

TRADEMARK REGISTRATION IN BRAZIL, THE UNITED STATES AND PORTUGAL

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Summary

This article aims to understand, analyze and compare the procedures adopted in Brazil, the United States and Portugal to register a trademark. For this purpose, bibliographic research was carried out in the Web of Science and documentary research into the three official institutions of trademark registration, namely: INPI(Brazil), USPTO(United States) and INPI(Portugal). In order to understand the adopted procedures, a simulation of the trademark application was made in the e-Marcas (Brazil), TEAS (United States) and InpiOnline (Portugal) systems.

In terms of navigability, the INPI (Portugal) InpiOnline System is the easiest to navigate and is the only one that offers the "Trademark on the Spot" service on its Portal, which allows for the immediate acquisition of a trademark without the need to go through the trademark application process. On the partnership issue, the USPTO (United States) has a support network with the Patent and Trademark Resource Centers (PTRC), which are part of the national network of public, state, and academic libraries designated to support the public with trademark and patent assistance. Among the main points in common, the following were identified: the availability of online systems for applying for trademark registration; the ease of conducting prior search in proprietary systems, and the use of the Nice classification to classify goods and services. Among the main differences are the estimated period to obtain the granting of the trademark registration; the types of trademarks allowed in each legislation; and the values of the fees to apply for a trademark registration.

Keywords: Intellectual Property; Trademark; Intangible Assets; Brand

1. Introduction

In today's globalized economy, companies want to take advantage of the ever-expanding market in some countries to introduce their products. Many see opportunities to make new businesses and to conquer new public niches for their products. However, it is necessary that these entrepreneurs understand the importance of protecting their intellectual properties and, specifically, the trademark.

Brands are one of the most important assets of companies and, according to Millot (2009), play a key role in the activities of companies, which can have their reputation built through the brand. Moreover, they win the loyalty of consumers, allowing the company to charge higher prices.

For authors Kotler and Keller (2012), a brand is the offering of a known source, because it provides many associations in people's minds. Such associations form the brand image, which is often the result of a company's efforts to consolidate itself with an exclusive and strong image.

There are several authors who indicate in their studies that consumers, when they think of brands, correlate these with quality products (Aaker, 1996; Ramello, 2006; Sheff 2013). Other studies concern the debate about the economic aspects of the use of brands. For example, in the study by Landes and Posner (1987), the authors argue that trademarks result in search time savings for consumers, since trademarks enable consumers to spend less time searching for the quality goods they desire. The authors presented in their studies a formal model of how trademarks are able to affect the prices and quality of products. Along the same line, Economides (1988) understands that the use of trademarks is beneficial, both from the consumer's and the company's point of view.

Considering the economic function of trademarks, the positive associations of consumers with the quality coming from the products of a trademark and, consequently, the size of the market it intends to reach, it is essential that a company obtain protection of its trademark in the country it intends to reach, since the trademark is a territorial right. The exception is for well-known trademarks that do not need to be registered in any country, since the Paris Convention, which is an international agreement, guarantees protection that goes beyond the territoriality principle. Therefore, if the company intends to sell its products and services in the national market, it is necessary to obtain the granting of trademark registration for use in national territory; however, if the company intends to export its products or services, it is essential that it obtains the granting of trademark registration in each of the targeted countries, before actually starting the sale operation. There are several international agreements and treaties created in order to make it easier to obtain a trademark registration. However, obtaining a registration is not an easy task, since the legislation that deals with this issue is not uniform.

In this context, this article aims to analyze, under the trademark registration aspect, which procedures are adopted in Brazil, the United States and Portugal, as well as to present the similarities and differences found.

2. Methodology

This study aims to understand, analyze and compare the procedures adopted in Brazil, the United States and Portugal to register a trademark. For this purpose, bibliographic research was carried out in the Web of Science and documentary research into the three official institutions of trademark registration, namely: INPI(Brazil), USPTO(United States) and INPI(Portugal). In order to understand the trademark registration procedures in each of the countries, a simulation of the trademark application was made in the e-Marcas (Brazil), TEAS (United States) and InpiOnline (Portugal) systems.

