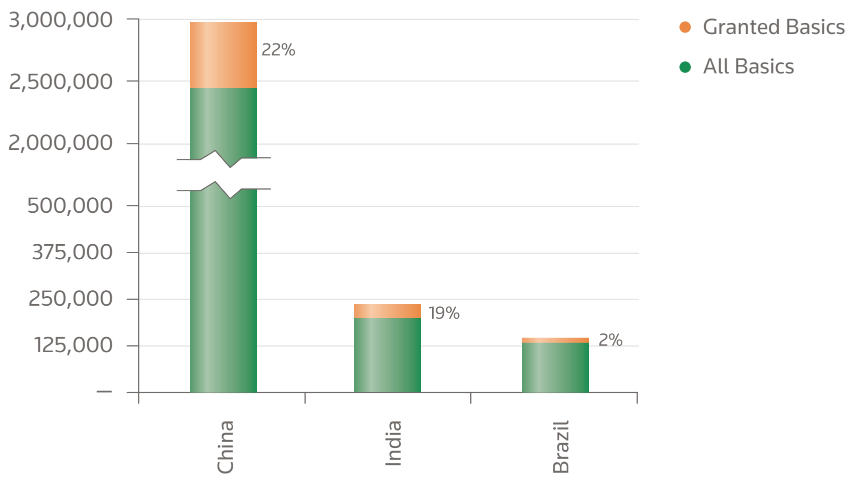
One important criterion that is often overlooked in blanket analyses of emerging market patent trends is quality. This is a critical metric to consider when tracking trends in the Brazilian marketplace because the Brazilian patent office, as one of the oldest and most developed in the world, is very selective about granting patents. This high level of scrutiny, combined with a surge of new applications, has contributed to the current patent backlog in the country.

Cristina A. Carvalho, a partner specializing in intellectual property and international business with the Washington, D.C.-based law firm, Arent Fox, explains: "It is important for multinational corporations doing business in Brazil to know that the country has a well-developed body of IP law. They are very aware of international concepts in IP law and very sophisticated about enforcement."

However, despite their robust IP enforcement system, the country has one of the lowest patent grant rates in the world. The comparison is particularly stark when viewed alongside China and India. As Figure 5 illustrates, just 2 percent of all Brazilian basic patent applications filed between 2001 and 2010 were granted. This compares with a success rate of 22 percent and 19 percent in China and India, respectively.

BRAZILIAN PATENT APPLICATION TO GRANT COMPARISON (2001-2010)

FIGURE 5



Source: Thomson Reuters Derwent World Patents Index (DWPI)

PATENTED IN BRAZIL BY BRAZIL

The bulk of patent applications filed in Brazil are filed by Brazilian organizations. Foreign nations that are active in their Brazilian filings include Germany, Japan, France and Italy (Figures 6 and 7).

PATENT APPLICATIONS FILED IN BRAZIL (RESIDENTS VS. NON-RESIDENTS, 1997-2007)

FIGURE 6

Country of Residence	Patent Applications Filed in Brazil (INPI data)										
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Residents	2741	2455	2791	3061	3308	3345	3643	3922	3900	3815	3867
Non-Residents	4841	3606	3791	3616	3267	2457	2168	2360	2424	2232	2181
TOTAL	7582	6061	6582	6677	6575	5802	5811	6282	6324	6047	6048

Source: INPI Website

COUNTRY OF ORIGIN FOR NON-RESIDENT PATENT APPLICATIONS (2003-2007)

FIGURE 7

Country of Non-Resident	Patent Applications Filed in Brazil				
	2003	2004	2005	2006	2007
Germany	260	259	235	268	230
Japan	197	147	171	211	202
France	184	174	232	199	182
Italy	117	111	88	77	104
Switzerland	86	93	78	97	147
S. Korea	57	52	108	60	59
Argentina	57	63	32	36	33

