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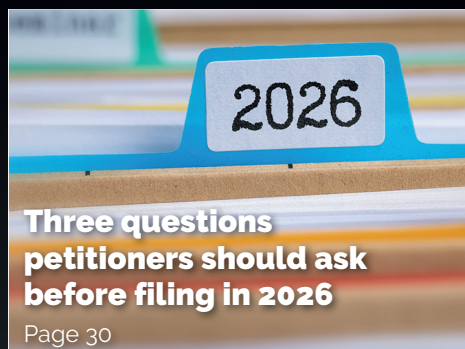
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Patenting fintech AI: How emerging standards reveal where valuable IP can be engineered

Robert Klinski of Patentship investigates how AI fintech standards are not mere compliance frameworks but maps for invention; understanding them can show exactly where patentable mechanisms lie.



SEPs in Brazil: FRAND licensing, antitrust risk, and litigation trends

In this article, Igor Simoes investigates how and why Brazil has become a hotspot for some of the biggest high-stakes tech disputes in the world, looking at FRAND and other trends likely to emerge in 2026.

Something fascinating has happened in the world of Standard-Essential Patent (SEP) enforcement. Brazil, long considered a secondary market for high-stakes technology litigation, has forcefully entered the main stage. As one of the planet's largest digital economies, it has always been a prize, but now its legal system is catching up, creating a potent and, at times, volatile mix for patent holders and implementers alike. The specialized IP courts in Rio de Janeiro, in particular, have become a global hotspot for high-stakes tech disputes, especially in the 4G and 5G space.



Igor Simoes

This isn't your typical academic overview. My goal here is to offer a pragmatic, boots-on-the-ground view of how Brazilian courts are *really* handling these cases. We'll dive into what's happening with FRAND (fair, reasonable, and non-discriminatory) licensing defenses, where the real antitrust risks lie, and what patterns are emerging that will likely define the landscape in 2026. It's crucial to understand that Brazil hasn't written a special rulebook for SEPs. Instead, judges are applying the existing Industrial Property Law and the Civil Procedure Code with a rapidly growing sophistication. From what I've seen,



Résumé

Igor Simões is Managing Partner at Simões IP Law. A chemical engineer and attorney with over 25 years in patents, he guides multinationals and scale-ups on prosecution, portfolio strategy, FRAND/SEP licensing, and patent enforcement and defense in Brazil. Igor acts across life sciences, medical devices, chemicals and materials, and software/ICT. He represents clients before INPI and in the courts nationwide – from specialized business courts to federal tribunals and the Superior Court of Justice – and works seamlessly with international counsel on cross-border disputes. Known for pragmatic, data-driven advocacy, his technical background gives him an edge in understanding what's truly at stake in patent disputes.

success in these courts has little to do with shouting "hold-up" or "hold-out" and everything to do with the evidence: who was willing to negotiate, what was offered, and how well you can justify your actions to a Brazilian judge.

The legal framework: no special treatment, just speed and leverage

One of the first things clients ask is whether Brazil has a specific law for SEPs. The answer is a simple no. Article 42 of the Industrial Property Law grants the patent holder the right to exclude others, and Article 209 provides for preliminary injunctions to stop infringement. The courts use these same tools in SEP cases as they would in any other patent dispute. This is the fundamental reason why Brazilian courts, especially the business courts in Rio, have been willing to grant urgent relief to SEP holders who come prepared with strong evidence of infringement and can demonstrate irreparable harm. A FRAND declaration

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This straightforward, statutory approach is the engine behind Brazil's rise as a key SEP jurisdiction. Unlike in some other countries, where the FRAND commitment is seen as a barrier to injunctive relief, Brazilian judges tend to view it as a component of the overall dispute, to be considered alongside evidence of infringement and negotiation conduct. This has created an environment where SEP holders can achieve rapid and powerful leverage, often forcing implementers to the negotiating table much faster than in other jurisdictions.

Litigation trends: the rise of Rio and game-changing rulings

The heart of SEP litigation in Brazil is, unquestionably, the state courts of Rio de Janeiro. Their specialized IP chambers have accumulated considerable expertise. The country's mixed bifurcated system – infringement in state courts, invalidity in federal courts – has a unique feature: infringement proceedings are not automatically stayed when a parallel nullity action is filed. The Superior Tribunal of Justice (STJ) has clarified that a stay requires substantial evidence of invalidity, preventing its use as a dilatory tactic (AgInt no AgInt no CC 198259/SP, Sep. 2024). Furthermore, in a landmark June 2024 decision (EREsp 1 332 417/RS), the STJ confirmed that patent invalidity can be raised as a defense in state court infringement proceedings. While such a finding has effect only *inter partes*, it provides defendants with a powerful defensive tool within the infringement action itself.

