

## BRAZIL:

BRPTO implements new rules on amendments to patent applications during the appeal stage

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On February 27th, 2024, the Brazilian Patent and Trademark Office (BRPTO) implemented significant changes to the patent review process during the appeal stage, as described in Attorney-General's Opinion no. 00003/2024. These revisions are intended to streamline procedures and address the backlog of pending appeals. Important clarifications accompanying the opinion include:

The Board of Appeal is responsible for reviewing proposed amendments during the appeal stage and determining their suitability. In general, amendments cannot include new content that was not previously discussed during the initial examination.

Regarding amendments to rejected claims, applicants may make restrictive adjustments aimed at addressing objections raised during the initial examination, subject to certain criteria:

- A. Amendments should directly address the reasons for rejection. Those unrelated to the rejection grounds will not be considered.
- B. Changes should impose logical constraints on rejected claims. Subject matter removed during the initial examination cannot be reintroduced.
- C. Restrictive changes must be consistent with dependent claims or result from a combination of independent/interconnected claims. Limitations based solely on the specification and not included in the rejected claims will not be accepted.
- D. Changes to the application's nature are not permitted unless discussed during the initial examination. For instance, a patent application cannot be converted into a utility model application during an appeal without prior consideration.

Additional data or documents may be submitted during the appeal to support arguments regarding the inventive step requirement.

These measures are intended to expedite the appeal process and will be implemented retroactively. **The BRPTO will accept petitions to amend previously filed appeals until April 2nd, 2024.**

It should be noticed that, due to legal ambiguities, the enforcement of these new regulations could be subject to legal proceedings in Court.