The United States was chosen because of the large number of trademark registration filings that exist in the database of its official institution, the US Patent and Trademark Office (USPTO). According to the

World Intellectual Property Organization (WIPO), the Global Brand Database, a database maintained by this institution, accounts for more than 40 million registrations. This is the first step to conduct research and verify whether there is already an identical or similar trademark to the one you intend to register. Of the total existing records in this database, approximately $\frac{1}{4}$ are trademark registrations filed in the American database USPTO (WIPO, 2020a).

The selection of the country Portugal occurred because it is a member of a regional trademark system, the European Union Intellectual Property Office (EUIPO). In addition, it is one of the countries in which the number of trademark filings has grown annually, which has positioned Portugal as one of the European Union countries with the highest number of trademark applications per million inhabitants (INPI.pt, 2019).

As a limitation of this study, the procedures presented are for online application by a national applicant for a trademark registration to protect a product or service with a single class.

3. Theoretical Foundation

3.1 International Agreements and Treaties

From an international perspective, companies rely on the various International Agreements and Treaties which contain provisions for trademark protection and are intended to simplify and facilitate trademark registration procedures in different countries. Most of these international treaties and agreements are administered by the World Intellectual Property Organization (WIPO). WIPO is the global forum for intellectual property services, policies, information, and cooperation. It is a self-financing agency of the United Nations with 193 member states and its mission is to lead the development of a balanced and effective international intellectual property system that enables innovation and creativity for the benefit of all (WIPO, 2021a).

The Paris Convention (CUP), with over 138 years of existence, is one of the most important international instruments on industrial property and has undergone several revisions over time in order to introduce changes designed to improve the system. The substantive provisions of the CUP fall into three main categories: national treatment, priority right, and common rules (WIPO, 2021b).

For a company that wants to protect its trademark in several countries, the right of priority provided in the CUP is an advantage, because the company will have six months at its disposal to decide in which countries it wants protection and organize all the necessary documentation. Currently, 177 countries are part of the CUP, including Brazil, the USA, and Portugal (WIPO, 2021c).

The Madrid Agreement and the Madrid Protocol govern the International Trademark Registration System, which is administered by WIPO, which maintains the International Register and publishes weekly in its journal the latest data on new trademark registrations, renewals, subsequent designations, and modifications affecting existing registrations (WIPO, 2021d).

With the Madrid System, it is possible to protect a trademark in a large number of countries by obtaining an international registration that takes effect in each of the contracting parties that has been designated. It facilitates the management of this protection by enabling the trademark owner to file a single application, in a single language, and pay the fees in a single place. Currently, 108 countries are part of the CUP, including Brazil, USA and Portugal (WIPO, 2021e).

The Nice Agreement aims to establish an international classification of goods and services for the registration of trademarks. The use of the Nice Classification is mandatory not only for the national registration of trademarks in the countries parties to the Nice Agreement, but also for the international registration of trademarks carried out by WIPO. Currently, 88 countries and organizations are signatories of the Nice Agreement, among them the United States and Portugal (WIPO, 2021f). Brazil, although not a signatory of the Nice Agreement, adopts its classification (INPI, 1999).

The Vienna Agreement establishes the Vienna International Classification for marks containing figurative elements. The objective of the Vienna Classification is to facilitate the search for anteriority of the trademark that is intended to be registered, avoiding the work of reclassification. The Vienna Agreement is administered by the WIPO International Bureau and is open to WIPO member states and certain intergovernmental organizations. Currently, 38 countries and organizations are part of the Vienna Agreement, however, Brazil, the United States and Portugal are not signatories (WIPO, 2021g).

3.2 Trademark Registration Process

According to the National Institute of Industrial Property (INPI,2018), the process of registering a trademark can be national, regional or international. In the process by the national route, the interested party seeks the Trademark Registration Office of each country in which it seeks protection and files the corresponding application in the prescribed language. The party pays the fees and follows the process to know whether the application will be granted or not.

In the regional process, the interested party seeks protection for its trademark in countries that are members of a regional trademark system, such as the African Intellectual Property Organization (OAPI) and the European Union Intellectual Property Office (EUIPO). By filing a single trademark application with the regional office, the registration application will have effect in the territories of all member countries (INPI, 2018). By the international route, it is necessary that the country or a regional trademark institution be a member of the Madrid System. Thus, by filing a single trademark application with the WIPO secretary, the registration application will take effect in the territories of all member countries and organizations of the Madrid System (INPI, 2018).