The STJ has also played a crucial role in shaping SEP enforcement. In the global dispute between *Ericsson v. Apple*, the STJ, in December 2022, offered Apple the alternative of paying a US\$3 per-device royalty to continue selling its 5G products. This decision balanced the parties' interests and was instrumental in fostering a global settlement. This ruling underscores a sophisticated judicial approach that uses the injunction not merely as a blunt instrument, but as a flexible tool to foster resolution.

None of this turns Brazilian courts into rate-setting tribunals. They have not embraced the role of fixing global FRAND rates; their comparative advantage remains speed and leverage through injunctive remedies. In practice, that often means orders requiring deposits or escrow based on historical royalty flows (for example, a prior GPLA), or binary instructions to pay-as-you-go or cease local use – powerful catalysts for negotiation when Brazil is a top-six smartphone market and an essential streaming territory.

A procedural nuance worth emphasizing for

global teams is Brazil's split jurisdiction: infringement suits (where preliminary injunctions are typically sought) run in state courts, frequently the specialized Business Courts of Rio de Janeiro; invalidity actions proceed in federal court. That bifurcation – plus the absence of "protective letters" and the lack of a mandatory validity screen before an injunction – shapes both sides' opening moves. Plaintiffs file in Rio, target products with large Brazilian exposure, and front-load technical evidence of standard mapping and essentiality. Defendants, for their part, prepare simultaneous invalidity actions and comprehensive non-infringement/essentiality attacks, while pushing back on urgency by offering security or proposing escrow. Recent practice notes and reporting from the last two years confirm both the concentration of docket activity in Rio and the judiciary's readiness to calibrate remedies rather than deny relief categorically.

On the FRAND side of the house, Brazilian decisions consistently frame FRAND as a defense – not as a sword that displaces the patent owner's statutory rights. Courts expect implementers to show credible, timely negotiation conduct (offers, counter-offers, diligence) rather than rely on abstract invocations of "FRAND." Conversely, rightsholders who can document a negotiation history anchored in market practice and comparable licenses tend to fare better on urgency and proportionality. A comparative review of recent cases – from cellular to audio codecs – shows injunctions being granted or maintained where the evidence supported likely infringement, the standard's implementation in the accused products was not seriously contested, and the implementer's payment posture looked like hold-out rather than good-faith bargaining.

Antitrust risk and CADE's position: a cautious approach

Antitrust risk is the other axis in Brazil, and the picture is more nuanced than binary. For years, CADE's stance was largely deferential to patent enforcement: in the TCT (TCL) complaint against Ericsson, CADE closed the file, treating the dispute as a private law matter grounded in the patent statute. That precedent has been repeatedly cited as evidence that SEP enforcement is not presumptively abusive. Yet, in 2025, CADE signaled a more probing approach. In a Motorola/Lenovo representation against Ericsson, CADE's tribunal dismissed the immediate appeal after a settlement but asked the investigative arm to open an inquiry, with a commissioner emphasizing concerns about potential price discrimination, global-license "tying," and refusal to license at the local level. The official note underlines that SEP abuse "may" be an antitrust violation depending on market effects and conduct. Taken together, the

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message is balanced: enforcement per se is not problematic, but CADE will examine patterns like hard refusals to license in Brazil, discriminatory terms, or injunction threats leveraged to demand supra-FRAND global deals.

CADE doubled down on learning the terrain in July 2025, publishing a study on SEPs and hosting a public seminar in September 2025. The study – framed as non-binding guidance – acknowledges Brazil's rising role in SEP enforcement (particularly Rio de Janeiro's courts), the efficacy of preliminary relief, and the absence of a codified FRAND statute, while urging negotiation discipline on both sides. For in-house teams, the practical takeaway is straightforward: document your FRAND posture carefully and assume CADE will ask for contemporaneous evidence of nondiscrimination and reasonableness if a complaint lands on its desk.