Source: INPI Website

SCIENTIFIC PUBLICATIONS

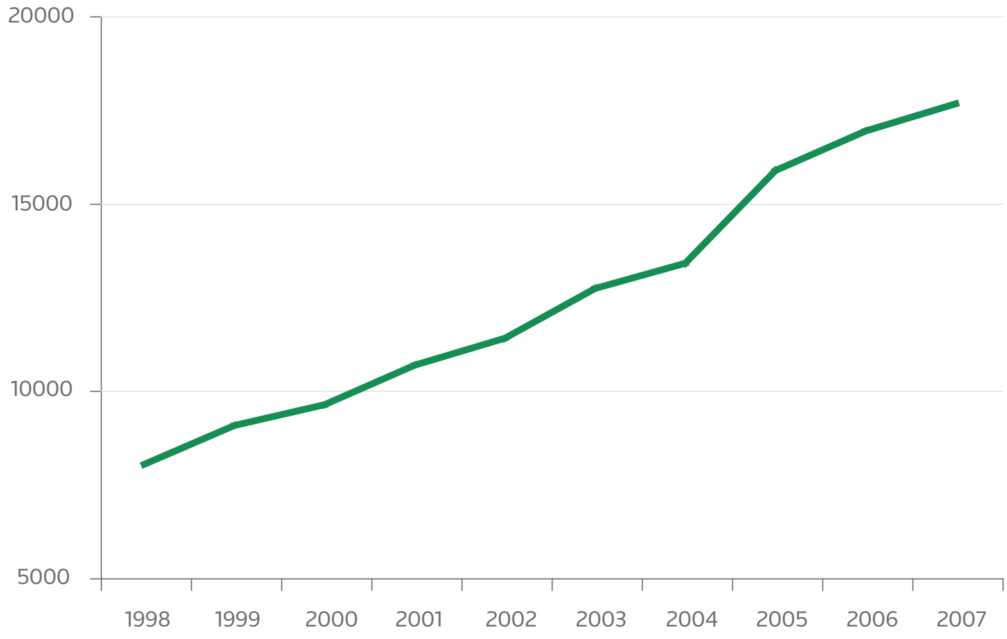
Another key indicator of the quality of innovation occurring in a particular region or industry is the size of the footprint it leaves in scientific literature. Particularly influential inventions are often cited in peer-reviewed scientific journals as key milestones in the forward march of innovation. These citations can be tracked by conducting a bibliographic analysis, which examines the penetration of a particular innovation into the body of scientific literature.

As Figure 8 illustrates, Brazilian scientists published 26,482 scientific articles in journals indexed in the Thomson Reuters Science Citation Index in 2007, making the country the 13th-largest producer of scientific research in the world. More than 90 percent of these articles were generated by public universities[9].

This puts Brazil at the forefront of research and development with its scientific literature output, on par with countries in Europe, such as Switzerland, Sweden, Holland and Russia.

ARTICLES PUBLISHED BY BRAZILIAN SCIENTISTS (1998-2007)