It is emphasized that, both through the regional route and the international route, the protection will be granted or refused according to the legislation of each country.

Trademark registrations are granted by official institutions of the countries. According to (INPI, 2018), the time required to obtain the registration of a trademark varies greatly from one institution to another, and this difference in time results mainly from the type of examination that the institution performs, namely: absolute grounds and relative grounds. When the institutions examine only the absolute grounds for preventing a registration, they will be analyzing, for example, if the sign is descriptive in relation to the specified goods or services, or if it is considered contrary to morals and good customs. On the other hand, the institutions that analyze the absolute and relative grounds for preventing registration will also check the existence of previous registration(s) in force intended to mark the same or similar products.

In general, the procedures for applying for trademark registration are similar among the institutions. However, it is necessary for those interested in registering a trademark to be aware of some preliminary procedures, in order to proceed with the application. By being aware of such procedures, the interested

party can gain time and save on the amounts that will be spent on fees to pay for such registration. Here are some procedures:

- First, it is necessary to know the current legislation in the country pertinent to the trademark registration, because, having access to the Law, the interested party will be aware if the trademark it intends to protect is in accordance with the specifications described.
- Second, define the class or classes of products and services that you intend to protect with the trademark. For the definition of classes, the Nice Classification is generally used. To facilitate the choice of the class or classes that will be protected by the mark, WIPO (2020b) provides a tool on its website called Madrid Goods & Services Manager, which is very useful to classify goods or services correctly, according to the Nice Classification.
- Third, it is important to perform a prior search (anteriority search) before applying for a trademark registration. The prior search consists of a detailed search in the database of the institution where you intend to protect the trademark. It is not mandatory, but it is advisable. If an identical or similar trademark is found (spelling or phonetics), one must observe if the classes are the same for which the interested party intends to obtain the trademark registration. If they are the same classes, the interested party must not continue the process with the desired mark, but if the classes are different, the process must continue.

3.3 Registering a Trademark in Brazil

In Brazil, the National Institute of Industrial Property (INPI) is responsible for the analysis of trademark applications. The INPI is a federal autarchy created by Law n. 5.648, dated December 11, 1970 (Brazil, 1970), linked to the Ministry of Economy (Brazil, 2019). Its mission is to stimulate innovation and competitiveness at the service of Brazil's technological and economic development through the efficient protection of industrial property. Among the INPI's services are registrations of trademarks, industrial designs, geographical indications, computer programs and integrated circuit topographies, patent concessions and recordings of franchise agreements and the different modalities of technology transfer. The headquarters of the INPI is located in the city of Rio de Janeiro and has twelve regional representations, located in the capitals: Brasília, Fortaleza, Vitória, Goiânia, Belo Horizonte, Curitiba, Recife, Porto Alegre, Florianópolis, São Paulo, João Pessoa, and Aracaju (INPI, 2021a).

To file a trademark application with the INPI, the interested party must be an individual or legal entity that exercises a lawful activity, effective and compatible with the product or service that the mark aims to distinguish.

According to the authors, Jungmann and Bonetti (2010), the trademark registration must serve to protect products and services arising from the activity performed in the enterprise. This limitation exists to prevent the registration of trademarks by individuals and legal entities that want only to market them, i.e., that do not intend to use the brands in their professional activities. Still, according to the authors, in Brazil, the legislation does not include protection for sound, olfactory, tactile, and gustatory marks, nor for trade dress. Along these lines, Sekeff (2018, p.23), argues "The legislation accepts only visually perceptible distinctive signs as susceptible of registration".

The current legislation pertinent to trademark registration is Law n. 9,279, of May 14, 1996, referred to as the Industrial Property Law that regulates rights and obligations relating to industrial property (Brazil, 1996).

