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BRAZIL'S SUPERIOR JUSTICE COURT SHORTENS PIPELINE PATENT TERMS WITH VIAGRA RULING

Vera Suarez*

IN *National Institute of Industrial Property v. Pfizer Ltd.*, Brazil's Superior Justice Court held that the patent term for pipeline patents—created from Industrial Property Law No. 9,279¹ (Law No. 9,279)—begins from the priority date of the patent application and not the international filing date.² The court considered this non-literal interpretation of the law³ to best fit with the principles governing intellectual property and the patent system in Brazil.⁴ The court's holding not only provided a shorter patent term, but could possibly go against governing international treaties, and has no doubt caused many pharmaceutical companies to lose hundreds of millions of dollars within the Brazilian pharmaceutical market.⁵ While the court's holding set precedent for other pipeline patent term debates, shortening the patent term from June 7, 2011 to June 21, 2010 for the patent involving the Viagra technology, it should result in an estimated \$40 million loss to Pfizer alone.⁶

The Superior Justice Court's holding in *Pfizer* represented a final resolution of what is to become of the group of pipeline patents that were created by the interim Law No. 9,279 in 1996.⁷ Although there are a limited number of pipeline patents in existence, much debate has taken

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1. See Lei No. 9.279, de 14 de Maio de 1996, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 15.05.1996 (Brazil), translation available at http://www.wipo.int/wipolex/en/text.jsp?file_id=125397 [hereinafter Law No. 9,279].

2. S.T.J., Ap. No. 731.101 - RJ (2005/0036985-3), Relator: João Otávio de Noronha, 28.4.2010, 219, DIÁRIO DO JUDICIÁRIO ELETRÔNICO [D.J.e.], 19.05.2010, 252 (Braz.) [hereinafter Nat'l Inst. of Indus. Prop. v. Pfizer Ltd.].

3. Hector Chagoya & Sergio De Alva, *Mexico: Using Pipeline Patents to Protect Pharmaceuticals*, MANAGING INTEL. PROP. (Mar. 1, 2003), <http://www.managingip.com/Article/1321760/Channel/194878/Mexico-Using-pipeline-patents-to-protect-pharmaceuticals.html?ArticleId=1321760&p=2>.

4. Nat'l Inst. of Indus. Prop. v. Pfizer Ltd., *supra* note 2, at 4.

5. Claudia Jurberg, *Brazilian Generic Drug Registration Sets Standard for 'Pipeline' Patents*, INTEL. PROP. WATCH (May 13, 2010), <http://www.ip-watch.org/weblog/2010/05/13/brazilian-generic-drug-registration-sets-standard-for-pipeline-patents/>.

6. See *id.*

7. Nat'l Inst. of Indus. Prop. v. Pfizer Ltd., *supra* note 2, at 5; Ed Taylor, *Viagra's Brazilian Patent Expires in June, Nation's Highest Court Rules*, 24 WORLD INTEL. PROP. REP. 006 D3 (BNA) (Jun. 1, 2010).

place in Brazil regarding the constitutionality of Law No. 9,279 and its effects, which are argued to limit the accessibility of generic drugs to the Brazilian population.⁸ While *Pfizer* did not evaluate the constitutionality of Law No. 9,279, it did provide a final resolution regarding how long the patents will remain in effect, and this ruling might violate the Agreement on Trade Related Aspects of Intellectual Property (TRIPS).⁹ The first section will outline the development of patent protection for pharmaceutical products in Brazil. The second section will provide a brief history of how Pfizer Ltd. (Pfizer) obtained patent protection for the Viagra technology. The third section will detail how the Viagra patent was initially challenged in Brazilian courts. Finally, the Superior Court's *Pfizer* decision and its effects will be compared to governing treaties.