FIGURE 8



Source: Thomson Reuters Web of Science

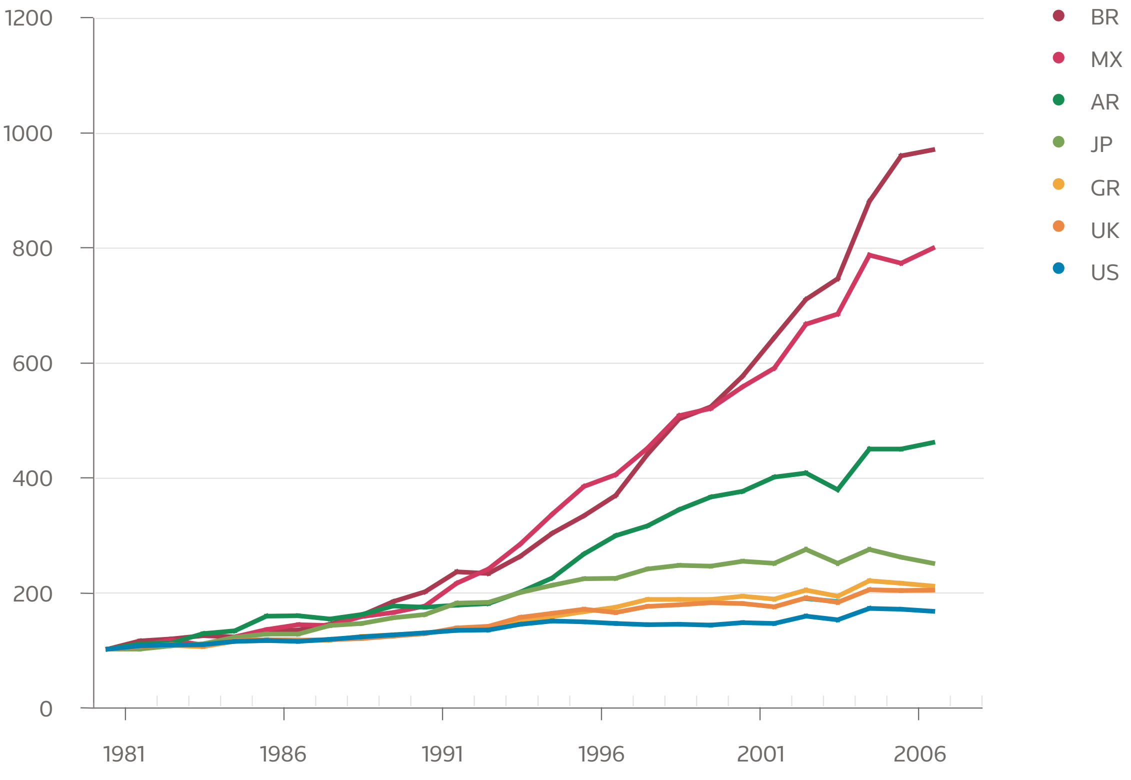
9 UNESCO Science Report, 2010

Thanks to a consistently favorable policy for graduate education over the past 50 years, the number of doctorate degree holders in Brazil has also grown from 554 in 1981 to 10,711 in 2008[10]. Furthermore, there appears to be a correlation between the increase of scientific literature output and the growing number of people graduating with doctorates annually.

When comparing Brazil to other well-established research nations such as Japan, the United Kingdom, Germany and the US, it is important to have a relative standard against which to compare the rate of their growth for these nations. In this analysis, each country's share of scientific literature output is set to "100" in 1981. Figure 9 shows how rapidly Brazil's share of world output is growing and how it leads the pack in Latin America.

SCIENTIFIC LITERATURE OUTPUT IN BRAZIL (1981-2007)

FIGURE 9



Source: Thomson Reuters Web of Science

10 UNESCO Science report 2010

The technology areas accounting for the greatest share of Brazilian scientific literature are clinical medicine, physics, plant and animal science, chemistry and biology/biochemistry (Figure 10).

TECHNOLOGY AREAS OF BRAZILIAN SCIENTIFIC LITERATURE

FIGURE 10

	Count of Papers		Rank	
	1998-2002	2003-2007	Volume	Growth
Clinical Medicine	7875	14408	1	1
Physics	8645	10121	2	7
Plant & Animal Science	5857	10006	3	2
Chemistry	6559	9635	4	3
Biology & Biochemistry	3189	5240	5	4
Engineering	3184	5182	6	5
Neuroscience & Behavior	2106	3394	7	9
Agricultural Sciences	2155	3308	8	10
Materials Science	2102	3254	9	11
Environment/Ecology	1353	3209	10	6
Computer Science	669	2031	15	8

Source: Thomson Reuters Essential Science Indicators

BRAND EXPANSION & PROTECTION: TRACKING TRADEMARK TRENDS

Companies are not just innovating in Brazil; they are also investing in the market opportunities resulting from steady growth of the country's middle-class consumers. Record numbers of firms are taking strides to secure brand protection in the region. Over the last two decades, Brazil experienced a total increase in trademark filings of almost 200 percent, hitting a total of 114,090 applications filed in the year[11].