The Brazilian legislation provides the exception of the right of precedence to trademark registration in its article 129. The right of precedence is given to those who, in good faith, have already used, in Brazil, for at least six months, a trademark equal or similar to the trademark for which registration at the INPI was requested. If such prior and legitimate use is proven, such company will have preference in the trademark registration. However, for the holder of the right of precedence to be entitled to the trademark, it is necessary for him to file an opposition to the new trademark application, make his application for the registration of his trademark and prove his prior use (Ghesti; Araújo, 2016).

The estimated time frame for granting a trademark registration is 6 months (INPI, 2020). Before filing a trademark application with the INPI, it is recommended that the applicant be aware of the following procedures:

- ✓ Verify that the trademark is in accordance with the Law of n. 9,279, of May 14, 1996.
- ✓ Define the nature of the trademark, which can be of product, service, collective or certification.
- ✓ Determining the graphic form of presentation of the trademark, which can be nominative, figurative, mixed or three-dimensional.
- ✓ Determine which classes of goods or services the trademark should protect. Since January 3, 2000, the INPI adopts the Nice Classification (international classification of products and services).
- ✓ Determine which class of figurative elements (Vienna Classification) the trademark fits into. This action is only for mixed, figurative or three-dimensional marks.
- ✓ Perform a preliminary search in the trademark database available on the INPI's Portal.
- ✓ Electronically submit the trademark registration application at the INPI using the e-Marcas system available at the INPI portal. Since the end of 2019, paper applications are no longer accepted.
- ✓ Be aware of the fields of the form that will be filled out to request the trademark registration. For example, if it is a figurative or mixed trademark, a file with the following characteristics must be attached: jpg or jpeg format; image size 8 cm x 8 cm; resolution from 200 DPI to 300 DPI; and maximum file size 2 MB.
- ✓ After getting to know the procedures, make the application for trademark registration in the e-Marcas System (INPI, 2021d).
- ✓ Follow up all publications related to the registration application through the Industrial Property Journal (RPI) or the option My Applications (INPI, 2021c).

3.4. Registering a Trademark in the USA

In the United States of America, the United States Patent and Trademark Office (USPTO) is the agency responsible for granting patents for the protection of inventions and registering trademarks for products and services. It is a federal agency under the Department of Commerce. The USPTO is headquartered in Alexandria, Virginia. It has four regional offices, located in Dallas, Texas; Denver, Colorado; Detroit, Michigan; and Silicon Valley, California (USPTO, 2021b).

To file a trademark application with the USPTO, the applicant can be an individual or a corporation. For the foreign domiciled applicant, it is necessary to hire an attorney licensed in the US to represent the applicant before the USPTO (USPTO, 2021a).

The current legislation pertaining to trademark registration is the Trademark Act of n. 489 of July 5, 1946, also referred to as the Trademark Act of 1946 or Lanham Act (USPTO, 2013). Several changes or amendments have occurred in the Lanham Act in order to keep up with the evolution of commercialism, technology and marketing (Laws, 2019).

American law has some specificities regarding trademarks, which are:

First, in the US the application process for registering a trademark includes a requirement that addresses the issue of the actual use of the trademark or the intention to use the trademark. If the person interested in registering his trademark informs that he is already using the trademark, he must prove his use before obtaining the registration. But if the interested party informs that he has the intention to use the trademark, and the USPTO has approved the granting of the trademark, the interested party does not receive the trademark registration certificate; instead, he receives a grant notice that he can use the trademark and has 6 months (which can be extended for a period of 6 months up to a maximum of 3 years) to prove that the trademark was used. Only after the proof of use of the trademark will the interested party receive the trademark registration certificate (USPTO, 2020).

Second, by American law, the entrepreneur is not required to register a trademark in order to obtain protection of his trademark. American law establishes rights with your trademark based solely on the use of the trademark, it is the common law. In other words, if the business owner already uses the trademark, he has the permitted law right to continue using it in his region without the need to apply for registration with the USPTO (USPTO, 2020). Protection based on common law depends on seniority, i.e. if two owners apply for rights to similar marks, the one that was established first will prevail (Pantalony, 2017).