I. DEVELOPMENT OF PATENT PROTECTION FOR PHARMACEUTICAL PRODUCTS IN BRAZIL

The patent laws of Brazil, in effect from 1971 to 1997, did not protect pharmaceutical products or processes.¹⁰ The copying or piracy of pharmaceuticals was so common and widespread in Brazil, that the United States implemented a "Special 301" sanction against Brazil in 1987.¹¹ This sanction resulted in "a 100% tariff on \$39 million dollars worth of Brazilian imports to the United States."¹² While this sanction did negatively affect Brazil, in that it virtually prohibited Brazilian exports of "certain paper products, non-benzenoid drugs, and consumer electronic items" from entering the American market during 1989 and 1990,¹³ it took the creation of TRIPS to force Brazil into pharmaceutical patent protection compliance.¹⁴

One of the main purposes of creating TRIPS, which came into effect on January 1, 1995, was to force Brazil, China, and India into providing a minimal standard of intellectual property protection.¹⁵ Pharmaceutical companies, which were unable to control the copying of pharmaceuticals,

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8. Tahir Amin, *Brazil's Attorney General Challenges Constitutionality of "Pipeline" Protection in Patent Law*, I-MAK DOT ORG, (May 11, 2009), <http://www.i-mak.org/i-mak-blog-updates/2009/5/12/brazils-attorney-general-challenges-constitutionality-of-pip.html>; Taylor, *supra* note 7.
 9. See Marrakesh Agreement Establishing the World Trade Organization, Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter TRIPS Agreement]; Nat'l Inst. of Indus. Prop. v. Pfizer Ltd., *supra* note 2, at 5.
 10. Naomi A. Bass, Note, *Implications of the TRIPS Agreement for Developing Countries: Pharmaceutical Patent Laws in Brazil and South Africa in the 21st Century*, 34 GEO. WASH. INT'L L. REV. 191, 206-07 (2002).
 11. *Id.*
 12. *Id.*
 13. *Bilateral Trade Disputes Involving the United States, Over Intellectual Property and Health Care*, CONSUMER PROJECT ON TECH., Sept. 15, 2000, <http://www.cptech.org/ip/health/country/allcountries.html>.
 14. Bass, *supra* note 10, at 207.
 15. Christopher S. Mayer, Note & Comment, *The Brazilian Pharmaceutical Industry Goes Walking From Ipanema to Prosperity: Will the New Intellectual Property Law Spur Domestic Investment?*, 12 TEMP. INT'L & COMP. L.J. 377, 380-81 (1998).

strongly encouraged a requirement for minimal patent standards of pharmaceutical products in developing countries.¹⁶ TRIPS was adopted after much negotiation and specifically details that pharmaceutical products and processes should be provided patent protection for a minimum term of twenty years.¹⁷ Developed countries were given one year to change their laws to comply with the protection requirements, while undeveloped countries were given five years to comply.¹⁸ Brazil implemented Law No. 9,279 less than two years after the implementation of TRIPS.¹⁹

A. BRAZIL ENACTS LAW NO. 9,279 TO COMPLY WITH TRIPS

In order to comply with TRIPS and to avoid further sanctions, Brazil passed Law No. 9,279, providing protection to pharmaceutical products and processes, which took effect on May 16, 1996.²⁰ Law No. 9,279 allowed a Brazilian patent to be granted for pharmaceuticals that already obtained a patent in another country.²¹ Law No. 9,279 details that:

1. the filing of a patent application must occur within one year from the publication of Law No. 9279 (from May 14, 1996 – May 14, 1997);
2. the patent application will automatically be published and a third party could submit comments or challenge the application within ninety days of publication;
3. upon finding that the material was patentable subject matter, and upon proof that the patent was granted in the country where the first application was filed, the patent shall be granted in Brazil, just as it was granted in its country of origin; and
4. the patent granted “will be guaranteed the remainder of the term of protection in the country where the first application was filed, counted from the date of filing in Brazil and limited to the term [of twenty years].”²²

B. THE PARIS CONVENTION DETERMINES THE EFFECTS OF CLAIMING PRIORITY TO PRIOR APPLICATIONS

Brazil has also been a member of the Paris Convention Agreement since 1884 and is therefore required to provide protection in accordance

16. *Id.* at 381.

