

## **SPECIAL REPORT 301**

### **INDECOPI'S comments on the stakeholders' opinions posted in the USTR page**

The National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) was created by Law Decree N° 25868 on November 24, 1992, to promote a culture of fair competition in the Peruvian economy, to protect market agents from inappropriate practices, and to protect all forms of intellectual property: from trademarks and copyrights to patents and biotechnology.

INDECOPI is a decentralized public agency, ascribed to the Presidency of the Council of Ministers (PCM, in Spanish) with technical, economic, budgetary, and administrative autonomy.

As the Peruvian Intellectual Property Agency oversees distinctive signs (trademarks), copyrights and inventions and new technologies (patent) matters.

#### **TRADEMARK**

##### **1. Formalities required by the Peruvian Authority in trademark procedures**

**The Trademark Working Group considers that Peru imposes some unnecessary formalities in trademark procedures. For example, it has been highlighted that, in the proceedings for filing trademark applications, oppositions, invalidations and cancellations, the power of attorney, with Spanish translation, if necessary, is required.**

**In addition, in the proceedings for filing trademark applications, in cases where the right of a foreign priority is claimed, a scan of the certified copy of the priority document is required.**

**On the other hand, in the proceedings for assignments of trademark applications or registrations, the original assignment document, with signatures notarized and apostilled, with Spanish translation if necessary, and the power of attorney from assignee, with Spanish translation, if necessary, are required.**

**Finally, in trademark infringement, passing off or unfair competition litigation, a notarized and apostilled power of attorney, with Spanish translation, if necessary, is required.**

Regarding the requirement to file a power of attorney with Spanish translation, if necessary, in the proceedings for filing trademark applications, oppositions, invalidations and cancellations, such requirement is contained in Legislative Decree No. 1075 and in the Law No. 27444.

It should be considered that our internal legislation is aligned with the provisions of the Trademark Law Treaty (TLT) and the Singapore Trademark Law Treaty (STLT). Accordingly, we consider that this requirement goes in accordance with the international standards, and it is not unnecessary or excessive.

In addition, we consider that the requirement to submit a power of attorney is essential to verify the legitimacy of whoever initiates or participates in a certain procedure, whether it is a trademark application, opposition, cancellation, invalidation or an assignment of a trademark.

On the other hand, in relation to the Spanish translation that is required when the power of attorney is submitted in a foreign language, it must be considered that in accordance with Perú's Political Constitution, our official languages are Spanish and, in areas where they predominate, so are Quechua, Aymara and other aboriginal languages.

Therefore, any document that is not submitted in the official languages must be translated.

It is important to highlight that the TLT and STLT themselves allow the Contracting Parties to require that the power of attorney is submitted in the language or in one of the languages admitted by the Office. Likewise, our community norm, Decision 486 of the Andean Community, requires the submittance of the power of attorney in Spanish language, or, if applicable, the translation of said document into Spanish. Therefore, in the case of Peru, the power of attorney must be submitted in Spanish or, if applicable by the area, in any of our other official languages detailed in the Political Constitution.

It should be noted that, in accordance with our internal legislation, it is not necessary to always submit the power of attorney. There are some exceptions. Indeed, when the power of attorney is registered in the Public Registries, it is enough to indicate the number of the Registration Certificate to comply with the requirement. Likewise, if the power of attorney was already submitted in another proceeding conducted before the entity, it is enough to indicate the number of the dossier where the power of attorney was submitted in order to comply with the requirement.

These advantages were promoted within the framework of a series of legislative reforms that seek to simplify the administrative proceedings. Thus, there is a clear effort from the Peruvian Government to ensure that the requirements imposed in these proceedings are simple, rather than unnecessary or excessive.

Now, in relation to the cases where the right of a foreign priority is claimed and a scan of a certified copy of the priority document is requested, this requirement is contained in Decision 486 of the Andean Community and is also consistent with the provisions contained in the Paris Convention, the TLT and the STLT. In that sense, we consider that this requirement is neither excessive nor unnecessary; on the contrary, it is in accordance with international standards.

On the other hand, in relation to the proceedings for assignments of trademark applications or registrations where the original assignment document, with Spanish translation, if necessary, is required, it is important to note that this requirement is also contained in Legislative Decree No. 1075.

However, it should be considered that, in the case of a change of ownership resulting from a contract, it will be enough that the applicant file - with its application - one of the following elements, if applicable:

- ✓ a copy of the contract, certified by a public notary or by any other competent public authority, certifying that said document is in conformity with the original contract.
- ✓ an extract of the contract containing the change of ownership, which must be certified by a public notary or any other competent public authority.
- ✓ a transfer certificate not certified with the content established in the Regulations of the Trademark Law Treaty of 1994, and signed by both the owner and the acquirer; or
- ✓ an uncertified transfer document with the content established in the Regulations of the Trademark Law Treaty of 1994, and signed by both the owner and the acquirer

In that sense, the requirement to file the original assignment document, mentioned by the Trademark Working Group, constitutes only one of the alternatives that the applicant has to prove the assignment of rights. On the other hand, in relation to the need to submit a Spanish translation, we refer to the legal justification indicated previously.