So, where does CADE scrutiny bite hardest? Two red flags stand out in the 2025 guidance and case signals: (i) categorical refusals to license in Brazil while insisting on global deals without principled justification, and (ii) facially discriminatory pricing or terms that look designed to foreclose local rivals or coerce implementers through Brazil-specific sales stoppages disconnected from a fair rate. None of this means injunction requests are anticompetitive, but it does mean in-house counsel should build contemporaneous files showing non-discriminatory offers, serious engagement with implementers, and reasonable treatment of regional sales footprints when proposing interim measures. Expect CADE to ask for it, and design your Brazil strategy so you can hand it over if needed.

The practicalities of licensing and INPI hygiene

Beyond the courtroom drama and antitrust oversight, there are practical, administrative hurdles that can trip up even the most sophisticated global licensing programs. This is where the Brazilian Patent and Trademark Office (INPI) comes in. While INPI doesn't rule on infringement or FRAND rates, its role in recording IP-related agreements is critical for financial and tax purposes.

Unlike in many jurisdictions, Brazil conditions certain fiscal and remittance effects on the recordal of IP-related agreements before the INPI. For years, this process was notoriously bureaucratic and slow. However, recognizing the need for modernization, the INPI published two new ordinances in October 2025 – Portaria/INPI/PR nº 34/2025 (covering procedures) and nº 35/2025 (covering examination guidelines) – which came into force in December 2025. These new rules are a significant step forward.

They formalize the distinction between *averbação* (recordal) for assignments and licenses of industrial property rights and *registro* (registration) for technology-transfer, technical assistance, and franchise agreements. They also standardize the certificates and documentation required. While SEPs are not singled out, these changes are vital for ensuring clean compliance and smooth royalty flows, especially where cross-border remittances are involved. My advice to clients is to audit their legacy agreements for alignment with the new templates and fee schedules. Proactive "licensing hygiene" can prevent major headaches down the road when you need to move money out of the country.

Although recordal is not a prerequisite to sue for infringement, it matters for tax deductibility of royalty payments and for the legal enforceability of the agreement against third parties. For large, cross-licensed portfolios that include Brazilian patents (both granted and pending), it's wise to plan your recordals early, line up sworn translations where needed, and budget for the updated fees. Don't let a paperwork issue derail the financial side of a hard-won licensing deal.

The 2026 playbook: strategic takeaways

So, what does this all mean for your strategy in 2026? Brazil is no longer a jurisdiction you can afford to ignore, nor is it a place for tactical gambles. It requires a deliberate, well-prepared approach.

For SEP holders:

If you are a rights holder planning to file in Brazil, you need to arrive with a dossier that would satisfy a skeptical business-court judge within 48 hours. This means:

- **Airtight infringement case:** This includes a tight essentiality mapping to the relevant standard, with claim charts that point to actual product behavior in Brazil. Don't just recycle your German or U.S. claim charts; tailor them to the Brazilian context.



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- **Documented negotiation history:** You need a paper trail that shows you offered FRAND terms in good faith. This includes initial offers, responses to counter-offers, and a clear, commercially reasonable justification for your licensing proposal. Be prepared to show that the implementer was unwilling to engage constructively.
- **A tailored remedy request:** Brazilian courts respond well to specific, tailored requests for relief. Instead of just asking for a blanket injunction, consider proposing payment into escrow at a historically anchored amount (like a prior GPLA rate) as a condition to avoid an immediate sales ban. The *Ericsson v. Apple* orders are instructive here and have been cited as persuasive authority in subsequent filings.

Conclusion: a mature and consequential jurisdiction

Brazil's SEP playbook in 2026 is neither quirky nor unpredictable. It is statutory, fast, and consequential. It has evolved from a peripheral venue into a central pillar of global SEP litigation strategy. The courts will enjoin where the evidentiary record warrants it; they will not shy away from requiring immediate, commercially realistic per-unit payments; and they will continue to treat FRAND as a defense to be proven, not as a magical shield against injunctions.

For SEP owners and implementers alike, success in Brazil hinges on disciplined preparation and negotiation conduct that you are comfortable seeing quoted back to you – by a judge in an injunction order or by CADE in an investigative note. This new battleground demands respect, preparation, and a strategy that is as sophisticated as the market itself. The days of treating Brazil as an afterthought are definitively over.

Contact

Simões IP Law Firm

Rua Marechal Raul de Albuquerque,
02 – Suites 611/703
Charitas, Niterói – RJ - 24370-025

Tel: +55 (21) 99498-8126

Email: international@simoes-ip.com

www.simoes-ip.com/en