Third, regarding the sale or transfer of a trademark, Millot (2009) reports that in most jurisdictions, a trademark can be sold or transferred with or without the underlying goodwill that exists in the business associated with the trademark. However, this is not the case in the United States, where a trademark registration can only be sold and assigned if it is accompanied by the sale of an underlying asset. For example, the machinery used to produce the goods bearing the mark. Before filing a trademark application with the USPTO, it is recommended that the applicant read the Trademark Examining Procedure Manual (USPTO, 2021) and be aware of the following procedures:

- ✓ Verify that the mark complies with the Act of n. 489, July 5, 1946 (Lanham Act).
- ✓ Determine the graphic form of presentation of the mark, which can be a standard character (word), stylized forms and/or design, or a sound mark.
- ✓ Determine which class of goods or services the mark is to protect, describing which goods and services are tied to the class. The United States uses the Nice Classification System regarding the class number. However, it uses its own system of identifying goods and services to determine the class description.
- ✓ Perform a prior search in the Trademark Electronic Search System (TESS) database. This prior search can be performed on the USPTO Portal, in person at the Trademark Public Search Library in Alexandria, at USPTO headquarters, or by using one of the Patent and Trademark Resource Centers

(PTRC) that is part of a national network of public, state, and academic libraries designated by the USPTO to support the public in this service.

- ✓ Define how to file a trademark application with the USPTO. It can be electronic or paper. Electronically, the Trademark Electronic Application System (TEAS) form must be accessed. In the paper mode, the applicant must manually fill out the form, attach the required documentation, and send it to the USPTO headquarters. To obtain a printed form, the applicant must call 1-800-786-9199. Note that fees are higher for paper applications.
- ✓ Define which type of TEAS form will be used. There are two types of forms: TEAS Plus and Standard TEAS. All of these electronic deposit request options allow the applicant to pay by credit card, wire transfer, or through an existing USPTO deposit account.

The TEAS Plus option offers the lowest filing fee per class of goods or services, but the requirements to be submitted by the applicant are more stringent. The applicant, in addition to meeting the requirements of the TEAS Standard, must also submit information regarding the identification of the goods/services when completing the form.

The form to be filled out in TEAS must contain: the applicant's name, the applicant's address (for mailing purposes), a list of goods/services selected to be protected with the mark, and a clear drawing or representation of the selected mark. The file attached with the reproduction of the mark must be in jpg format and scanned at 300 to 350 dots per inch. It must be 250 to 944 pixels long and 250 to 944 pixels wide. Sound marks require the file to be submitted in various audio formats, such as wav, wmv, wma, mp3, avi, or mpg. Audio files must be no larger than 5 MB, and video files have a maximum file size of 30 MB. The application must be accompanied by a detailed description of the sound.

- ✓ Define on which of the two bases you will apply for your registration application:
 1. Use in commerce - this basis is for marks that have already been used or are currently in use. The applicant must provide proof of use of the mark.
 2. Intention to use - this basis is for marks that have not yet been used in commerce, but are to be used in the future.

The estimated time frame for granting a trademark registration is twelve months (USPTO, 2020).

To initiate the trademark application, the applicant must register in the MyUSPTO System available on the USPTO Portal (USPTO,2021c).

3.5 Registering a Trademark in Portugal

To obtain trademark protection in Portugal, the applicant has two ways to apply for trademark registration. The first option is to apply for trademark registration through the regional route throughout the European Union, with a single application for registration; it is thus, a community trademark. According to Domínguez (2012), the Community trademark was introduced in 1996 by the European Union with the aim of obtaining protection using a single and equal procedure. This, for the totality of the member countries of the European Union, is valid throughout the EU territory.

According to Carvalho (2017), on March 23, 2016, Regulation (EU) 2015/2424 of the European Parliament came into force, in which the Community trademark was replaced by the European Union trademark. The institution that administers the European Union trademark is the European Union

Intellectual Property Office (EUIPO), based in Alicante, Spain. It is a decentralized agency of the European Union to ensure the protection of Intellectual Property rights in Europe.

The second option is the one in which the applicant requests the registration of a trademark, by national means, directly in the institution in Portugal responsible for this purpose. In this study, we will follow the trademark registration procedure, through the national route, i.e., through the official Portuguese institution.