17. *Id.*; TRIPS Agreement, *supra* note 9, at art. 33.

18. TRIPS Agreement, *supra* note 9, at art. 65.

19. See Law No. 9,279, *supra* note 1; Mayer, *supra* note 15, at 380.

20. Adriana Rizzotto, *Overview on the Latest Developments on Patent Protection In Brazil, with focus on Biotechnology, Business Methods and Computer-Implemented Inventions*, INTEL. PROP. OWNERS ASSOC. (Mar. 2009), www.ipo.org/AM/Template.cfm?section=Home&Template=/CM/ContentDisplay.cfm&ContentID=21973.

21. Law No. 9,279, *supra* note 1, arts. 230-31.

22. *Id.*

with the Paris Convention.²³ The Paris Convention specifically states, “patents obtained with the benefit of priority shall, in the various countries of the Union, have duration equal to that which they would have, had they been applied for or granted without the benefit of priority.”²⁴ This suggests that the patent term is not calculated from the priority date, because the duration should be the same regardless of whether the benefit of priority was claimed. When interpreting TRIPS in light of the Paris Convention, it appears that a patent should be granted for a twenty-year term—starting from the filing date of a patent application that developed into a patent and not starting from a priority date of a previously filed and abandoned application.

II. THE EUROPEAN PATENT OFFICE ORIGINALLY GRANTS PATENT PROTECTION TO THE VIAGRA TECHNOLOGY

Patent applicants generally should file a patent application as early as possible to establish a “priority date” corresponding to the filing date, proving that the applicant invented or filed no later than this date. It is common for applicants to file a first application to obtain this priority date and then later abandon it.²⁵ The applicants then use this priority date in subsequent applications that develop into issued patents.²⁶ These patent applications that are filed in accordance with the Patent Cooperation Treaty and reference an earlier priority date generally have a patent term calculated from the filing date of the later application instead of the older, priority date²⁷

Pfizer embraced the tactic of claiming priority of an abandoned application when obtaining patent protection for the technology related to Viagra. Viagra consists of an enzyme called phosphodiesterase (PDE5) and an inhibitor, Sildenafil.²⁸ Therefore, there are two key but separate components to the drug Viagra. Pfizer first submitted a patent application, GB19900013750 (‘750 patent), relating to the inhibitor Sildenafil in the United Kingdom on June 20, 1990.²⁹ This ‘750 application was later abandoned and did not develop into an issued patent.³⁰ But, Pfizer used the ‘750 patent application as a priority date when later filing patent ap-

23. Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as last revised at Stockholm July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305 [hereinafter Paris Convention].

24. *Id.* art. 4bis(5).

25. European Patent Office Guidelines for Examination/Part C, JAPAN PATENT OFFICE, http://www.jpo.go.jp/shiryoku_e/s_sonota_e/fips_e/epo/gec/chap5.htm (last visited on Oct. 15, 2011).

26. *Id.*

27. Patent Cooperation Treaty art. 8, June 19, 1970, 28 U.S.T. 7645, 1160 U.N.T.S. 231; Paris Convention, *supra* note 23.

28. *Brazil Accepts British Court Ruling Revoking Patent on Viagra Enzyme*, WORLD INTELL. PROP. REPORT (BNA) (Aug. 1, 2007), available at 2007 WL 2110667.

29. See European Patent No. 0463756 (filed June 7, 1991) [hereinafter ‘756 Patent].

30. Taylor, *supra* note 7.

plication, EP 0463756 ('756 patent), in the European Patent Office on June 7, 1991.³¹ The '756 application protects Sildenafil Citrate and did develop into a patent, which issued on April 19, 1995, and is still in force in the United Kingdom with a maximum expiration date of June 21, 2013.³² Pfizer also received a patent for using Sildenafil Citrate to treat male impotence, European Patent 702,555 ('555 Patent), which was a separate patent from the '756 patent that only protected the chemical itself.³³ No patent applications relating to the Viagra technology were filed in Brazil in 1991, because Brazil did not provide patent protection to pharmaceutical inventions at that time.³⁴