Finally, in the cases of trademark infringement, passing off or unfair competition litigation, where a notarized and apostilled power of attorney - with Spanish translation if necessary - is required, it is important to highlight that this requirement is also contained in Legislative Decree No. 1075.

Its justification lies in the very nature of the actions involved. In fact, since they are proceedings with a sanctioning nature that entail burdensome or punitive consequences for the accused, it is essential to establish certain guarantees throughout the process. In fact, it is considered that trademark infringements are like a mini criminal process but in the administrative level; hence, there is the need to establish more stringent requirements to prove the legitimacy of the complainants.

Finally, in relation to the Spanish translation requirement of the notarized and apostilled power of attorney, we refer to the legal justification indicated above.

## **2. Letters of Consent and Coexistence Agreements**

**According to the Trademark Working Group, in Peru the Letters of Consent are not binding on the Trademark Office. Also, the requirements established for the acceptance of Coexistence Agreements are stringent.**

Although it is true that in Peru the Letters of Consent do not oblige the Administrative Authority to accept them and grant the registration of a trademark, it does evaluate its content carefully and analyzes, for example, if there is an economic link between the parties that signs the letter. The objective is to determine whether a coexistence of trademarks commerce would be misleading or confusing to the public.

If the applicant manages to prove that there is an economic link between the parties, or if the owner of the previously registered trademark recognizes such linkage under an affidavit, then the Administrative Authority accepts the letter of consent and the coexistence of the signs in conflict.

In the case of the Coexistence Agreements, the Intellectual Property Chamber of INDECOPI established a mandatory precedent in which it establishes the criteria that must be considered when evaluating this coexistence agreements, namely:

*“Coexistence agreements will be valid and binding on the parties as long as they do not violate mandatory rules, such as those of the competition law or those that protect consumers from practices that can mislead them.*

*In this regard, to minimize the risk of confusion between two or more signs, the Chamber considers that the coexistence agreements must comply with minimum conditions so that they may be accepted by the Authority.*

*Trademark coexistence agreements may contain provisions of various kinds that represent the will of the parties; in fact, the territory of use of the respective signs (territorial delimitation agreements), the range of products to which each sign is to be applied (product delimitation agreements) or the representation of the signs (agreements of delimitation of the shape of the marks), can be delimit or agreed.*

*Indeed, for the content of the coexistence agreements to be viable, it must contain the measures and provisions aimed at reducing the risk of confusion among consumers regarding the origin of the products or services in question.*

*In that sense, the Intellectual Property Chamber states that for a coexistence agreement to be able to minimize the risk of confusion to which the consumer can be induced, it must contain certain minimum conditions, such as:*

- a) Information on the signs object of the agreement, indicating the denominative and figurative elements that conform them, as well as the products and services to which those signs are applied (how they are registered or requested).*
- b) Delimitation of the territorial scope within which the agreement will be applicable.*
- c) Delimitation of the products or services to which the signs subject to the coexistence agreement will be applied in the market. For this purpose, it will be necessary for the parties to request the restriction of the products or services in the respective registers or applications.*
- d) Delimitation of the use or representation of the signs.*
- e) Indication of the consequences in case of breach of the agreement.*
- f) Establishment of dispute resolution mechanisms in case any litigious matter arise between the parties”.*

It is important to bear in mind that even if the coexistence agreements comply with the minimum conditions indicated above, it does not mean that they will be approved automatically, since the Authority must evaluate whether the agreement between the parties meets or not the purpose that is pursued through the agreement, that is, by legal mandate, to protect the general interest of consumers.

In contrast to what was stated by the Trademark Working Group, we consider that these requirements are not stringent nor excessive, but, on the contrary, they constitute minimum legal conditions that will ensure that the trademarks can coexist peacefully in commerce without the risk of inducing to confusion or misleading the public.

### **3. Madrid Protocol**

**The Trademark Working Group reports that Peru is not yet part of the Madrid Protocol.**

In this regard, it should be noted that being part of the Madrid Protocol constitutes a sovereign decision that responds to the needs of each country. Therefore, what corresponds is to evaluate the Peruvian reality and if it really is necessary for our country to be part of it. In any case, it should be taken into consideration that the trademark applications conducted by INDECOPi are sufficiently simplified and fast.

Proof of the above is the fact that during the last years, Peru has been ranking on the first places within the region in terms of pendency in trademark applications without oppositions (from 2 to 4 months), both to grant and to deny the application. Likewise, in the case of trademark applications with opposition, Peru has an average time of 4 to 6 months, which in some cases could be extended to 8 or 9 months, mainly due to the sanitary crisis that has affected the country due to the pandemics, situation that it is circumstantial and perfectly reversible, to keep our intellectual property office as one of the most expeditious worldwide.

### **4. Letter of Protest**

**The Trademark Working Group refers that Peru does not have a procedure for the Letter of Protest.**

According to Peruvian legislation, the formal proceeding to question the registration of a trademark is through an opposition. This proceeding is regulated both in Decision 486 of the Andean Community and in Legislative Decree No. 1075.

