

INFOCARD ELANBiz Intellectual property¹

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Introduction

This infocard is organized as follows. Firstly, it describes the industrial property rights (“IPR”) regime in Argentina, in particular patents, trademarks and geographical indications. Secondly, it describes the regime applicable to copyright and related rights. Finally, it refers to some difficulties related to intellectual property rights that EU operators experience in Argentina, as identified in the EU Market Database.

Patents

General regulations

Patents in Argentina are regulated by [Law No. 24,481](#) of 1995 (the “Patent Law”) as amended by Decree No. 260/1996 and subsequent modifications, together with the [Patent Guidelines](#) issued by the National Institute of Industrial Property (*Instituto Nacional de Propiedad Intelectual* - [INPI](#)). In addition, Argentina has ratified the [Paris Convention for the Protection of Industrial Property](#) (the “Paris Convention”) and the WTO agreement including the [Trade-Related Aspects of Intellectual Property Rights](#) (the “TRIPS Agreement”). However, unlike most Latin American countries, Argentina is not a contracting party to the [Patent Cooperation Treaty](#) (PCT), which grants patent protection in all contracting countries by just filing an “international” patent application.

The Patent Law defines “patentable invention” as any invention of a product or procedure that (i) is new; (ii) is the result of an inventive activity; and (iii) can be applied to an industrial activity.

Moreover, pursuant to the Patent Law, an “invention” is understood as “any human creation that allows to transform matter or energy so that they can be used by men”. Furthermore, according to some authors, inventions must include a technology or a technical knowledge that are applicable to an industrial development.

Patentability requirements

The Patent Law sets forth that inventions must meet the following requirements in order to be patentable:

1. The invention must be novel: an invention is considered to be new if it does not form part of the state of the art. The “state of the art” is defined as everything made available to the public by means of a written or oral description, by use, or in any other way, in the country or abroad,

¹ The information provided in this document is of a general nature only. For more detailed information, events and commercial trade offers, as well as commercial business contacts, please contact the Commercial Offices of the member states Embassies, the European trade organizations and the bilateral chambers of commerce.



before the date of filing of the patent application, or before its date of priority.

2. There must be an inventive activity: an invention is considered as involving an inventive activity if, having regard to the state of the art, it is not obvious to a person skilled in the Art.
3. The invention must be "susceptible of industrial application": an invention is considered to have an industrial application whenever it allows to get a result or an industrial product. The term "industrial" comprises "agriculture, forestry industry, livestock, fisheries, mining and services".

Exclusions

The Patent Law establishes that the following products or procedures are not considered inventions:

1. Scientific theories or mathematical methods;
2. Literary works or artistic plays;
3. Software and rules or methods applied to perform intellectual activities;
4. Surgical, therapeutic or diagnostic procedures applicable to humans or animals;
5. The modification of the shape or dimensions of products or materials already known, unless they are modified in such a way that they cannot function separately or that their modification has a non-obvious industrial result for a specialist or technician in the field;
6. The ways in which information is presented;
7. All kinds of living matter and substances of nature.

In addition, the Patent Law determines that the following inventions are not patentable:

1. Inventions whose exploitation in the Argentine Republic must be prevented to protect public order or morality, the health or life of people or animals, or to preserve plants or prevent serious damage to the environment;
2. All biological and genetic materials existing in nature or their replication, in the biological processes implicit in animal, plant and human reproduction, including genetic processes related to the material capable of conducting its own duplication in normal and free conditions as it occurs in nature.

Patents registration

In accordance with the Argentine regulations, a patent application must be filed before the INPI by the inventor, by their successors and / or by their representatives. The applicant may withdraw from the application at any time during this process. If there are many inventors, all of them will own an intellectual property right.

Patent granting and duration of patent protection

The applicants do not own an intellectual property right until the patent is granted to them by the Authority.

Patents last for a non-extendable term of 20 years, counted from the application filing date. It is important to recall that, while the intellectual property rights can only be exercised once the patent is granted, the validity term is counted from the date the patent application is filed.