After Brazil enacted Law No. 9,279, Pfizer submitted a patent application for Viagra's active ingredient, Sildenafil Citrate.³⁵ This application was one of over 1,100 patent applications filed in Brazil at that time and termed "pipeline patents."³⁶ At the time of application, Pfizer, along with the other patent applicants, expected to be granted a patent with a term of twenty years, beginning from the filing date in Brazil, and based on a literal reading of the 9,279 law.³⁷ The Brazilian Patent Office did grant Pfizer a patent for Sildenafil Citrate issued as BR 9102560A ('560 patent).³⁸ But, no expiration date was determined at the time of issuance, as is the normal practice.³⁹ Therefore, at the time of issue, the patent term was not expressly determined.⁴⁰

III. THE VIAGRA PATENT TERM CHALLENGE IN THE BRAZILIAN COURTS BEGAN BY A PARTIAL INVALIDATION IN A BRITISH COURT

The '756 patent protecting the active ingredient of Sildenafil Citrate was challenged in Brazil only after a similar challenge was brought in a British court.⁴¹ The '555 patent validity was challenged in a British court

31. '756 Patent.

32. '756 Patent; Intellectual Prop. Office of the U.K., Supplementary Protection Certificate Search for '756 Patent, *available at* <http://www.ipo.gov.uk/types/patent/p-ops/p-find/p-find-spc/p-find-spc-by-patentresults.htm?number=ep0463756&submit=Go+%BB> (last visited on Nov. 6, 2011).

33. *See* European Patent No. 0702555 (filed May 13, 1994); Lilly Icos Ltd. v. Pfizer Ltd., [2002] EWCA (Civ) 1, [A3/2000/3811], [1] 59 BMLR 123 (Eng.), *available at* <http://www.bailii.org/ew/cases/EWCA/Civ/2002/1.html>.

34. Bass, *supra* note 10, at 206.

35. *See* Braz. Patent No. 9102560 (filed June 7, 1991) [hereinafter '560 Patent].

36. Amin, *supra* note 8.

37. *Court Deals Another Setback for Firms Trying to Extend Drug Patents in Brazil*, WORLD INTELL. PROP. REP. (BNA) (Feb. 1, 2010), http://news.bna.com/wiln/display/batch_print_display.adp?searchid=12579719.

38. '560 Patent.

39. Press Release, Research and Markets, Brazil Pharmaceutical Market Overview, (Sept. 10, 2010), <http://www.forbes.com/feeds/businesswire/2010/09/10/businesswire145139986.html>.

40. *Id.*

41. *See Lilly Icos LLC*, [2002] EWCA (Civ) 1, No. A3/2000/3811 [1]; *Pfizer Loses Viagra Patent*, BBC (Nov. 8, 2000), <http://news.bbc.co.uk/2/hi/business/1013244.stm>; *Brazil Accepts British Court Ruling Revoking Patent on Viagra Enzyme*, *supra* note 28.

by a Pfizer competitor.⁴² The British court found that the technology was obvious and that the '555 patent was invalid.⁴³

Bayer, which produces a similar product to Viagra, used this British court ruling to challenge Pfizer's Brazilian Viagra '560 patent and requested it be invalidated in Brazil.⁴⁴ Bayer argued that, based on Law No. 9,279, if the '555 patent was invalidated in the country of origin, then the Brazilian patent office should respect the British ruling and invalidate the '560 patent, because the term of a pipeline patent in Brazil was only guaranteed for the remainder of the term in the country of origin.⁴⁵ Although Bayer and Pfizer settled this dispute, the National Institute of Industrial Property (INPI), a government entity that processes and grants patents, continued to pursue Bayer's objections.⁴⁶

