

Patent reexamination under new rules: Brazilian PTO updates post-appeal procedures



On May 27, 2025, the Brazilian PTO published Ordinance No. 04/2025, establishing **procedures for continuing the technical examination of patent applications** (covering inventions and utility models, including certificates of addition) **following a second-instance decision that sets aside a refusal** (publication code 100.2) **and returns the case to the first instance.**

The main points of the Ordinance are the following:

1. The continued examination will be carried out **by the same examiner who issued the refusal decision.** If this is not possible, the case will be assigned to another examiner from the same technical field.
2. The application will return to the first instance for the continuation of examination **when the appeal cannot proceed due to:**

1. A formal defect (i.e., procedural error affecting the outcome of the appealed decision).	2. Inclusion of subject matter in the claim set that was not examined in the first instance.	3. A new claim set containing subject matter not previously examined.
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3. **Third-party observations** submitted during the continuation of the technical examination, **will be disregarded.**
4. When the continuation of the technical examination resumes, the examiner must evaluate the **patentability requirements** (novelty, inventive step and industrial applicability) **as well as formal aspects.**

The following measures may be taken in this case, **giving the applicants the right to a complete defense**:

- Office Action related to formal aspects (publication code 6.1).
- Office Action related to patentability requirements - also indicating whether a new prior art search was necessary. (publication code 7.1).
- Allowance (publication code 9.1).
- A new refusal may only be issued if responses of aforementioned office actions are not sufficient.
- In such cases, the applicant retains the right to a full defense and appeal.

At **UNGRIA**, we are at the disposal of new applicants and patent holders for further information, advice and a joint assessment in order to make an informed decision.

Contact with our expert patent team for more information.

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