Alejandro Pinedo is a Managing Director at Interbrand, the world's largest brand consultancy, where he oversees the firm's Brazilian office. He describes the trend of trademark growth in Brazil as a kind of great awakening: "Brazil discovered the world in the last decade. Before that, Brazil was exporting commodities, and companies in Brazil thought only about their local markets. Now, they are realizing there is a world out there and they are getting very sophisticated about being better prepared and better organized to compete in the international market. The result has been a 17 percent increase in value among Brazilian brands from last year to this year."

Likewise, foreign multinationals have moved aggressively into the Brazilian market, which has seen a rapid increase in its consumer population. Leticia Provedel, an attorney with a specialty in patent and trademark prosecution and litigation with Veirano Advogados, one of Brazil's largest law firms, explains: "Thirty percent of the Brazilian population has come out of poverty and into the middle class in the last 10 years; that's creating enormous opportunities for companies selling basic products, cosmetics, even automobiles."

Mr. Pinedo echoes the sentiment: "There are huge opportunities for international brands in Brazil right now; the US has enormous appeal to Brazilians in terms of consumer brands, and a great deal of the fashion influence in the country comes from Europe. We see enormous growth coming particularly in the areas of retail, healthcare and education."

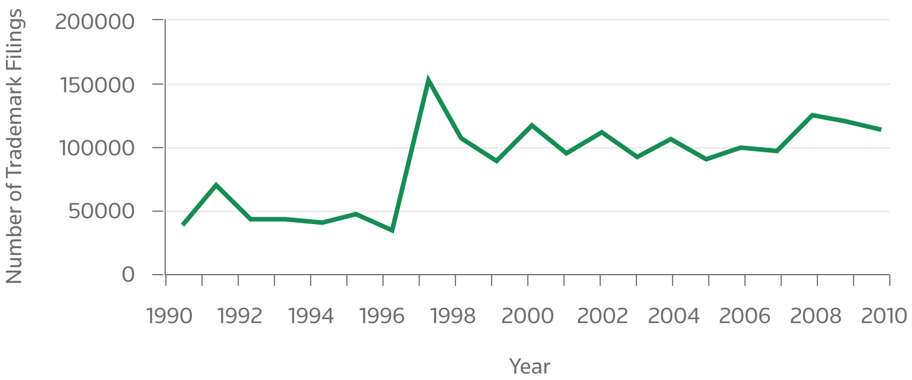
11 Thomson CompuMark 2011

RECORD GROWTH IN BRAZILIAN TRADEMARKS

The result of economic opportunities has been steady growth in Brazilian trademark filings. Between 1990 and 2010, trademark applications grew nearly 200 percent (Figure 11). Moreover, the number of trademark filings continued to increase throughout the recessionary period of 2008-2009.

GROWTH OF OVERALL TRADEMARK FILINGS IN BRAZIL BETWEEN 1990-2010

FIGURE 11



Source: Thomson CompuMark 2011

Consistent with Mr. Pinedo's comments, the vast majority of Brazilian trademarks are being filed by Brazilian firms who are capitalizing on the country's great brand awakening, but a large number of filings are also coming from the US and Europe. As Figure 12 demonstrates, in 2010, 93,850 trademark applications were filed in Brazil by Brazilian firms, while 5,891 were filed by US firms and 1,917 were filed by German entities.

BRAZILIAN TRADEMARK FILINGS BY COUNTRY OF ORIGIN (2010)

FIGURE 12

Country	Number of filings
Brazil	93850
United States	5891
Germany	1917
Switzerland	1391
France	1391
Japan	978
Italy	903
United Kingdom	820
Netherlands	720
China	666

Source: Thomson CompuMark 2011

Among the top companies filing the most trademarks in Brazil, a mix of regional multinational consumer products, pharmaceutical and news/entertainment brands are represented (Figure 13).