A. INPI ASSERTS THE PATENT TERM SHOULD BE CALCULATED FROM THE PRIORITY DATE AND NOT THE INTERNATIONAL FILING DATE

The INPI attacked the validity of all pipeline patents in multiple ways, but the critical issue in *Pfizer* relates to the term of protection for pipeline patents in Brazil.⁴⁷ Pharmaceutical companies will lose hundreds of millions of dollars if patent protection is lost, because generic drugs will be able to enter the market and offer significantly reduced prices for similar drugs.⁴⁸ Generic pharmaceutical companies will reap the benefits of a shorter protection term for patented medicines, and the medicines will become more readily available to the Brazilian population.⁴⁹

The pharmaceutical companies wanted the longest patent term possible and therefore argued that Law No. 9,279 should be read to allow for a twenty-year term from the date of filing in Brazil.⁵⁰ Because all pipeline patents had filing dates between May 1996 and May 1997, they should expire between May 2016 and 2017.⁵¹ Alternatively, the pharmaceutical companies argued that the twenty-year term should begin from the date of international filing instead of the priority date.⁵² Additionally, pharmaceutical companies asserted that if an extension of a patent term was granted in the country of original filing for the primary patent, the corresponding Brazilian pipeline patent term should also be extended.⁵³ Fi-

42. *Lilly Icos LLC*, [2002] EWCA (Civ) 1 No. A3/2000/3811, [2].

43. *Id.*

44. *Brazil Accepts British Court Ruling Revoking Patent on Viagra Enzyme*, *supra* note 28.

45. *See id.*

46. *See id.*

47. Nat'l Inst. of Indus. Prop. v. *Pfizer*, *supra* note 2, at 3; Amin, *supra* note 8.

48. *See* Amin, *supra* note 8; *Brazil Accepts British Court Ruling Revoking Patent on Viagra Enzyme*, *supra* note 28.

49. Clark A.D. Wilson, *The TRIPS Agreement: Is It Beneficial to the Developing World, or Simply a Tool Used to Protect Pharmaceutical Profits for Developed World Manufacturers?*, 10 J. TECH. L. & POL'Y 243, 256 (2005).

50. Taylor, *supra* note 7.

51. *See id.*

52. *See id.*

53. Jurberg, *supra* note 5.

nally, the pharmaceutical companies looked to international treaties, such as TRIPS and the Paris Convention, and argued that patent terms should not be shorter than twenty years.⁵⁴

The INPI and generic pharmaceutical drug companies desire the shortest patent terms possible and ultimately prefer that all patent pipelines be invalidated.⁵⁵ For this reason, the INPI argued that any filing of a patent application, including one that is abandoned and is only used as a priority date, should mark the beginning of the twenty-year protection.⁵⁶ Because Pfizer submitted an initial application in the United Kingdom on June 21, 1990, the INPI argued that the Brazilian Viagra patent should expire on June 21, 2010, which is twenty years after the priority date.⁵⁷

B. LOWER BRAZILIAN COURTS RULED IN FAVOR OF THE LATER EXPIRATION DATE

Two lower Brazilian courts evaluated Law No. 9,279 and interpreted it as allowing for Pfizer's patent term to extend until June 7, 2011, meaning the international filing date should be used to calculate pipeline patent terms and not the priority date.⁵⁸ The lower court focused on the literal wording of Law No. 9,279 art. 230, § 4 and held that a pipeline patent's period of protection continues throughout the term remaining in the country in which the first application was filed.⁵⁹ Because the patent that was granted in the United Kingdom involving the Viagra technology was still protected, protection should still be present in Brazil.⁶⁰ The lower court also stated that it is not the Brazilian Patent Office's responsibility to review the acts of foreign patent offices, and the office should not evaluate the adequacy of those patent offices' patent extensions.⁶¹

IV. THE SUPERIOR JUSTICE COURT INTERPRETS TRIPS AND THE PARIS CONVENTION IN PFIZER

The INPI appealed the lower court's decision to the Superior Justice Court, which is one of the highest courts in Brazil.⁶² The Superior Justice Court released its decision on April 28, 2010, less than two months before the contested expiration date of the '560 patent.⁶³ The *Pfizer* Court noted that the patent pipeline system, or Law No. 9,279, was imple-