Notwithstanding the above, and although the submittance of letters of protest is not regulated, in practice, they can be submitted during the proceeding in ongoing - prior to the issuance of a resolution by the Administrative Authority -. If letters of protest are submitted by third parties, although they are not a formal part of the proceeding, INDECOPi will take them into consideration as a kind of alert at the time a resolution is issued.

### **5. Landlord liability where infringing conduct is known to be emanating from their leased property.**

**The Trademark Working Group refers that Peru does not have landlord liability where infringing conduct is known to be emanating from their leased property.**

Although at the administrative level there is no proper landlord liability regime where infringements are being committed by a third party, measures are being taken that seek to help the owners to prevent the continuation of any potentially infringing conduct carried out in their premises or establishments.

Thus, Legislative Decree No. 1397 has incorporated into the powers of investigation of the Administrative Authority, the following:

*"Article 115.- Powers of investigation*

*Without this list being taxable, the competent national authority has the following powers of investigation: (...)*

*e) Demand, through a precautionary measure or a resolution that terminates the instance, natural or legal persons, as well as public or private, state or non-state entities, for or without profit, the adoption of measures that prevent continuation or perpetration of acts practiced by third parties that involve the unauthorized use of elements protected by industrial property. (...)*”

## **6. Geographical Indications and use of terms considered generic**

**Consortium for Common Food Names and National Association of Manufacturers expressed concerns about the protection that Peru has granted the European Union (EU), under the Free Trade Agreement signed between the EU and Peru, regarding some products that commonly were being produced by the United States and were considered generic. In their opinion, the granting of such protection undermines the ability of the United States and other countries to protect existing trademarks in these products as well as to ensure fair treatment for those making products on terms already treated as generic. Moreover, they stated this action violated WTO rules and impaired the value of concessions granted to the United States under the U.S. – Peru FTA, which pre-dated the EU Agreement.**

**Additionally, Consortium for Common Food Names expressed concerns about the partnership arrangement that Peru has signed with OriGIn, due to its potential to influence the degree of impartial treatment Peru is obligated to utilize with respect to GI applications.**

Regarding the concerns about the protection granted to the EU geographical indications, and the presumed damage that this could cause in the use of generic terms by third parties, it should be noted that, once Peru becomes formally a part of the Geneva Act of the Lisbon Agreement concerning Appellations of Origin and Geographical Indications, it must apply the provisions contained therein, including the footnote of Article 12 (Protection Against Becoming Generic), which expressly states the following:

*“(...) For the purposes of this Act, it is understood that Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party (...).”*

Likewise, Article 13 (Safeguards in Respect of Other Rights) establishes with respect to trademarks registered previously to the granting of protection of appellations of origin or geographical indications, that the provisions contained in the Geneva Act may not in any way prejudice the rights acquired by the previous trademark whose registration has been requested or made in good faith, in a Contracting Party.

About applications for the registration of appellations of origin or geographical indications that include elements that cannot be claimed, Rule 5.5 of the Geneva Act Regulation will be applicable, which expressly states the following:

*"(...) [Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication] The application shall indicate whether or not, to the best knowledge of the applicant, the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication (...)"*.

On the other hand, regarding the agreement signed by Peru with the Organization for an International Geographical Indications Network (OriGIn), it should be noted that the objective of this agreement is to promote geographical indications as an instrument for product development and from local communities. To achieve this objective, an office called "OriGIn Peru" has been installed, through which all the geographical indications of Peru will be represented.

Finally, it must be considered that the current system of protection of geographical indications in Peru does not violate any of the commitments previously made by our country, either bilaterally or multilaterally, nor does it undermine any concession granted previously. In fact, it should be considered that any preferential treatment granted to the United States has been with respect to a category of product in general and not to a specific type of product, as follows from the provisions of the FTA itself.

## **7. Intellectual Property Enforcement**

**International AntiCounterfeiting Coalition and American Apparel & Footwear Association expressed concerns about the fact that widespread counterfeiting and piracy persists in Peru. In their opinion, although there has been some progress on awareness issues, this is not sufficient, since, to date, no effective enough actions have been taken to eliminate piracy and counterfeiting in local markets.**

**Moreover, American Apparel & Footwear Association also expressed their concern regarding the lack of proactiveness of our local authorities to act ex-officio to help clean up markets and target production sites. On the other hand, International AntiCounterfeiting Coalition highlighted the slowness of some of Peruvian's prosecution and civil procedures.**

INDECOPI has designed a strategy on enforcement of Intellectual Property Rights, which starting point is to understand the causes that generate the existence of high rates of violation of these rights, in order not to limit us combating its visible effects (counterfeiting and piracy) through exclusively punitive actions, but to develop actions that address the problems that originate them. In this sense, since 2019, the following measures have been developed:

- a) The formulation of a National Intellectual Property Policy (PNPI) has been formally initiated and is still ongoing, in which the enforcement of intellectual property rights is addressed. The process of formulation counts with WIPO's accompaniment and

the articulation of more than 45 national public and private institutions. In bullet c) reference will be made to some relevant aspects on this matter.

