



## Resolution of the Executive Committee, Kyoto, Japan 6-10 April 2014

### “Mailbox Patents”

**FICPI**, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee held in Kyoto, Japan, 6-10 April 2014, passed the following Resolution:

**Noting with great concern** the court actions brought recently by the Brazilian National Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial*, “INPI”) against the owners of certain so-called “mailbox patents” seeking the complete invalidation *ab initio* of such patents on the ground that they were issued with a term of ten years counted from grant in accordance with Article 40, sole paragraph, extending beyond the period allowed by the heading of Article 40 of twenty years from the filing date;

**Understanding** that the owners of such patents are obliged to defend such court actions or face losing their patents completely, and even if they elect not to defend such actions, with the consequence that the court will decide against them by default, they would still be liable to pay any legal costs awarded by the court to INPI;

**Observing** that the granting of such mailbox patents for a term extending beyond the period of twenty years from the filing date was in no way the fault of their owners, or consequential upon any act, error or omission by the owners, but resulted wholly from the failure by INPI to decide the underlying applications by December 31, 2004, contrary to the requirement of Section 229-B, and subsequently to comply with the provisions of Article 229, sole paragraph, last part;

**Considering** that the complete revocation of a mailbox patent granted by INPI under these circumstances is a wholly inappropriate and disproportionate response to errors made entirely by INPI, is completely contrary to the reasonable expectations of the owner of a patent that was applied for in good faith and duly examined and granted by INPI, and would violate Articles 27, 33 and 70.8 of the TRIPS Agreement; and

**Pointing out** that the obligation on the owner of a mailbox patent to comply with any costs order issued by the court, even if they choose not to participate at all in the court action, is very unfair;

**Strongly condemns** the actions brought by INPI;

**Requests** INPI to withdraw immediately the actions and to preserve the patents; and

**Urges** other WTO member states to take appropriate action through the WTO to compel Brazil to cease such actions in violation of the TRIPS Agreement.