Issues related to pharmaceutical patents



Several issues are related to pharmaceutical patents:

- a. Patents for **second medical use** are not permitted. [Joint Resolution No. 546/2002](#) issued by the Ministry of Industry, the Ministry of Health and the INPI, restricts the patentability of several categories of inventions in the pharmaceutical field, including second medical indications. According to the Joint Resolution, second medical uses are not patentable given that they are equivalent to a therapeutic treatment method and do not present industrial applicability.
- b. Lack of regulatory data protection. [Decree No. 150/92](#) provides that the applications for registration of medicines must include, inter alia, the formula and the product elaboration method. There is no effective mechanism to keep this data confidential.
- c. Abbreviated approval process for pharmaceutical copies. [Law No. 24,766](#) of 1995 establishes that once a product has been registered in Argentina or in any of the countries listed in the Annexes (which include several EU countries), any product considered “similar” to the original shall benefit from an abbreviated process of approval without requiring additional tests and examinations.

Plant Variety Protection

[Law No. 20,247](#) on Seeds and Phytogenetic Creations of 1973 (the “Seeds Law”) allows producers to keep seeds of a prior harvest and use them without any limitation in the following harvest. In 2019, the National Congress resumed discussions on a project to modify this Law.

Trademarks and service marks

General regulations

[Law No. 22.362](#) and its regulatory [Decree No. 242/2019](#) (hereinafter, the “Trademark Laws”), regulate trademarks and service marks². According to such regulations, trademarks and service marks can consist in one or more words with or without a conceptual content; drawings or emblems; monograms, engravings or prints; seals, images, combinations of colors applied in a certain place of the products or of the containers; packages; combinations of words and numbers; advertising phrases; among others. Conversely, the Trademark Laws provide that the following signs are not considered trademarks or service marks and, therefore, cannot be registered: (i) the names, words and signs that constitute the necessary or customary designation of the product or service to be distinguished, or that are descriptions of its nature, function, qualities or other characteristics; (ii) the names, words, signs and advertising phrases that have gone into general use before the registration request; (iii) the shape of products; and (iv) the natural or intrinsic color of the products or a single color applied to them. Pursuant to the Trademark Laws, property over trademarks or service marks and the right to exclusively use them, shall only be obtained after their registration. Applicants must demonstrate a

² A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors. A “service mark” is any sign that individualizes a service provided by a company and that allows consumers to distinguish that service from the services offered by other competitors.

legitimate interest in order to register a trademark or service mark.

Exclusions

The Trademark Laws set forth that the following trademarks or service marks cannot be registered: (i) a trademark or service mark that is identical to another one previously registered or requested to distinguish the same products or services; (ii) trademarks or service marks that are similar to others already registered or requested to distinguish the same products or services; (iii) domestic or foreign geographical indications; (iv) trademarks or service marks that are likely to mislead consumers regarding the nature, properties, merit, quality, manufacturing techniques, function, price origin or other characteristics of the products or services; (v) words, drawings and other signs that are contrary to moral social customs; (vi) letters, words, names, symbols, that shall be used by the Argentine Nation, provinces, communities, religious organizations or sanitary institutions; (vii) the name, nickname or portrait of a person, without their consent; (viii) designations of activities; and (viii) advertising phrases that are not original.

Validity term

The Trademark Laws provide that the property right to trademarks and service marks and the right to exclusively use them last 10 years, counted from the day when the Authority grants these rights. This term can be indefinitely extended for the same term, five years prior to the expiration time.

Registration procedure

Pursuant to the Trademark Laws, applications for trademarks and service marks shall be filed before the INPI. In addition, the Trademark Laws entitle foreigners to register trademarks or service marks. For this purpose, foreigners must set a legal domicile in the City of Buenos Aires.

Geographical Indications

Legal framework for the protection of Geographical Indications

Argentina has in place a legal framework with separate regulations for the protection of indications of source (“IS”) and appellations of origin (“AO”)³ for: (i) wines and spirits (Law No. 25,163 of 1999), and (ii) agricultural and foodstuff products (Law No. 25,380 of 2001). Although such regulations permit the registration of foreign Geographical Indications, so far, no foreign IS or AO have been registered.