- b) A Draft Law on Strengthening the Enforcement of Intellectual Property Rights was not only prepared and submitted for approval, but also disseminated so that all interested parties and sectors involved could make the comments and observations they deem convenient.
- c) In both the PNPI and the Draft Law, the strategy of adopting three approaches is proposed, which are: **i) Preventive approach:** Referring to the development of a National Educational Program, aimed at students at school age, for the development of a new culture of respect for IP rights. Currently and since 2018, subjects in which the respect for trademark and copyright rights is promoted have been included in the curriculum of more than 150 public schools in Lima and the interior of the country; **ii) Persuasive Approach:** Referring to the promotion of legal trade within the informal sector, using IP tools. Among various actions, the Collective Marks Program was thoroughly developed, generating the registration of 5,228 collective marks between 2017 to 2021; and **iii) Reactive Approach:** Referring to the stringency of sanctions, increasing them from 150 to 450 UIT (Tax Units imposed by the government), on the understanding that each UIT had an approximate value of USD 1,100 in 2021 and has a current value of USD 1,200 this year. Likewise, a **Collaborative Enforcement** approach is adopted, where third parties (people other than offenders) will play a fundamental role.
- d) Under the **Collaborative Enforcement** approach, in 2021 INDECOPI renewed for one year an Interinstitutional Cooperation Agreement that had been executed with MERCADO LIBRE in 2020, for the activation of an expedite and simple mechanism that will allow the termination of infringing acts in that platform. The good news is that from 2022 onwards, the Agreement will have an indefinite term. It must be noted that Peru is the first country in the region to sign an agreement of this nature. Moreover, efforts are being made to conclude new Agreements with different e-commerce platforms. Under this same approach, in the Draft Law on Strengthening the Enforcement of Intellectual Property Rights, the creation of a **Rewards Program** has been envisaged to obtain information on the identity of the main perpetrators of counterfeiting and piracy in Peru.
- e) On the other hand, it should be noted that, among the new modifications of the Industrial Property regulations (Legislative Decree No. 1097, which modified Legislative Decree No. 1075), the power of requiring Internet Services Providers (ISPs) the adoption of measures that prevent the performance of acts that involve the unauthorized use of industrial property elements, has been attributed to INDECOPI. This power allows INDECOPI to discharge online stores, through the technical collaboration of the ISPs, under the warning of initiating sanctioning procedures against them.

In addition to the above, it is important to mention that ex-officio actions conducted by the authority are provided for in the legislation as a power and not as an obligation, and unfortunately their performance is subject to the limited resources available to the government. Despite this, since IP rights are rights of private individuals and whose obligation is to protect them, our legislation provides effective means for private individuals to successfully protect their rights.

Finally, despite the health emergency that has affected our country, during 2021 we dealt with 1,149 infringement actions, managing an increase of 41%, compared to 2020, of which 96 ex-officio actions were filed related to the use of trademarks that identified counterfeit products that were offered on online platforms, likely to affect the safety, health, and life of consumers, achieving 269 closures of virtual sale points of these products. In addition, we granted and made effective 511 precautionary measures, which represents 32.7% compared to 2020.

#### **8. Restrictions on the use of trademarks - Expansion of Plain Packaging Approaches**

**The National Association of Manufacturers reports that manufacturers from a variety of sectors are concerned about the growing interest of countries in the application of plain packaging and other restrictive approaches to intellectual property, which in some cases have generated specific regulatory proposals, with Chile being one of the first countries to apply these approaches with the imposition of a series of trademark restriction actions and the use of STOP-sign warning in food products and beverages. It is also evaluating a simple packaging policy to apply to pharmaceutical products, including a prohibition on brand-name prescription. Other countries, including Peru, are considering similar measures.**

In this regard, it should be noted that Peru has not adopted any policy that restricts intellectual property rights in any way; on the contrary, the current legislation in IP is of unrestricted application and in accordance with the international framework and the commitments assumed by Peru both bilaterally and multilaterally.

#### **9. IP Erosion in Multilateral Fora – OECD Future accession**

**The National Association of Manufacturers states that IP and innovation are also a critical topic in broader multilateral discussions, including negotiations with countries seeking to join organizations like the OECD. They added that given the growing interest from countries to join the OECD and other bodies, it remains crucial for the United States to hold firm on the need for these countries to demonstrate that their laws are drafted and being implemented in line with those organizations' high standards, including in the critical areas of innovation and IP, especially for countries such as Argentina, Brazil and Peru for which the OECD announced the start of talks in January 2022.**

With respect to this matter, it is important to mention that Peruvian legislation on intellectual property meets the highest standards of protection at the international level, being the case, that Peru has adhered to 18 of the multilateral treaties administered by WIPO, the UN, the WTO and UPOV. In this sense, we believe that Peru is prepared to be part of any international organization that requires high-standard regulations on innovation and intellectual property issues.