In Portugal, the National Institute of Industrial Property (INPI.pt) is the institution responsible for the registration and granting of trademarks, patents, designs or models. It is a public institute integrated to the indirect administration of the State, with legal personality, administrative and financial autonomy and its own assets, carrying out its activities under the superintendence and tutelage of the Ministry of Justice, according to Decree-Law n.132 of April 27th, 2007(PORTUGAL, 2007). The headquarters of INPI.pt is located in Lisbon.

The current legislation pertinent to this type of registration is Decree-Law n.110, dated December 10, 2018 (PORTUGAL, 2018). Part of this Decree-Law is the Industrial Property Code, which regulates rights and obligations relating to industrial property.

It is noteworthy that, on the INPI.pt Portal, a differentiated service is made available to customers, called "Trademark on the Spot". The Trademark on the Spot is a trademark bank, which contains trademarks available for registration. The client purchases a trademark from a pre-approved list and after payment can start using it immediately. Trademark on the Spot only provides trademarks for the classes of products and services with more demand in Portugal, which are

- class 25 (clothing; headgear; footwear)
- class 33 (alcoholic beverages - except beers)
- class 35 (advertising; commercial administration; commercial business management; sales promotion for third parties; office work)
- class 36 (insurance, financial affairs; real estate; financial sponsoring; monetary affairs; real estate management; brokerage services for the purchase and sale of real estate)
- class 37 (construction)
- class 41 (education; entertainment; training; sporting and cultural activities)
- class 43 (restaurant services - food services; temporary accommodation)

A "Trademark on the Spot" can be obtained independently of the formation of a company, i.e. without the necessary dependence on a firm (PORTUGAL, 2007). This service is performed by the Institute of Registration and Notary Affairs. It is a public institute integrated in the indirect administration of the State, endowed with administrative autonomy, with jurisdiction over the entire national territory.

To file an application for trademark registration at INPI.pt, the interested party can be an individual or a legal entity, and the estimated timeframe for granting the trademark registration is four months (INPI.pt, 2021).

Before filing a trademark registration application with INPI.pt, it is recommended that the applicant perform the following checklist:

- ✓ Verify that the brand is in accordance with the Decree-Law of n. 110, of December 10, 2018.

- ✓ Determine the modality of the brand, which can be: brand of products/services, logo, denomination of origin/Geographical Indication, collective brand, certification and reward brand.
- ✓ Determine the type of mark, which can be: word, figurative, figurative with verbal elements, three-dimensional, sound, multimedia, hologram, position, pattern, movement, color, or other type.
- ✓ Determine which class of goods or services the mark should protect. In Portugal, the international classification of products and services (Nice Classification) is used. The trademark application at INPI.pt is not limited to a single class; therefore, a trademark registration can be obtained for two or more classes.
- ✓ Perform a prior trademark search in the online services available at INPI.pt portal.
- ✓ Define how to file the trademark application at the INPI.pt . It can be by electronic means, using the online trademark registration available on the INPI.pt portal, or by request on paper form. In the latter case, the applicant accesses the model form available on the INPI.pt portal and, after completing and printing it, delivers it in person or sends it by post to the INPI.pt headquarters, located in Campo das Cebolas, 1149-035 Lisbon, or forwards it to one of the Company Formalities Centers or to one of the branches of the Commercial Registry Offices in Lisbon, Coimbra, or Porto. Please note that INPI.pt fees are higher when using the paper form.
- ✓ Be aware of the fields of the form that will be filled out to request the trademark registration. For example, if it is a figurative or mixed trademark, a jpg or png file must be attached.
- ✓ After learning the procedures, make the trademark application request in the InpiOnline System (INPI.pt, 2021a).

4. Data Analysis

In this section, the similarities and differences in trademark registration procedures in the three countries will be presented. Tables have been used to facilitate the identification of the topics that will be compared and analyzed.

Official Trademark Registration Institutions

Table 1 presents information about the 3 official institutions in each of the countries analyzed. Regarding the number of regional offices linked to the headquarters of the institutions, it was found that the INPI (Brazil) has 12 regional offices and the USPTO (United States) has 4 regional offices. It is noteworthy that the USPTO partners with the Patent and Trademark Resource Centers (PTRC), which is part of a national network of public, state, and academic libraries to support the public by providing trademark registration assistance.

