

Updates regarding public hearing about guidelines for the Examination of Patent Applications in the Biotechnology field

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As informed on our [Newsletter #03](#), on February 2019, the BRPTO started public hearing proceedings regarding the revised Guidelines for the Examination of Patent Applications in the Biotechnology Field.

Now, on June 06, 2020, the BRPTO published the final revised version, which incorporated some of the suggestions submitted during the public hearings. The revised version comprises mainly few minor textual corrections and changes to make the text clearer.

Among the differences between the previous proposal and the current text we highlight the following:

- The BRPTO made it clear that when a DNA sequence is defined by the polypeptide sequence it encodes (which is not accepted), the Applicant is allowed to amend the claim to define the polynucleotide by its specific sequence, degenerate sequences being also allowed, as long as they encode the same polypeptide.
- The BRPTO clarified that Markush claims directed to nucleotides, if encoding a polypeptide, may be accepted as long as they generate the same protein. If the sequence is a non coding one (e.g. promoter sequences), the Examiner must analyze the information provided in the Specification seeking for support for all modifications claimed.
- Regarding GURTs (Genetic Use Restriction Technologies), the BRPTO clarified that human intervention processes for the generation / multiplication of genetically modified plants resulting in the production of sterile reproductive structures are not eligible to patent protection. Processes that use external chemical inductors that activate or deactivate genes related to plant fertility are also not allowed.

The text was forwarded to the Specialized Federal Attorney, and a final official version shall be published soon.

We will keep you informed on any developments on this matter, as soon as they are available. Should you have any questions or suggestions, our teams are available in Rio de Janeiro and São Paulo offices and, through the e-mail mail@kasznarleonardos.com.