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WESTERN HEMISPHERE

ARGENTINA

Argentina remains on the Priority Watch List in 2019.

Ongoing Challenges and Concerns

Argentina continues to present long-standing and well-known challenges to intellectual property (IP)-intensive industries, including from the United States. A key deficiency in the legal framework for patents is the unduly broad limitations on patent eligible subject matter. Pursuant to a highly problematic 2012 Joint Resolution establishing guidelines for the examination of patents, Argentina rejects patent applications for categories of pharmaceutical inventions that are eligible for patentability in other jurisdictions, including in the United States. Additionally, to be patentable, Argentina requires that processes for the manufacture of active compounds disclosed in a specification be reproducible and applicable on an industrial scale. Stakeholders assert that Resolution 283/2015, introduced in September 2015, also limits the ability to patent biotechnological innovations based on living matter and natural substances. These measures have interfered with the ability of companies investing in Argentina to protect their IP and may be inconsistent with international norms. Another ongoing challenge to the innovative agricultural chemical and pharmaceutical sectors is inadequate protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for products in those sectors. Finally, Argentina struggles with a substantial backlog of patent applications resulting in long delays for innovators seeking patent protection in the market. This problem is compounded by a reduction in the number of patent examiners in 2018, primarily due to a government-wide hiring freeze.

Enforcement of IP rights in Argentina continues to be a challenge, and stakeholders report widespread unfair competition from sellers of counterfeit and pirated goods and services. La Salada in Buenos Aires remains the largest counterfeit market in Latin America. Argentine police generally do not take *ex officio* actions, prosecutions can stall and languish in excessive formalities, and, when a criminal case does reach final judgment, criminal infringers rarely receive deterrent sentences. Hard goods counterfeiting and optical disc piracy is widespread, and online piracy continues to grow as criminal enforcement against online piracy is nearly nonexistent. As a result, IP enforcement online in Argentina consists mainly of right holders trying to convince cooperative Argentine Internet service providers (ISPs) to agree to take down specific infringing works, as well as attempting to seek injunctions in civil cases. Right holders also cite widespread use of unlicensed software by Argentine private enterprises and the government.

Developments, Including Progress and Actions Taken

Over the last year, Argentina made limited progress in IP protection and enforcement. Beset with economic challenges, Argentina's government agencies were strapped by a reduction of funding and a government-wide hiring freeze, and many of Argentina's IP-related initiatives that had gained momentum last year did not gain further traction due to a lack of resources. Despite these circumstances, the National Institute of Industrial Property (INPI) revamped its procedures and began accepting electronic filing of patent, trademark, and industrial designs applications as of October 1, 2018. Argentina also improved registration procedures for trademarks and industrial designs. On trademarks, the law now provides for a fast track option that reduces the time to register a trademark to four months. The United States continues to monitor this change as INPI works on the implementing regulation. For industrial designs, INPI now accepts multiple applications in a single filing, and applicants may substitute digital photographs for formal drawings. To further improve patent protection in Argentina, including for small and medium-sized enterprises, the United States urges Argentina to ratify the Patent Cooperation Treaty.

Argentina's efforts to combat counterfeiting continue, but without systemic measures, illegal activity persists. Argentine authorities arrested the alleged operators of the market La Salada as well as numerous associates in 2017, but vendors continue to sell counterfeit and pirated goods at the market and throughout Buenos Aires. The United States encourages Argentina to create a national IP enforcement strategy to build on these successes and move to a sustainable, long-lasting initiative. The United States also encourages legislative proposals to this effect, along the lines of prior bills introduced in Congress to provide for landlord liability and stronger enforcement on the sale of infringing goods at outdoor marketplaces such as La Salada, and to amend the trademark law to increase criminal penalties for counterfeiting carried out by criminal networks. In November 2017, Argentina entered into an agreement with the Chamber of Medium-Sized Enterprises and the Argentine Anti-Piracy Association to create a National Anti-Piracy Initiative focusing initially on trademark counterfeiting. The United States encourages Argentina to expand this initiative to online piracy. In March, revisions to the criminal code, including certain criminal sanctions for circumventing technological protection measures, were submitted to Congress. While Argentina has moved forward with the creation of a federal specialized IP prosecutor's office, the office is not yet operational. In November 2018, following a constructive bilateral meeting earlier in the year, Argentina and the United States held a digital video conference under the bilateral Innovation and Creativity Forum for Economic Development, part of the U.S.-

Argentina Trade and Investment Framework Agreement, to continue discussions and collaboration on IP topics of mutual interest. The United States intends to monitor all the outstanding issues for progress and urges Argentina to continue its efforts to create a more attractive environment for investment and innovation.