TRADEMARK FILINGS BY APPLICANT OWNER IN BRAZIL (2010)

FIGURE 13

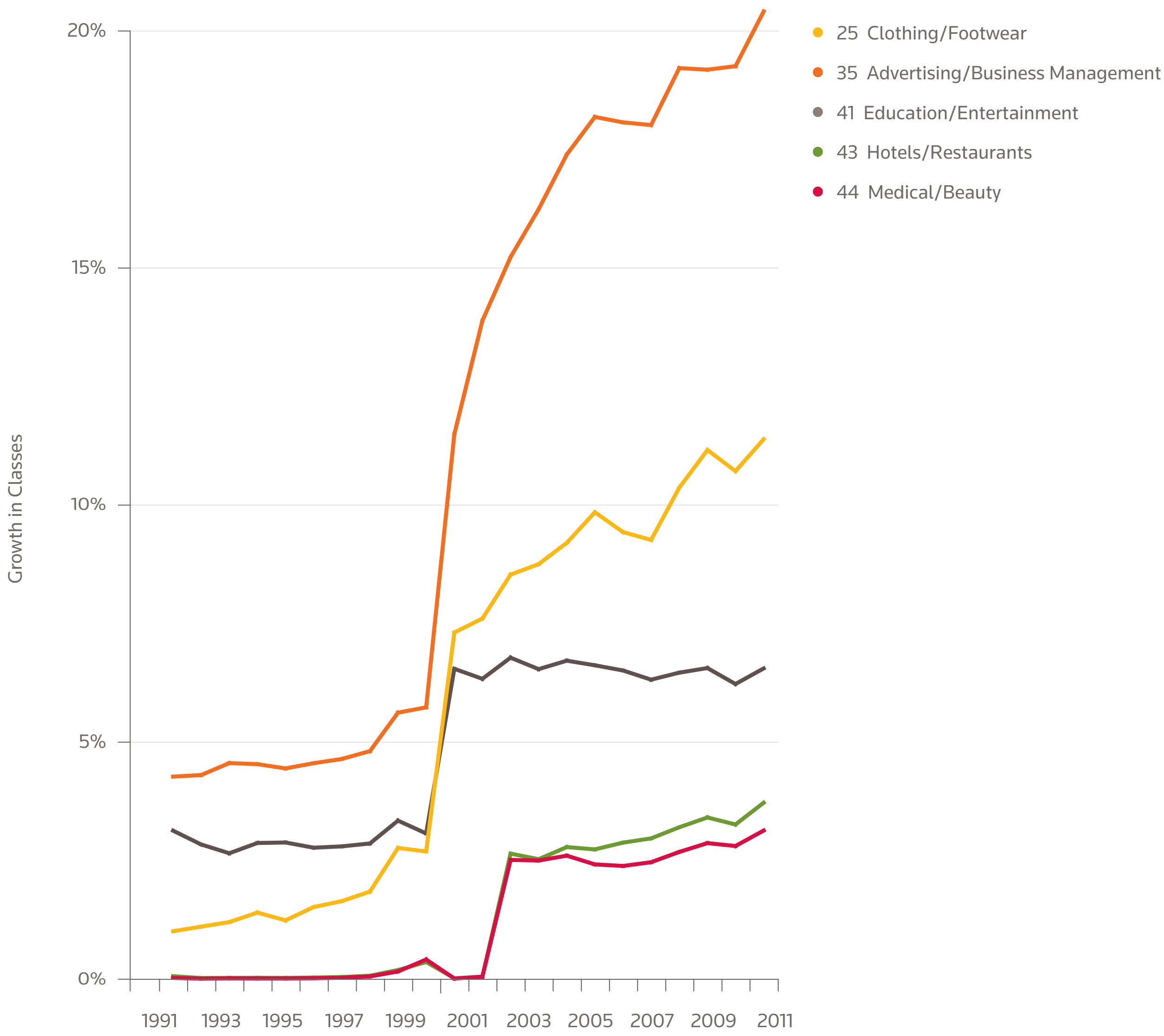
Applicant	Trademarks
LG Electronics Inc	201
Editora Abril S.A.	192
Syngenta Participations AG	183
Globo Comunicacao E Participacoes S.A.	175
Johnson Johnson	157
Companhia Brasileira De Distribuicao	147
Radio E Televisao Record S.A.	136
Medley S.A. Industria Farmaceutica	135
Philip Morris Products S.A.	123
Legiao Da Boa Vontade	117