## 2021 Main achievements of the Distinctive Signs Directorate of INDECOPI

- Despite the serious effects on the economy caused by the health emergency, thanks to our hard work in promoting, disseminating, and raising awareness of the benefits of the system of distinctive signs, as well as to the technical assistance provided through our Advisory Platform, we contributed to the filing of 42,605 trademark applications, a historical figure since the creation of INDECOPI, which represents an increase of 14.38%, compared to the year 2020.
- We provided technical assistance and collaborated in the filing of 1,054 collective trademark applications nationwide, favoring the improvement of the competitiveness of producer organizations, artisans, and entrepreneurs. Accordingly, we granted 680 registration certificates of this type of marks, a figure that represents an increase of 177.55% compared to the previous year, benefiting 159 organizations of producers, artisans and entrepreneurs who are committed to a strategy of associative work and quality standardization, comprised by a total of 3,765 families, which include 1,714 members women.
- We carried out 321 promotional and awareness actions countrywide, including seminars, workshops, webinars, interviews, fairs, and radio programs, providing training to more than 14,500 entrepreneurs (including artisans, agricultural producers, exporters, officials, students and teachers); and, in addition, we achieved more than 86,410 views or reproductions of the activities published (75) on social networks. The number of trained entrepreneurs represents an increase of 185.63% compared to the annual goal. Likewise, we provided technical assistance to more than 21,000 entrepreneurs, helping them to register their trademarks.
- Despite the health emergency, we dealt with 1,149 infringement actions, managing an increase of 41%, compared to 2020, of which 96 ex officio actions were filed related to the use of trademarks that identified counterfeit products that were offered on online platforms, likely to affect the safety, health and life of consumers, achieving 269 closures of virtual sale points of these products. In addition, we granted and made effective 511 precautionary measures, which represents 32.7% compared to 2020.
- We led the adoption of Decision No. 876 - Common Country Brand Regime, a pioneering regulatory text worldwide. Likewise, we achieved the protection of the Peru Country Brand in the Member Countries of the Andean Community (CAN), contributing to the international positioning strategy of the national policy of promoting the identity, tourism, exports and image of Peru.
- We promoted and obtained the approval of Supreme Decree No. 170-2021-PCM, Regulations for the Protection Regime of Traditional Specialties Guaranteed (TSG) and the Geographical Indications Regime (GI), which will allow us to continue working with the purpose of add value to our products.
- We obtained financing approval from the Asia Pacific Economic Cooperation Forum (APEC) for the execution of the project called "Recovering from COVID-19: Success stories in APEC economies around the use of collective Intellectual Property tools to

promote and promote economic development and the reactivation of vulnerable populations and MSMEs”.

- Within the framework of the Ibero-American Program for Industrial Property and Development Promotion (IBEPI), we organized the “Ibero-American Workshop on Good Practices in Trademarks for SMEs in times of Covid 19” and the “Ibero-American Workshop on Enforcement of Industrial Property Rights – Challenges post-pandemic”, which made it possible to promote our good practices in the field of industrial property and to exchange information, services and programs on them.
- We promoted the creation of an Intellectual Property and Gender network with Colombia, Chile, and Costa Rica, and with the support of WIPO, which seeks to mainstream the gender approach in the policy, management, and services of the IP Offices of the region, through the exchange of experiences and learning, creating a space for inter-institutional coordination and collaboration that contributes to closing gender gaps. As a recognition of the work carried out towards the establishment of the Gender and Intellectual Property Network, in June 2021, INDECOPI was appointed to exercise the Presidency and Technical Secretariat of the Network.
- We reached the category of “Finalist” and obtained the acknowledgment of the Good Practice 2021 Awards by applying with the technical tool “Trademark Renewals online”, within the Simplification of procedures category, in the Good Practices Awards in Public Management contest, organized by the institution named “Ciudadanos al Día” (“Citizens Up to Date”).

## **COPYRIGHT**

### **THE INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)**

#### **COMMENT:**

Peruvian authorities, especially the National Institute for the Defense of Competition and The Protection of Intellectual Property (INDECOPI), along with the courts, continued in 2021 to issue injunctions against local sites that contain unauthorized infringing music and film materials. In December 2020, the first site blocking order was issued against the most popular stream ripping service in Peru, Y2Mate. The order was directed to all ISPs and was swiftly complied with, resulting in disruption to this pirate site and an estimated 84% reduction in traffic to the site. Subsequently, additional orders were issued by INDECOPI in May 2021, including one ex officio action, resulting in permanent blocking of 10 stream ripping services, many of them dedicated to the unauthorized copying of music videos and sound recordings of national and international labels and artists. IIPA encourages INDECOPI to continue exercising its ex officio powers to develop a long-term campaign against sites that facilitate online piracy including the most prevalent form of music piracy in Peru, stream ripping.

#### **RESPONSE:**

INDECOPI will continue monitoring and surveillance in the digital environment of suspected piracy sites for the year 2022 and will take the corresponding actions to block illegal sites

that would allow the downloading of works under the modality of Stream ripping, as well as regarding the transmission of sports events via streaming.

For this year 2022, we are counting on a new strategic allied in the fight against online piracy such as IFPI - International Federation of Phonographic Industry, which we have just signed a cooperation agreement with.

## **COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION**

### **COMMENT:**

Peru remains out of compliance with key provisions under the U.S.-Peru Trade Promotion Agreement (PTPA).

### **RESPONSE:**

With respect to compliance with the pending points of the U.S.-Peru Trade Promotion Agreement (PTPA), for example regarding provisions for the compensation of damages in case of civil infringement of copyright, it should be noted that a regulatory project has been worked on with the competent authorities for such purpose (Ministry of Justice), and recently was submitted with the final comments of INDECOPI to the Ministry of Foreign Trade and Tourism (MINCETUR).