Wines and spirits

Law No. 25,163 establishes the legal regime for Provenance Indications (PIs), IS and AO *for wines and spirits*. The Law stipulates that the following goods may not be registered as PIs, IS and AO: (a) “generic” names, that is, those denominations that because of their use have become the common or general way in which a product is identified by the public; (b) registered trademarks that identify

³ The Paris Convention distinguishes two kinds of Geographical Indications: (i) indications of source (“IS”), which are expressions or signs used to indicate that a product originates in a country, a region or a specific place and (ii) appellations of origin (“AO”), which are geographical names of countries, regions or specific places that serve to designate a product originating therein, the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural or human factors or both natural and human factors.



products of winegrowing origin and (c) varieties of grapes. Moreover, pursuant to Article 23.1 of the TRIPS Agreement, Law 25,163 prohibits the use of expressions such as “kind”, “type”, “style” or similar, to indicate the geographical indication or the true origin of the goods.

[Regulatory Decree No. 57/2004](#) stipulates that *foreign* PIs, IS and AO for wines and spirits may be registered, provided that they are duly identified and that they are registered in their country of origin. Furthermore, it is important to note that when an IS application is similar to a prior trademark registration, applicants wishing to register the IS must previously obtain an authorization granted by the owner of the trademark.

The list of IS and AO recognized and protected in Argentina in the wines and spirits sector includes 97 IS and 2 AO. The complete list of PI, IS and AO for wines and spirits registered in Argentina, can be checked by clicking [here](#). It should be mentioned that there is no online platform for the process of registration.

Agricultural and foodstuff products

[Law No. 25,380](#) amended by Law 25,966 of 2004, establishes the legal regime for IS and AO *for agricultural and foodstuff products*. The Law states that IS and AO will not be registered if, inter alia: (a) they correspond to “generic” denominations for agricultural or food products, defined as those that, according to their use, have received a common name for their identification for the public in Argentina, or (b) they are trademarks registered in good faith or acquired through their use in good faith (Article 25). Contrary to Law 25,163 on IS and AO for wines and spirits, Law 25,380 for agricultural and foodstuff products does not prohibit the use of expressions such as “class”, “type”, “style” or similar.

[Regulatory Decree No. 556/2009](#) lays down specific requirements for the applications for the registration of *foreign* IS and AO for agricultural and foodstuff products. These requirements include: proof of IS or AO protection in the country of origin; an endorsement or opinion of the competent authority of the country of origin, giving an account of the effective existence, validity and use of the IS or AO; the appointment of a legal representative in Argentina authorized to carry out the procedure; and proof of compliance with other requirements provided by the general legislation.

So far, only 8 products have been registered in the registry of IS and AO for agricultural and foodstuff products, all of them from Argentina. The complete list of PI, IS and AO for foodstuff products registered in Argentina, can be checked by clicking [here](#). Finally, it is important to note there is an online platform for the registration process.⁴

Other relevant rules for the protection of IS and AO

Several European IS and AO are considered a specific method of production or generic and even defined as such by the **Argentine Food Code**, so they cannot be registered in Argentina. For example, Brie, Camembert, Cuartirolo, Edam, Emmental, Gouda, Fontina, Mozzarella, Parmesano, Provolone, Reggiano, Ricota, Romano, and Sardo are cheeses produced in Argentina recognized as a method of production of cheeses by the Argentine Food Code.⁵ The Food Code also refers in generic terms to

⁴ See http://www.alimentosargentinos.gob.ar/HomeAlimentos/IGeo/tramite_de_registro.php.