Table 1. Information on the official institutions for trademark registration

Country	Official Institution	Headquarter Location	Access Link
Brazil	INPI	Rio de Janeiro	www.inpi.gov.br
USA	USPTO	Alexandria	https://www.uspto.gov/
Portugal	INPI	Lisbon	https://inpi.justica.gov.pt/

Source: elaborated by the authors

Individual x Legal Entity

With respect to the process of filing a trademark registration application, it can be seen in the procedures performed that there is a similarity between the three countries, because the applicant himself or an attorney, who may be an individual or a legal entity, may request such registration. In the three systems analyzed, it is possible for the applicant to be domiciled outside the country, but in the case of the USA, it will be necessary to hire a licensed attorney in the USA to represent him/her at the USPTO.

Types of Marks

In the analysis of the types of marks accepted for registration, it can be seen in table 2 that there are differences between the legislation of each country. Portugal is the country with the greatest diversity in the types of marks accepted for registration.

Table 2: Types of marks

Country	Types of marks
Brazil	word, design, mixed and three-dimensional
USA	word, stylized forms and/or design and sound mark
Portugal	word, figurative, figurative with verbal elements, three-dimensional, sound, multimedia, hologram, position, pattern, movement, color or other type

Source: elaborated by the authors

Prior search

With respect to prior search, as explained above, it is not a mandatory activity, but it is important that the applicant perform it, since such a measure can save time and resources. Table 3 shows that the three institutions make available on their portals access to trademark search systems in each of the countries studied.

It is important to note that there are other systems available for the applicant to perform a prior search. Examples include the Global Brand Database maintained by WIPO and the TMView System that allows access to several national trademark databases (EUIPN, 2021).

Table 3. System for the prior search

Country	Link access to the systems to perform the prior search
Brazil	https://busca.inpi.gov.br/pePI/jsp/marcas/Pesquisa_num_processo.jsp
USA	https://tmsearch.uspto.gov/
Portugal	https://servicosonline.inpi.pt/pesquisas/main/marcas.jsp?lang=PT

Source: elaborated by the authors

Examination on merit

In the analysis of a trademark application, the responsible institutions perform the formal examination and the examination of merit. Initially, the formal examination is performed, when it is verified if the trademark application meets the formal requirements, i.e., if the fee has been paid and if the basic information requested has been entered in the online or paper form.

The examination of merit, on the other hand, takes into consideration the absolute and/or relative grounds. The absolute grounds are, for example, whether the trademark is distinctive, not counterfeit, or immoral. Relative grounds are based on the existence of prior trademark registrations and/or whether there is an opposition proceeding in the country in question prior to registration.

We can see a similarity in the issue of merit analysis, because the three institutions responsible for trademark registration in the countries studied, when they perform the merit analysis, use the absolute and relative reasons before granting/refusing a trademark registration.

According to the (INPI, 2018), most countries, for example: Germany, France, and Switzerland, examine only the absolute grounds. Other countries, such as Argentina, Australia, Colombia, USA, Japan, Brazil, and Peru, conduct the merit examination of both absolute and relative grounds.

Instruments for Monitoring Trademark Applications

In the analysis of the types of instruments available by the institutions responsible for trademark registration, it was found that the INPI, USPTO and INPI.pt make available by means of electronic bulletins, the applicant's access to information about the trademark registration process (Table 4).

The USPTO also makes available the Trademark Status and Document Retrieval System (TSDR) so that the applicant can follow up on his process. For its part, the INPI makes available the item "My Applications", which allows the applicant to select and follow up the processes from the web search system.

Table 4. Tools for monitoring trademark applications

Country	Monitoring Instrument
Brazil	Intellectual Property Journal- http://revistas.inpi.gov.br/rpi/
USA	Trademark Official Gazette - http://tmog.uspto.gov
Portugal	Intellectual Property Bulletin - https://inpi.justica.gov.pt/Boletim-da-propriedade-Industrial

Source: elaborated by the authors

Online form x paper form

All three institutions, INPI, USPTO and INPI.pt provide online forms for trademark applications. Although we are in an age where many services can be performed over the internet, the USPTO and INPI.pt still allow the application for a trademark registration to be made on paper forms, but the cost is higher. In Portugal, the fee is 50% higher for the paper form.