### **COPYRIGHT: Peru's main achievements during 2021**

Peru's main achievements during 2021 were the following:

### **REGISTRATIONS OF WORKS**

Between January and December 2021, the Copyright Directorate granted more than 2, 040 registrations of works to authors and owners who requested protection of their creations, as part of the promotion and dissemination efforts undertaken by the institution to develop a culture of respect for copyright, including, in the first place, the registration of literary works, followed by the registration of artistic works and phonogram registration.

### **VIRTUAL REGISTRATION OF WORKS - IMPLEMENTATION OF TECHNOLOGICAL TOOLS**

The Copyright Directorate of INDECOPI, in order to promote the protection of intellectual property and facilitate the registration of works protected by copyright legislation, implemented the "Virtual Registration of Works", so that the author or owner of a work can request the registration of the same from any place and at any time, through a computer with internet access, thanks to the efforts of the institution to offer agile procedures, reducing time and money to citizens.

### **TECHNICAL ASSISTANCE RECEIVED BY USERS - SERVICE CHANNELS**

During 2021, there were 4,628 users linked to the different creative industries received specialized technical assistance through the new digital and telephone channels for

attention and consultation on registration and procedures, during the current state of emergency.

## **PARTICIPATION IN THE COUNTRY'S MAIN CULTURAL EVENTS**

The Directorate of Copyright participated in the Lima Film Festival organized by the Cultural Center of the Pontificia Universidad Católica del Perú (PUCP).

## **FIGHT AGAINST DIGITAL PIRACY – STRATEGIC ALLIANCES**

A Memorandum of Understanding was signed with the Directorate General of Cultural Industries, Intellectual Property and Cooperation of the Ministry of Culture and Sports of the Kingdom of Spain to strengthen collaboration in copyright protection and cooperation in the investigation of copyright infringing activities.

Likewise, INDECOPI has just signed a few days ago a memorandum of understanding with IFPI - International Federation of Phonographic Industry, to implement jointly cooperation mechanisms, particularly regarding training an exchange of information for the detection, in the digital environment, of websites, as well as mobile and desktop applications, through which are carried out or contribute to allegedly infringing acts.

## **TRAINING - CREATIVE INDUSTRIES**

Within the framework of the Program to Strengthen the Creative Industries, a series of trainings (webinars) were given to people linked to the different creative industries, i.e., those industries that have been especially affected by the current state of emergency. In this sense, the workshops on copyright in the performing arts, comics, video games, publishing, music, audiovisual and software, among others, stand out.

## **ONLINE ANTIPIRACY ACTIONS**

During 2021, we continued with the inspection and monitoring of websites that infringe copyrights and related rights, having ordered remote inspections of websites that stream audiovisual works, stream-ripping of protected content, retransmission of radio broadcasts and public communication of sporting events. As a result of this INDECOPI blocked 17 illegal websites that allowed the downloading of works under the stream ripping modality and the transmission of sporting events via streaming:

### **Stream-ripping**

The Copyright Commission of INDECOPI (CDA) issued ex officio a set of precautionary measures that resulted in the blocking of access, in Peruvian territory, of ten websites, through which stream-ripping services were offered.

### **Retransmission of sporting events (via streaming)**

The Copyright Commission issued precautionary measures, at the request of the association La Liga Nacional de Fútbol Profesional (La Liga), ordering the blocking of access to the Peruvian territory of websites called "Fútbol Hoy"; "Tele Gratis"; "Roja Directa TV", "Tarjeta Roja TV Online" and "Televisión Gratis HD". Through these websites, access was provided, allegedly illicitly, to the broadcasting of various sporting events, particularly, futbol games of the Santander League (Spanish First Division Football League), among others.

The Copyright Commission considered that the websites would infringe the regulations on Copyright and Related Rights, since acts of public communication would be made under the modality of retransmission, via streaming, of recordings of moving images not considered works, corresponding to soccer matches owned by the association La Liga, allegedly without its authorization.

## **COPYRIGHT ENFORCEMENT – BORDER MEASURES**

INDECOPI's system of observers, officials of the Copyright Directorate, accredited before Customs, has continued to carry out constant work to carry out verifications in maritime and air storage terminals (primary customs zone) to detect the entry of goods with copyright infringement incidence, and generate the corresponding alert, which is made known to the owners, giving rise to the initiation of administrative proceedings for infringement.

## **FINES**

The Copyright Commission has ordered 175 fines against individuals and legal entities that have infringed the Copyright legislation, amounting to 4,073.30 U.I.T. (Tax Units).

## **DRAFTING OF SPECIALIZED DOCUMENTS AND STUDIES**

To promote a culture of respect for copyright and related rights, the Directorate of Copyright issued various digital publications to the public. Thus, 14 video tutorials were published on the main creative sectors, as well as 4 interactive guides on copyright.