⁵ Argentine Food Code, Articles 553-642, available at http://www.anmat.gov.ar/alimentos/codigoo/CAPITULO_VIII.pdf.



other products as “type”, as in the cases of “Turrón tipo Jijona”, “Turrón tipo Alicante” and “Turrón tipo Cádiz”, “Turrón tipo Provence”, “Turrón tipo Montelimar”;⁶ and as a method of production or type in the cases of “Champagne”, Vermut “Tipo Torino”, Vermut “Tipo Francés”,⁷ and in the cases of Gin, London Dry Gin, Corn, Steinhaeger, Brandy, Calvados, Cognac, Whisky and Pastis, among others.⁸ The exact wording used in the Food Code in the case of alcoholic beverages can be for example: “X are those obtained from” or “Y is the beverage with”.

[Law No. 22,362](#) on Trademarks of 1980 provides that it is not possible to register as trademarks, *inter alia*: (a) “denominations of national or foreign origin” or (b) trademarks “that are likely to induce errors regarding the (...) origin (...) of the products or services” (Article 3). There is no reference to generic names in the law. There are numerous European IS registered as trademarks by local companies, generally before the entry into force of the TRIPS Agreement (e.g. Toro, Rioja, Margaux, Lambruso, Jerez, Oporto, Champagne, Borgoña, Roquefort, Reggiano).⁹ In many cases, foreign companies have opposed the registration or use of a trademark before the administration or courts.

[Decree No. 274/2019](#) provides that “[n]o denomination of national or foreign origin may be used to identify a product when it does not come from the respective zone.” The Law also provides that “appellations of origin that by their use have become the name or type of the product will be considered of generalized use and will be of free use”.

Through [Resolution 146/2004](#), Argentina incorporated in the national legal order [MERCOSUR Common Market Group’s Resolution 26/2003](#), which is the MERCOSUR technical regulation for the labeling of packaged foods. The resolution prohibits the use of the expression “type” to names associated with wines and spirits (a requirement under TRIPS Article 23.1), but expressly allows it for agricultural products and foodstuffs.

Copyright and related rights

General regulations

[Law No. 11.723](#) (the Copyright Law) regulates copyrights and related rights in Argentina¹⁰. According to such regulation, owners of copyrights are entitled to perform the following actions: use, communicate, disseminate, execute, represent, transfer, translate and authorize third parties to use the protected intellectual works.

Additionally, the Copyright Law recognizes that the following intellectual works might be protected by

⁶ Ibid, Articles 800 and 801, available at http://www.anmat.gov.ar/alimentos/codigoa/Capitulo_X.pdf.

⁷ Ibid, Articles 1101 and 1102, available at http://www.anmat.gov.ar/alimentos/codigoa/Capitulo_XIII.pdf.

⁸ Ibid, Chapter XIV, available at http://www.anmat.gov.ar/alimentos/codigoa/CAPITULO_XIV.pdf.

⁹ Molina, M. S. “Conflictos Entre las Indicaciones de Origen Geográfico y las Marcas en el Derecho Argentino”, *Revista Chilena de Derecho*, vol. 44, no. 1, 2017, 107-132, 111. The Argentine Trademark’s Registry can be accessed online at <https://portaltramites.inpi.gob.ar/Home/frame?page=and https://portaltramites.inpi.gob.ar/Clasico/Docs/FormulariosConsultas/MarConsultaAvanzada.asp>.

¹⁰ While copyrights are intended to protect intellectual works such as productions in the literary, scientific and artistic domain, “related rights” are aimed at protecting the activities of those who assist intellectual creators to communicate their message and/or works



copyrights: scientific, literary and artistic works, including software, compilations of data or other materials; dramatic plays, musical compositions; cinematographic, choreographic or pantomimic works; drawings, paintings, architectural works and sculptures; or any other scientific, literary, artistic or didactic work irrespective of the reproduction media.

Protection term

The Copyright Law sets forth that creators of intellectual works own copyrights during their complete life. Moreover, authors' heirs own copyrights on the intellectual works during a period of 70 years, counted from January 1st, of the year following the date of death of the author. In case of phonograms, artists own copyrights for a period of 70 years counted from January 1st of the year following the publication of the work.

Registration procedure

According to the Copyright Law, in order to be granted copyrights over intellectual works, creators must register their works before the National Directorate of Copyrights.