54. See Nat'l Inst. of Indus. Prop. v. Pfizer, *supra* note 2, at 9.

55. *Id.*

56. *Id.*

57. See *id.*; see also Taylor, *supra* note 7.

58. See TRF-2, No. 2001.02.01.045636-3, Relator: Sergio Schwaitzer, 03.03.2004, Diário da Justiça da União [D.J.u.], 17.03.2004, 212, 212-13 (Braz.); see also Nat'l Inst. of Indus. Prop. v. Pfizer, *supra* note 2, at 6-8 (discussing the decisions of lower Brazilian courts).

59. TRF-2, No. 2001.02.01.045636-3, Relator: Sergio Schwaitzer, 03.03.2004, Diário da Justiça da União [D.J.u.], 17.03.2004, 212, 212-13 (Braz.).

60. See *id.*

61. *Id.*

62. See Nat'l Inst. of Indus. Prop. v. Pfizer, *supra* note 2, at 1.

63. *Id.*

mented for a temporary time and provided an exception to the patent system; therefore, it must be strictly interpreted.⁶⁴

The *Pfizer* Court interpreted Law No. 9,279 in light of Article 33 of TRIPS to conclude that the term of patent protection will begin from the date of first deposit, regardless of whether this system was not the system of original grant.⁶⁵ The date of first deposit for the '560 patent was June 20, 1990.⁶⁶ Focus was given to the wording of TRIPS's Article 33 footnote, which states that "[i]t is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant."⁶⁷

The *Pfizer* Court reasoned that because Brazil did not have a system of original grant for pharmaceutical patent applications, the filing date in the system of the original grant begins with the very initial deposit or first application, regardless of whether the system receiving the first application was the first to grant protection.⁶⁸ This analysis ignores the reality that the United Kingdom patent system was not the system of original grant, because the patent application that was filed in this system was abandoned. Instead, the European Patent Office was the patent system that originally granted a patent.⁶⁹ This European Patent system lists a filing date of June 7, 1991.⁷⁰

To satisfy the twenty-year term minimum requirement, the *Pfizer* Court stated that at least some form of patent protection begins at the time of first deposit, which is the priority date.⁷¹ The *Pfizer* Court believed that protection stemming from a priority date involves the ability to request other countries to accept the priority date.⁷² The *Pfizer* Court also reasoned that during this twelve-month period, the applicant has certain safeguards such as the preservation of characteristic novelty of the invention and the inability of third parties to make use of or patent the invention in other countries.⁷³ But patent protection, or the ability to prevent others from using, making, and selling the patented invention, only begins when the patent is issued.⁷⁴ The *Pfizer* Court stated that safeguards continue regardless of whether the applicant later withdraws or abandons the patent application.⁷⁵ But the establishment of a priority date is often viewed as merely a method of "alleviating the negative con-

64. *Id.* at 8.

65. *Id.* at 9.

66. '560 Patent.

67. Nat'l Inst. of Indus. Prop. v. Pfizer, *supra* note 2, at 9 (quoting TRIPS Agreement, *supra* note 9, at art. 33).

68. *Id.*

69. '756 Patent.

70. *Id.*

71. Nat'l Inst. of Indus. Prop. v. Pfizer, *supra* note 2, at 22, 26.

72. *Id.*

73. *Id.*

74. See e.g., 35 U.S.C. § 154 (2006).

75. Nat'l Inst. of Indus. Prop. v. Pfizer, *supra* note 2, at 10.

sequences of the principle of territoriality in patent law”—while the inventor is trying to establish international protection for his invention.⁷⁶ The *Pfizer* Court reasoned that the initial deposit or priority date begins the term of patent protection, regardless of its later abandonment and regardless of no patent rights stemming from the priority date.⁷⁷ Therefore, it believes that the twenty-year minimum term of TRIPS is satisfied.⁷⁸