Similarly, a Study on the Contribution of Cultural Industries to the Peruvian Economy was carried out, which has allowed to analyze with the greatest scientific rigor and through various forms of measurement, how copyright impacts as a strategic tool for the protection of intangible assets of entrepreneurs, small and medium entrepreneurs, and creators of the various creative industries, such as the publishing, audiovisual, musical, video games, handicrafts, fashion, film, etc. According to the conclusions of the Study, it has been estimated that, between the years 2010 and 2018, the total contribution of the IBDA increased 39%, from S/ 13.4 billion to S/ 18.6 billion; while the employment generated went from 636,205 to 703,654 workers, an increase of 11%, for the same period.

## **IP ROUTE**

As part of the RUTA P.I. program, which provides free advisory, the Directorate of Copyright provided advice to companies in creative sectors related to software, apps, platforms, among others.

## **COOPERATION WITH WIPO IN TRAINING AND/ OR EDUCATION ACTIVITIES**

As part of the cooperation with WIPO in the various activities carried out with different member countries, the Directorate of Copyright was invited to participate as a speaker in the Virtual Seminar on Copyright and Traditional Cultural Expressions: Overview of Key Issues. Seminar organized by WIPO in collaboration with the Mexican Copyright Institute (INDAUTOR).

## **PROMOTION OF SUCCESS STORIES OF CREATIVE ENTREPRENEURSHIP: PROMOTING GENDER EQUITY**

To continue promoting the generation of referents of those who successfully use copyright tools, success stories of female entrepreneurship were highlighted.

## **CAMPAIGN FOR RESPECT FOR ARTISTIC ACTIVITY**

To raise awareness about the work performed by artists and the remuneration to which they are entitled, in 2021 an awareness campaign was launched on social networks with the support, testimony and participation of various national artists linked to music, film, among others.

## **REGULATORY PROPOSALS - REFORM LAWS PROJECTS**

### **NEW REGULATION:**

- **MARRAKECH TREATY IMPLEMENTATION**

On January 30, 2021, Law No. 31117 was published, Law that incorporates and modifies articles of Legislative Decree 822, Law on Copyright, to implement the Marrakesh Treaty and facilitate access to published works for the blind, visually impaired or persons with other difficulties to access printed text.

## **PATENTS**

### **1. Compulsory licenses**

Regarding the comments of the Pharmaceutical Research and Manufacturers of America (PhRMA), within the framework of the flexibilities provided by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Andean Community has collected the compulsory licensing regime through Decision 486 of the Commission of the Andean Community that establishes the Common Regime on Industrial Property.

The Andean Decision 486 regulates compulsory licenses (Articles 61 to 69), establishing their issuance in the following cases: a) Lack of exploitation of the patent; b) public interest; c) Anti-competitive practices; and d) Cross patents; which are applicable only if the assumptions established in the current regulations are met in accordance with the established procedure.

INDECOPI has not declared the existence of public interest to access to any patented product, so that there are no reasons to start a procedure to grant a compulsory license by the Directorate of Inventions and New Technologies, moreover, no compulsory license has been issued nor has any procedure for the issuance of compulsory licenses is in process.

### **2. Patent enforcement**

Regarding the comments of Pharmaceutical Research and Manufacturers of America (PhRMA) and National Association of Manufacturers (NAM), on patent enforcement, we must point out that Patent enforcement in Peru has different procedural mechanisms. One of them is the administrative contentious proceeding in charge of the Commission of Inventions and New Technologies of INDECOPI (hereinafter, the Commission), through which remedies could be ordered to stop patent infringement conducts, including preliminary injunctions.

Legally, the Commission has a maximum of 180 working days to resolve any infringement case, which is equivalent to approximately 9 months. Concerning this issue, the Commission considers that the proper enforcement of industrial property rights should not only consider the issuance of effective injunctions but also the issuance of a decision in due time. Thus, it must be said that in 2021 the average processing time of infringement cases took 90.7 working days.

Furthermore, preliminary injunctions are adopted as soon as they are requested. Thus, in 2021, the average time to issue these measures on infringement cases was only 2.6 working days.

It should be noted that one of the greatest strengths of the enforcement of patent rights is that, in the administrative procedure of action for infringement of rights, the technical analysis is carried out by highly qualified patent examiners in the different technical fields.

### **3. Regulatory Data Protection**

The National Association of Manufacturers (NAM) mentioned about the Regulatory Data Protection framework, however, the peruvian authority is Dirección General de Medicamentos Insumos y Drogas (DIGEMID), not INDECOPI as intellectual property national authority.

### **4. Educational campaigns and awareness raising and incentives for the creation and use of IP assets for SMEs (2021)**

In relation to educational campaigns, awareness raising and programs to promote patent protection and other forms of protection, the following actions are being developed:

#### **a) National Patent Programme - PATENTA**

Advice on the filing of patent applications with INDECOPI. Initiative through which a person, company or organization can find out if one or more research projects or inventions have the potential to be patented. If so, he/she will receive advice on the adequate drafting of the technical documentation required for the filing of the corresponding patent application during the current year. To receive free support from INDECOPI, each project must be applied for, in accordance with the Program's rules.

(<https://www.patenta.pe/en/programa-patenta> )

#### **b) National Competition of Inventions**

The purpose of this event is to recognize and reward the creativity, ingenuity, and inventive spirit of Peruvians in the conception and development of products, technologies and inventions that can be patented using the tools offered by industrial property.