Amount of the trademark application fee

In relation to the amount to be paid for the trademark application in each of the three countries, we can see in table 5 that the amounts are different. The fee amounts were obtained by applying for a trademark registration in an online form with a single class, and the options that offer discounted fees were not used.

As the currencies of the three countries are different (real, dollar and euro), in order to compare the fee values of the three countries, the real and euro were converted into dollars using the currency conversion program available on the website: <https://pt.exchange-rates.org/converter> .

Table 5. Fee for trademark application with a single class

Country	Value rate	Conversion to dollar
Brazil	R\$ 415,00	US 79,27
USA	US 350	US 350
Portugal	€ 127,37	US 149,83

Source: elaborated by the authors

Different rates for small businesses

In the data survey it was observed that Brazil and the USA offer discounts for small companies. These companies pay lower fees for applying for a trademark registration.

Means of payment

Regarding the means of payment used by the applicants to pay the trademark registration fee, it was observed that both the USPTO and INPI.pt offer several ways for the applicant to pay the fee. However, INPI presented only a bank slip as a means of payment, which may hinder the registration process (Table 6).

Table 6. Means of payment

Country	Means of payment
Brazil	One payment method only – bank slip
USA	Several payment methods - deposit accounts, credit cards, electronic funds transfer, or money orders
Portugal	Several payment methods - credit cards and payment via ATM

Source: elaborated by the authors

Multi-Class Procedure

In the analysis of the number of classes allowed per trademark registration request, it was observed that the United States and Portugal allow a multi-class request to be made on the same form, that is, more than one class is accepted in a single trademark registration request. In Brazil only one class can be requested per form, so if the applicant wants to protect his trademark in three different classes, he will have to make three trademark applications, one for each class.

Estimated time

Table 7 shows that the average time: in Brazil is 6 months, in the USA it is 12 months, and in Portugal 4 months.

In years past, the time to obtain a trademark registration in Brazil reached 64 months (proceedings with opposition) and 28 months (without opposition). With the reduction of the backlog this time became 10 months (with opposition) and six months (without opposition) (INPI, 2021b).

Table 7. Estimated time to obtain a trademark registration

Estimated Time		
Brazil	USA	Portugal
6 months	12 months	4 months

Source: elaborated by the authors

5. Final Considerations

When analyzing the trademark registration procedures in the three countries, it was possible to identify some similarities between the analyzed procedures, as well as differences.

All three countries prioritize online applications for trademark registration. However, application via printed form is allowed at the USPTO and at INPI.pt, and the fees for this modality are higher.

The main differences were identified in the US. First, U.S. law provides for common law trademark use. Second, under the USPTO, trademark applications must be based on actual use or intent to use, and usage must be proven before a registration can be issued. Third, the USPTO is the only one of the three institutions that provides two different types of tools for the applicant to file the application: TEAS Plus and TEAS Standard. It is worth mentioning the support network used by the USPTO via partnerships with the Patent and Trademark Resource Centers (PTRC) that make up the national network of public, state, and academic libraries designated to support the public with trademark and patent assistance. This type of partnership could be stimulated by the INPI, for example with the NITs (technological innovation centers) installed in the Universities, which already provide IP support to teachers and students.

In terms of navigability, the INPI.pt portal is easier to navigate and is the only one that makes available, within the online trademark registration application, an automatic search to find out if there are similar trademarks.

We highlight the “Trademark on the Spot” service available on the INPI.pt website as a good option for the client because it is easier, faster and less expensive; however, the client is limited to a certain number of trademarks.

The search for anteriority is not mandatory, and the 3 institutions make their own systems available on their websites so that clients can perform this action, aiming to have a lower rate of rejection of trademark registrations.

In relation to the values of the fees charged in the official trademark registration institutions, it is noteworthy that the INPI (Brazil) presents some fees with a 60% discount for small companies, aiming to encourage these companies to register a trademark.

It was possible to verify that the three institutions INPI, USPTO and INPI.pt are concerned with the

existing frauds in relation to trademark registrations and warn in their portals and booklets about fraudulent companies that pass themselves off as these institutions in order to deceive those who already have a trademark registration or the interested parties who make trademark registration requests.

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