Source: Thomson CompuMark 2011

Over the period between 1991 and 2011, the international trademark classes showing the most significant growth in Brazil have been class 35: advertising/business management, class 41: education/entertainment, class 25: clothing/footwear, class 43: hotels/restaurants and class 44: medical/beauty (Figure 14).

GROWTH OF INTERNATIONAL TRADEMARK CLASSES IN BRAZIL (1991-2011)

FIGURE 14



Source: Thomson CompuMark 2011

TRADEMARK CHALLENGES

Brazil's deeply entrenched IP law makes it a highly attractive market for global brands seeking trademark protection. As Cristina Carvalho of Arent Fox explains: "Brazil is not one of those countries in which a big corporation will go in and find itself without protection; it is a very favorable environment for IP laws."

The country's embrace of strict IP law does not necessarily make it easy for brands to secure protection, though. The first issue companies seeking trademark protection in Brazil will encounter is a long review process. Ms. Carvalho, of Arent Fox, adds: "If Brazil is in the mid- to long-term future plans for a corporation, it needs to move now to secure protection for its brands. The Brazilian Trademark Office is still trying to catch up in manpower to keep up with increased protection demand and volume; things tend to take a long time."

The sheer scale of Brazil also makes it a challenging marketplace for foreign brand owners. Brazil's President Dilma Rousseff describes the widespread geographical and cultural variation in her country in acknowledgement of the management challenges it creates: "To govern a country of continental dimensions such as Brazil it is also important to have dreams. One must have great dreams, and one must pursue them… I shall stand alongside those that work for the good of Brazil – in the solitudes of the Amazon, in remote areas of the Northeast, in the immense expanses of the Cerrado, in the vastness of the Pampas. I shall prize regional development: sustaining the vibrant economy of the Northeast; preserving and respecting biodiversity of the Amazon in the North; fostering conditions for extraordinary agricultural production in the Central-west; industrial might of the Southeast, and the vigor and pioneering spirit of the South."

To put this in perspective for brand owners, Mr. Pinedo, of Interbrand, explains: "Brazil is similar to the US in that it is geographically large and diverse. Just as different brands resonate differently on the US West Coast than they do in the Southeast, the way people buy products and use things is completely different in São Paulo than they do in the South. It is very important for foreign brand owners entering the Brazilian market to recognize the regional variations that exist in our consumer economy."

UNIQUE TWISTS ON FIRST-TO-FILE AND NON-USE MARKS

The specific laws governing trademarks are also somewhat unique in Brazil, requiring a slight shift in strategy for foreign firms that have traditionally focused their brand protection efforts in the US and Europe. Brazil follows a first-to-file trademark system, which means that brands that have been using a particular mark in other regions of the world will not necessarily have protection in Brazil unless they file there. But the law is not black-and-white. Marks that are not registered in Brazil, but that are proven to be well known have been recognized by Brazilian courts in infringement cases. Also, high-reputation trademarks, or extremely well-known brands considered to be of high repute are also given special clearance in Brazilian trademark law.

As Veirano Advogados' Provedel explains: "In Brazil's first-to-file system, if you do not have a very well-known mark, there are very limited rights derived from simple use in commerce. This really underscores the importance of filing trademarks as early as possible before launching a new brand in Brazil."