(<https://www.patenta.pe/en/concurso> )

#### **c) Program of Informative Talks (virtual)**

These are free information and/or dissemination days where patent (and other) issues are addressed in an introductory manner. The virtual talks are aimed at a wide audience, such

as students, teachers, and researchers in general or institutional staff itself. Any Peruvian organization can request one or more talks from INDECOPI.  
(<https://www.patenta.pe/en/charlas-y-capacitaciones> )

#### **d) Specialized Training Program**

These are free activities to strengthen and/or deepen knowledge and skills in certain patent (and other) subjects. These trainings are focused on a smaller specialized public (people directly linked to research or innovation activities or projects). Any Peruvian organization can request one or more training sessions from INDECOPI.  
(<https://www.patenta.pe/en/charlas-y-capacitaciones>)

#### **e) Virtual Patent Course**

Free course that can be freely accessed by any person (students, teachers, researchers, innovators, people in general) it explains the basic topics of the patent system. At the end of the course, students take an exam and those who pass the minimum score obtain a certificate from INDECOPI and Universidad Peruana Cayetano Heredia.  
(<http://cursopatente.andeanquipu.org/>)

#### **f) Specialization Course in Patents**

Intensive program to train young professionals in science and engineering majors as (junior) patent consultants.

#### **g) IP route**

Program aimed at providing the country's manufacturing and technological services companies with individualized strategies (routes) for the maximum use of intellectual property in business (with emphasis on patents).  
(<https://www.patenta.pe/en/rutapi>)

#### **h) Peruvian Patent Marketplace**

Mechanism created for the exhibition and promotion of products that use the intellectual property system, with the aim of increasing commercial opportunities to reach the market through direct sales, licensing, strategic alliances, or other business schemes, both locally and internationally.  
(<https://www.patenta.pe/en/peruvian-patent-market-place>)

#### **i) Patenting abroad**

Initiative that seeks to support the correct preparation, presentation, and processing of the International Phase of the PCT for the protection of inventions abroad.  
(<https://www.patenta.pe/en/patenta-en-el-exterior>)

#### **j) Identi-Pat Identification of patentable subject matter**

Virtual tool for the identification of Patentable Subject Matter - IdentiPat. It is a web application that guides, in a referential way, in the detection of matter with the capacity of being patented (or protected) starting from a brief questionnaire made to the user.

[\(https://aplicaciones.indecopi.gob.pe/appDINPatenta/\)](https://aplicaciones.indecopi.gob.pe/appDINPatenta/)

#### **k) Pro-Breeder**

A program seeking to encourage the protection of new plant varieties because of research and experimentation. Through this initiative, free information and guidance talks are given on the procedure and presentation of the corresponding registration of plant breeders' certificates.

[\(https://www.patenta.pe/en/pro-obtentor\)](https://www.patenta.pe/en/pro-obtentor)

#### **l) Advisory Program for the Protection of Designs**

Initiative through which a company can receive advice on the preparation of the industrial design application.

[\(https://www.patenta.pe/en/ppd\)](https://www.patenta.pe/en/ppd)

#### **m) Annual Recognition of the Commercialization of the Patented Invention**

An initiative through which successful examples of patented inventions are summoned and sought, which can serve as inspiration, reference and a model for researchers, inventors, entrepreneurs, and local institutions to pursue protection, through patents, as an instrument that will allow them to maximize commercial and business opportunities on the route from conception to market.

[\(https://www.patenta.pe/en/reconocimiento \)](https://www.patenta.pe/en/reconocimiento)

### **5. Patents: Peru's main achievements during 2021**

Peru's main achievements during 2021 were the following:

- ✓ 100% of patents and other industrial property files in process within the legal term.
- ✓ 838 patents granted by residents and foreigners (invention patents and utility models), surpassing the registrations filed in 2020 by 31.76% (636).
- ✓ 41% national patents applications were filed at least one woman as part of the team of inventors (in 2021 this same indicator rose to 36%).
- ✓ 37 international applications were filed under the Patent Cooperation Treaty (PCT), 8.82% more than in 2020 (34)
- ✓ 58 applications were filed under the Patent Prosecution Highway (PPH), 70.59% more than in 2020 (34)
- ✓ The average time for issuing precautionary measures in infringement proceedings was 2.6 days.
- ✓ A delegation of 34 inventions developed by Peruvian women participated at the Korea's International Women's Inventions Exhibition (KIWIE), obtaining 11 gold medals, 16 silver medals, 7 bronze medals and a special prize awarded by the International Federation of Inventors Associations (IFIA).
- ✓ 10, 987 participants at capacity building and knowledge strengthening activities on patent and IP issues, provided through Webinars, training sessions, among others.
- ✓ The IP Route program was launched to provide intellectual property specialized consultancy from Peruvian companies.
- ✓ Approval of the Project "Women and Patents in the APEC Region: Current Situation, Performance, and Challenges" by the APEC Secretariat.

- ✓ Provided virtual assistance to more than 7,000 persons through the PATENTA Assistance Platform.
- ✓ The XX National Competition of Inventions was organized, receiving 67 national patent applications participants.

***(End of the document)***