

Amendment No. 8

(for Bill #2,210/2022)

The following Paragraph 3 shall be added to Article 209 of Statute #9,279 of May 14, 1996, thereby amending Article 1 of the Substitute Bill of the Committee on Foreign Affairs and National Defense (CRE) for Bill #2,210 of 2022, in the following terms:

"Article 209.

Paragraph 1.

Paragraph 2.

Paragraph 3. Upon identifying a request to a foreign authority with the aim of preventing the filing of a lawsuit in Brazil or otherwise interfering with the enforceability of a Brazilian Court decision, the judge may order the following measures to prevent or cease the interference:

I – if the interfering measure has been requested by a company, suspend its business activities, as well as those of all entities belonging to the same economic group in Brazil, for as long as the request before the foreign authority or the foreign Court decision remains in force;

II – impose upon the responsible party a fine in an amount not less than twice the full value of any penalties applied to the party harmed by the foreign authority that received the request for intervention, to be awarded to the harmed party;

III – impose upon the responsible party the penalties applicable on those who commit contempt of court, under the terms of Statute #13,105 of March 16, 2015 (Civil Procedure Code), including a fine in the same amount as that provided for in item II, to be allocated to the respective court’s fund, and prevent the party from making further submissions in the case records until the irregularity has been purged." (NR)

JUSTIFICATION

This amendment to Article 1 of the Substitute Bill of the CRE to Bill #2,210 of 2022 seeks to safeguard Brazilian jurisdictional sovereignty, ensure the effectiveness of the decisions rendered by the national Courts, and restrain improper practices of international strategic litigation aimed at undermining rights exerted in Brazil.

The proposal herein introduces, in Article 209 of Statute #9,279 of May 14, 1996, specific legal mechanisms to address conduct aimed at blocking access to the Brazilian Judiciary or to depriving its decisions of effectiveness, by presenting measures before foreign authorities. This is a necessary normative response to a phenomenon increasingly observed in intellectual property disputes, particularly in the context of complex technologies and globalized markets.

First, the proposed amendment protects patent owners for granted all sectors of the economy. It covers the largest users of the system, namely, companies in the electrical, electronic and telecommunications industries, representing 22,055 of the 115,017 patents in force in Brazil as of November 2025 (19.17% of the total), as well as users in the mechanical (10,840 patents, 9.42% of the total), pharmaceutical/biopharmaceutical (8,062 patents, 7.01% of the total), and agrochemical sectors (6,013 patents, 5.23% of the total).

A comparative analysis shows that key jurisdictions in the global landscape of intellectual property disputes have developed specific mechanisms to protect their jurisdiction against foreign interference, including regulatory instruments with direct effect on parties seeking to transfer or neutralize controversies outside national territory.

This initiative aligns with an international legislative effort directed at the development of countermeasures against cross-border jurisdictional interference, a phenomenon intensified by the proliferation of requests for anti-suit injunctions (ASIs) and interim license injunctions, judicial orders aimed at preventing access to foreign courts or restricting the effectiveness of decisions rendered in other jurisdictions, especially in disputes involving standard essential patents (SEPs).

More recently, on April 13, 2026, the State Council of the People's Republic of China enacted the Regulation against Improper Extraterritorial Jurisdiction by Foreign States, which establishes measures to identify, block, and sanction undue violations of the country's sovereignty.

Within the framework of the Chinese Civil Procedure Statute, exclusive jurisdiction over disputes concerning intellectual property rights was expanded in 2023, such that foreign courts may adjudicate patent lawsuits only where the subject matter does not involve "the sovereignty, security or public interest of the People's Republic of China" (free translation).

Within the European system, the EU Blocking Statute (Regulation #2,271/96) was enacted. It is a regulatory instrument designed to neutralize the extraterritorial effects of certain foreign laws and decisions stemming from foreign economic sanctions expressly listed therein. The Regulation prohibits European operators from complying with foreign determinations deemed incompatible with the European Union's legal autonomy.

In the absence of specific statutory regulation for jurisdictional protection, several countries have resorted to case-law instruments derived from Common Law systems, such as the anti-anti-suit injunction (AASI) and the anti-interim-license injunction (AILI). These are solutions developed aiming to safeguard jurisdictional sovereignty by preventing foreign decisions from having extraterritorial effects.

The comparative analysis allows the conclusion that creating mechanisms to defend national jurisdiction against foreign interference would not constitute an isolated innovation by the Brazilian legislator; rather, it would align with the prevailing international regulatory trend.

At the multilateral level, this amendment finds direct support in the decision rendered by the World Trade Organization (WTO) in case DS611, brought by the European Union on February 18, 2022, to challenge the Chinese policy of granting anti-suit injunctions (ASIs).

The European Union successfully demonstrated that such measures, although formally domestic, produced extraterritorial effects by restricting patent rights in other jurisdictions, effectively preventing access to foreign courts and undermining the effectiveness of their decisions, a position upheld in the arbitral decision rendered on July 21, 2025, which found a violation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), in particular Articles 28.1 and 28.2, in conjunction with Article 1.1, for impairing the operation of the protection and enforcement systems of other Member States.

As a direct consequence of the WTO's understanding, on April 1, 2026, the European Commission reported that China had declared the termination of the use of that policy, in compliance with the decision in case DS611. This outcome confirms that these practices are incompatible with international law and align with the parameters for the protection of jurisdiction and intellectual property rights.

Also, in the international context, on July 2, 2019, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters was approved in The Hague, with the aim of promoting judicial cooperation and harmonizing rules governing the domestic recognition of foreign judgments.

The Convention, to which the United Kingdom, the European Union, and the United States are Contracting Parties, excludes intellectual property matters from its scope of application, so as to respect the systemic differences among countries, such as the availability of preliminary injunctions under Brazilian law, as provided for in Article 209, Paragraph 1, of Statute #9,279.

The adoption of the proposed amendment seeks to prevent undue extraterritorial effects in lawsuits filed in Brazil involving Brazilian patents granted by the Brazilian Patent and Trademark Office (BRPTO). It thereby upholds the principles of territoriality and independence of patents set forth in Article 4bis of the Paris Convention and ensures the right of patent owners to access to justice when using the domestic patent system.

In this context, the proposal also seeks to provide effective instruments to curb the abusive use of measures filed before foreign authorities to block lawsuits pending in Brazil or to undermine the effectiveness of decisions rendered by the national Judiciary.

For these reasons, this amendment ensures the defense of Brazilian jurisdictional sovereignty, aligns the national legal system with best international practices already established in jurisdictions that play key roles in the global intellectual property system, and protects intellectual property rights owners across all of Brazil's productive sectors. The matter is one of national interest: defending the jurisdiction of the Brazilian Judiciary to decide, in Brazilian territory, on rights granted by the Brazilian State.

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Senator Carlos Portinho

(PL – RJ)