A. THE PFIZER COURT RULING APPEARS TO BE INCONSISTENT WITH PATENT TERMS UNDER THE PARIS CONVENTION AND WILL HAVE WIDESPREAD NEGATIVE EFFECTS

Generally, the method of obtaining a priority date by filing an initial application in one country's patent system, abandoning the initial application, and then using the priority date for future international patent applications is a common practice.⁷⁹ When this occurs, twenty years of protection is calculated from the international filing date, and not the priority date.⁸⁰ The Paris Convention specifically states that “patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.”⁸¹ The *Pfizer* Court holding that the priority date, instead of the filing date, starts the twenty-year patent term seems to contradict a clear reading of the Paris Convention and TRIPS.

The *Pfizer* holding sets a confusing precedent for patent pipeline cases and patent term adjustments.⁸² The INPI was confident that this holding would accelerate the expiration of pipeline patents by one or two years.⁸³ In June 2010, there were more than 100 similar cases before Brazilian courts involving the validity and the expiration dates of pipeline patents relating to pharmaceutical products or processes.⁸⁴ Since the *Pfizer* decision, multiple other pipeline patents have been truncated in a similar manner.⁸⁵ Brazilian courts truncated the patent terms for Lipitor, a medicine that controls cholesterol, and Gleevec, a medicine used for can-

76. Case T-0015/01, *Mystery Swine Disease/SDLO*, [2004] O.J.E.P.O. 34 (Technical Bd. Appeal 3.3.4, June 17, 2004), available at <http://www.epo.org/law-practice/case-law-appeals/pdf/t010015ex1.pdf>.

77. Nat'l Inst. of Indus. Prop. v. *Pfizer*, *supra* note 2, at 10.

78. *Id.*

79. See European Patent Office Guidelines for Examination Part C, *supra* note 25, at §§ 2.1-2.2.

80. Paris Convention, *supra* note 23, at art. 4bis(5).

81. *Id.*

82. *Jurberg*, *supra* note 5.

83. *Id.*

84. Taylor, *supra* note 7.

85. See Patricia Covarrubia, *INPI Did It Again – Pipeline Mechanism*, IP TANGO (July 12, 2011, 11:23 AM), <http://iptango.blogspot.com/2011/07/inpi-did-it-again-pipeline-mechanism.html> [hereinafter Covarrubia, *INPI Did It Again*]; Guna, *Brazil Pipeline Patents – Term Extension*, PATENT DAILY (PHARMA) (Nov. 2, 2011), <http://patentdaily.wordpress.com/2011/02/11/brazil-pipeline-patents-term-extension/>.

cer treatments.⁸⁶ Also, patent terms were shortened for patents protecting medications for Parkinson's disease, blood clots prevention, and cardiac arrhythmias.⁸⁷

In response to losing patent protection in Brazil, Pfizer acquired a forty percent interest in Teuto, a Brazilian generic drug manufacturing company, which allowed Pfizer "to increase its participation in Brazil's pharmaceutical market."⁸⁸ It is unknown whether other pharmaceutical companies owning patents soon to expire will follow suit.

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86. José Carlos Vaz e Dias, *INPI Wins the Battle Against the Patent Extension for Lipitor*, IP TANGO (Aug. 30, 2010, 4:25 AM), <http://iptango.blogspot.com/2010/08/inpi-wins-battle-against-patent.html>; Patricia Covarrubia, *Brazilian Pipeline System – Again*, IP TANGO (Oct. 25, 2010, 6:00 AM), <http://iptango.blogspot.com/2010/10/brazilian-pipeline-system-again.html>.
87. Covarrubia, *INPI Did It Again*, *supra* note 84; Guna, *supra* note 84.
88. Agence France-Presse, *Pfizer Buys into Brazilian Drug Maker Teuto*, INDUSTRY WEEK (Oct. 20, 2010), http://www.industryweek.com/articles/pfizer_buys_into_brazilian_drug_maker_teuto_23066.aspx.