

LLONA & BUSTAMANTE

ABOGADOS



T U S O C I O E S T R A T É G I C O

CHAMBERS LATIN AMERICA 2023: PRACTICE AREA OVERVIEW GUIDELINES PERU: INTELLECTUAL PROPERTY

Peru is considered one of the world's leading emerging markets, with a long term of uninterrupted growth and well-defined legal framework defines the country as a surprisingly and excellent destination for foreign investment, offering a great variety of possibilities in its different sectors of the economy.

However, what are the main factors that are creating new and better business opportunities today? Mainly five factors: (i) the mining industry potential and its vast and diverse available resources, (ii) the necessity of infrastructure projects, (iii) the development of gastronomy, agribusiness and its cultural tourism, (iv) the growth of the middle class, and; (v) solid macroeconomic fundamentals.

Nevertheless, none of these investments' opportunities will work without the appropriate framework. Peruvian constitutional and legal framework opens our economy to private investment, which is exercised in the context of a social market economy. Thus, our economy is governed by the law of supply and demand, where- in general terms - prices for goods and services

are fixed by market, repressing any conduct that restricts it. Likewise, neither law nor agreement may authorize or establish monopolies, nor allow the government to perform any business or economic activities, unless is made in a subsidiary manner and with prior authorization granted by law.

Specifically to the IP arena, the current regulations allow to protect all legal aspects of this field and The National Office for Intellectual Property and Registrations - INDECOPI- has a fundamental and exclusive role as the governmental agency responsible for promoting the Intellectual Property Protection in Peru.

Nevertheless, recent isolated political episodes have been characterized by instability such as radical policy proposals and intents to restructure constitutional order, as well as corruption scandals and current contentious issues against some government servers. The Covid-19 pandemic and the international conflicts have had a significant impact on Peru's economy and political framework too, not different from the rest of the world.

All those factors affect all industries in a general view and the legal sector in a particular view. In this regard, it has been proven that the uncertain political and economic scenario generates caution, confusion and greater risk aversion in local and international companies seeking to invest or remains investing in our country, which in turn will imply less promotion in research, development and innovation (R+D+I) affecting intellectual property fields.

However, “in 2021 the economy surpassed pre-pandemic levels, expanding 13.3% - as comparing to 2020 results - and leading all countries in South America”, according to the Overseas Business Risk in Peru Guidance[1]. Likewise, it is important to take into account that more companies and entrepreneurships have increased their needs in protecting trademarks as well as other IP assets. According to reports of INDECOPI, entrepreneurs and companies have registered 36,547 trademarks in 2021, a growth of 32.21% compared to the previous year[2] and has granted 838 patents, between invention patents and utility models, to national and foreign inventors, with a growth of 31.76% compared to the registrations granted during the year 2020.

[1] Guidance. Overseas Business Risk in Peru. Updated 6 June 2022. Available on: <https://www.gov.uk/government/publications/overseas-business-risk-peru--2/overseas-business-risk-in-peru#political-analysis>

[2] Indecopi (2022). El Indecopi recibió 37 250 solicitudes de registros de marcas pese a la pandemia. Available on: https://www.indecopi.gob.pe/en/notas-de-prensa/-/asset_publisher/A97k3Jah06e9/content/el-indecopi-recibio-37-250-solicitudes-de-registros-de-marcas-pese-a-la-pandemia?inheritRedirect=false

On the other hand, the aforementioned Agency has receipt more consults related to patent protection in Peru in contrast to 2019 and 2020. Therefore, it has implemented a patent program to bring free assistance to inventors with limited resources and SME's[3], an important advance in the promotion and protection of inventiveness in the country either to local and foreign applicants.

Despite the political and economic conditions, regulations related to intellectual property assets are supported due to international treaties; although, our local laws and rules cannot regulate against or exceed the terms provided under these treaties for their applicability in the country. Among the most important current international treaties Peru is a signatory to the Paris Convention (industrial property), the Berne Convention (copyrights) and Decision 486 of the Andean Community, which contains guidelines and legal principles for industrial property applicable to all countries in the Andean Community (Bolivia, Colombia, Ecuador and Peru). These treaties are supplemented by local laws and regulations covering industrial property and copyright matters.

Along these lines, there have been some relative regulatory changes which have positive effects on IP protections. Some of those changes in the IP regulation are:

- The legal term for obtaining a trademark or other distinctive sign registration is 180 business days (approximately six months) as provided by local regulations. Despite, the Peruvian Agency is fast-tracking these

IP applications in a reduced time-frame of three (03) to four (04) months, if no oppositions to the same are filed.

- Other procedures related to trademarks and other distinctive signs (including infringement and nullity actions, cancellations or oppositions) have a legal term of six (06) months to be solved (or even more, depending on the complexity of the case).
- The legal term to solve renewals, waivers and modifications of distinctive signs registration has changed from 180 to 90 business days. Although in practice only renewal procedures are solved in less than a week and its entire process is completed on virtual and digital means.
- In the case of patents, these terms can last up to two years, however said term can take approximately four (04) to five (05) years. A backlog of unexamined patent applications is allowed in Peru within one year counted from the filing date.
- Copyrights and related rights regulations in Peru are based on the main principles of the Berne Convention. Authors and copyright owners may start infringement actions before national authorities without prior registration.
- Recently regulation changes regarding this matter are centered on the concept of reproduction, disclosure without authorization, collective management companies, payment of remuneration and royalties, and other important concepts but no regarding piracy matters.

- Peru has significant concerns with the piracy market and counterfeit products affecting trademark and copyright owners, even though proper regulations against piracy are in place, Peru's regulations and public policies need to be strengthened reinforcing the coordinated participation of authorities, companies and prosecutors for the control and trace of the infringement actions.

All these regulatory changes have positive effects on stakeholders seeking protection and promotion of intellectual property in all its areas, bringing more opportunities to improve our actions to protect all legal aspects of this field.

Notwithstanding the political, economic and even regulatory difficulties, stakeholders have been able to face them and continue to work towards the development of their businesses and entrepreneurships, increasing their researches and innovations. All these actions show that Peru is a good place to be in and invest, being crucial the importance in protecting intangible assets.

We remain at your disposal for any questions or queries on the matter.

Sincerely,

[3] Indecopi (Feb, 2022). El Indecopi ofrece servicios gratuitos de patentes a inventores Peruanos de bajos recursos y a microempresas. Available on: <https://www.gob.pe/institucion/indecopi/noticias/586728-el-indecopi-ofrece-servicios-gratuitos-de-patentes-a-inventores-peruanos-de-bajos-recursos-y-a-microempresas>



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