The Copyright Law grants protection for foreign works, provided that the owners demonstrate to the Argentine Authority that such works are protected in their countries in accordance with their domestic regulations. The duration of the protection for foreign works shall not last more than the maximum term granted by their domestic regulations. However, should the domestic regulations establish a protection term that is longer than the period set forth in the Copyright Law, then the latter shall prevail over the former, and therefore, the foreign works will be protected during the maximum term established in the Copyright Law.

Trade Barriers for EU Operators

The [EU Market Access](#) database identifies different trade barriers that EU operators face concerning Intellectual Property Rights (IPR) in Argentina:

(i) Delays in granting patents and lack of IP protection

Insufficient patent protection of new products due to opaque patentability criteria and slow granting procedures combined with a patent backlog in examining applications (in particular for pharmaceutical products, currently 5 years, and for agrochemicals) and inadequate regulatory and test data protection. As a comparison, the average pendency period for a patent in the EU, at the EPO, is less than 2 years.

(ii) Lack or insufficient IPR protection for geographical indications

Argentina has in place a legal framework in line with TRIPS including a sui generis protection by means of a national register that in principle is also available to foreign holders of Geographic Indications (GI) and Designations of Origin (DO). There are separate regulations for the registration of wines and spirits, on the one hand, and agricultural and foodstuffs, on the other. However, no EU GI or DO has been registered up to date. Without registration, EU GI holders lack legal means to defend their rights in the country. One of the major difficulties is that GI denominations considered as "generic" names cannot be registered, and many European GIs are considered in Argentina and mentioned as such in the local food codex "Codigo Alimentario". There are concerns on misappropriation of many European GI names.



GI protection for wines and spirits is in place since January 2004 (when Law No 25163 of 1999 entered into force) and for agricultural and food products since May 2009 (when Law No 25380 of 2001 became effective).

At the same time the existing Mercosur rules (MERCOSUR/GMC/Resolución N°26/03 - transposing TRIPS requirements) and implemented in Argentina by Resolution 146/2004 on labelling of packaged foods, establishes that the geographical appellations of a country, a region or a population, recognised as places, in which are manufactured foods with specific characteristics, cannot be used for labelling or advertisement of foods manufactured in other places when this can mislead the customer. It prohibits the use of the expression "type" to names associated with wines and spirits (TRIPS requirement) but allows it for agricultural products and foodstuffs. This latter increases the risk that those names become "generic".

In addition, there is widespread misappropriation of European GI names notably in the wine and spirit sector (for instance private operators try to obtain registration of European GI names, logos or official mentions as trademarks).

*In the context of the **EU-MERCOSUR** negotiations for an Association Agreement, in November 2017 Argentina published for internal consultation (through Resolution 319-E/2017) the list of GI and AO for which the EU requested protection in the territory of MERCOSUR. The outcome of such consultation was an important input for the development of the negotiations.*

The UE – Mercosur Free Trade Agreement

The recently negotiated [EU-Mercosur Association Agreement](#) (not in force yet), contains a chapter and different annexes on intellectual property. It includes provisions on copyright, trademarks, industrial designs, geographical indications, plant varieties, and the protection of trade secrets.

As regards geographical indications, the EU recognizes 220 IS and AO from MERCOSUR (such as Wines of Mendoza or Brazilian Cachaça), and simultaneously MERCOSUR grants protection for 355 IS and AO from the EU (like Manchego cheese, French Champagne, Portuguese Porto or Rioja Wines). In cases in which European IS or AO are similar to MERCOSUR's trademarks, both shall coexist. Moreover, in cases in which European IS or AO are used to commonly designate a product in MERCOSUR (such as parmesano, reggianito, fontina, gruyere, ginebra, among others), producers will be entitled to continue using those denominations. Only in some specific cases the Agreement sets forth long terms after which MERCOSUR producers are obliged to modify the denomination of such products in order to differentiate them from European IS or AO.

Useful Links

National Institute of Intellectual Property ([INPI](#))

[World Intellectual Property Organization](#)

[EU Market Access database](#)

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