Gabriel Leonardos, of Momsen, Leonardos & Cia., explains another interesting wrinkle in Brazilian trademark law pertaining to non-use marks: "In Brazil, you do not need to be using a mark to secure protection for it, but we have a peculiar provision that anyone filing a trademark application must be engaged in the field of activities in which the trademark is claimed."

Mr. Leonardos explains that this provision exists to prevent trademark squatters from snapping up trademarks for big brands in the hope they will be bought off by a deep-pocketed corporation. But, he adds: "If you are a big company trying to expand your offerings, you may have difficulty in expanding your brand in Brazil until you have already expanded into that business."

TRADE DRESS

Another unique aspect of Brazilian trademark law is its approach to enforcement of trade dress, or the characteristics of a product's visual appearance or packaging. Unlike other regions of the world, Brazil has no protection for isolated colors, such as those used in packaging and logos.

Leticia Provedel of Veirano Advogados highlights a case where her firm was able to enforce trademark rights on a brand-specific color for their client, Mars, Inc. and its Whiskas® cat food brand: "This was a case where there were a series of giant billboard advertisements that showed a tabby cat jumping out of a purple bag and into a Friskies product. The purple color was similar to the signature color the Whiskas brand uses in its cat food packaging. We were able to enforce the Whiskas trademark on the grounds that the color was representative of their brand, but the enforcement did not come from the courts; it was through CONAR, the Brazilian Advertising Self-Regulation Council. There are several other examples where the courts have ruled against brand owners because statutory law brings no provisions recognizing IP rights over isolated colors."

It can also be difficult to secure protection for taglines and slogans in Brazil. Ms. Carvalho, of Arent Fox, notes that: "Brazilian trademark code prohibits the registration of slogans, but we have been able to get around this in some cases by using the tagline in packaging and arguing that it is part of the brand's trade dress."

CONCLUSIONS

In many ways, Brazil is a nation that defies easy categorization. It is simultaneously a hyper-growth emerging market, a protector of intellectual property rights and a hotbed of new innovation. Together, this spirit of new growth, combined with a solid legal infrastructure is creating an exciting market for local and multinational corporations.

Alejandro Pinedo, of Interbrand, explains: "Brazil is completely comprehensible. You can understand the market immediately. We're in the West and that makes a big difference from Russia, India and China. Economically, we are very much like the US was 40 years ago and that creates enormous opportunity for companies who are looking to grow."

BEST PRACTICES

While there is never a simple, one-size-fits-all solution for protecting IP in any nation, the path to success in Brazil is well worn with proven approaches. Based on our analysis of the industry's current thinking on the matter, the following are five key steps to a successful IP strategy in Brazil:

- **File as Early as Possible:** Brazil's first-to-file system for patent and trademark registration, combined with the patent office's 8-plus year backlog, makes it essential for businesses looking to secure IP in Brazil to file well in advance of a Brazilian brand introduction.
- **Conduct Thorough Searches:** Given the time it takes to get approval for Brazilian patents and trademarks, it is crucial for companies to conduct detailed searches for prior art, existing marks, even Internet domain names that could impede a speedy approval process.
- **Know the Culture:** Brazil is physically enormous and there is widespread cultural variation within the country. Mr. Pinedo explains: "Brazil is many Brazils; in the South the way people use products and buy things is completely different than in São Paulo. Companies operating here need to understand the local culture and respect it."
- **Invest in Monitoring:** Infringement can be common in Brazil, but the infrastructure exists to enforce IP rights. The key for IP owners is to be vigilant about monitoring to catch a problem before it escalates. Veirano's Leticia Provedel advises: "Sending a strong warning to a company that is infringing will work 80% of the time in Brazil; you just have to be aware of the issue."
- **Leverage Local Experts:** Brazil's IP laws, tax code and political environment are among the most complicated in the world. It is important for foreign firms moving into the market to leverage local expertise on how best to navigate the nuances of the country's legal and regulatory infrastructure.

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