

## SIPO-INPI PPH 试点项目技术指南

中国国家知识产权局（SIPO）与巴西工业产权局（INPI）于 2017 年 11 月 13 日签署的关于专利审查高速路（PPH）试点项目的谅解备忘录下的技术指南如下：

### 请求参与 SIPO-INPI PPH 试点项目的要求

1. 为适格参与 SIPO-INPI PPH 试点项目，需满足以下要求：

1.1 请求参与 SIPO-INPI PPH 试点项目的中国或巴西申请以及在对方局提交的对应申请需满足两局各自流程指南的要求。

1.2 请求参与 SIPO-INPI PPH 试点项目的申请以及在对方局提交的对应申请应具有相同最早日，可以是优先权日或申请日，并属于同族申请。同族的所有专利申请均符合。

1.3 同族的最早专利申请应根据巴黎公约向 INPI 或 SIPO 提交，或在 PCT 下由 INPI 或 SIPO 作为接收局。

1.4 专利申请可以向 SIPO 提交 PPH 请求，专利申请和实用新型申请可以向 INPI 提交 PPH 请求。

1.5 有效作为参与 SIPO-INPI PPH 试点项目请求基础的申请需已进行实质审查，包括在先审查局（OEE）已审查其新颖性和创造性。即 SIPO 做出的专利申请审查结果可用于向 INPI 提交 PPH 请求的基础；INPI 做出的专利申请和实用新型审查结果可用于向 SIPO 提交 PPH 请求的基础。

1.6 向在后审查局（OLE）请求PPH基于的审查工作结果为对于在先审查局（OEE）审查的同族专利申请由SIPO作出的“授权通知书（Decision to Grant a Patent）”或由INPI作出的“授权决定（decisão de deferimento）”。专利申请必须明确被指出将被授权。

1.7 请求参与 SIPO-INPI PPH 试点项目的申请的所有权利要求必须与对应申请中“具有可专利性/可授权”的权利要求充分对应。虑及因权利要求形式要求引起的差异，当请求 PPH 的申请的权利要求与对应申请的权利要求具有相同或更小范围时，权利要求被认为是充分对应的。

1.8 对请求参与 SIPO-INPI PPH 试点项目的 OLE 申请的实质审查应尚未开始。

1.9 OLE 申请对公众公开。

## 限定条件

2. SIPO-INPI PPH 试点项目有以下限定条件：

2.1 各局参与 PPH 请求的数量分别限为 200 件，其中 20 件可使用 PPH Mottainia。

2.2 SIPO 接收包含任意分类号权利要求的所有申请。INPI 接收包含权利要求属于信息技术发明、包装技术工业、计量技术以及化学技术领域的申请。SIPO-INPI PPH 试点项目不包含医药申请。请求参与 SIPO-INPI PPH 试点项目的申请应分入附件规定的国际专利分类号或其子分类号中。

2.3 除非 (i) 分案申请直接从原始申请分出, 并且 (ii) 分案申请由在先审查局 (OEE) 要求, 否则分案专利申请不予接受。

### 请求参与 SIPO-INPI PPH 试点项目所需文件

3 为满足 SIPO-INPI PPH 试点项目的要求, 各局将决定需提交的必要文件。在后审查局的流程指南中将规定这些文件。其中, 这些文件可包括:

3.1 参与 SIPO-INPI PPH 试点项目请求表;

3.2 与 OEE 认为具有可专利性/可授权的权利要求充分对应的权利要求。权利要求应具有相同或更小的范围;

3.3 权利要求对应表, 其体现 OLE 申请权利要求与 OEE 申请被认为具有可专利性/可授权的权利要求的关系; 或适用时声明权利要求仅从 OEE 认为具有可专利性/可授权的权利要求翻译而来;

3.4 OEE 对 OEE 申请做出的工作结果 (检索报告和实质审查报告) 副本, 必要时提交译文。

3.5 “授权决定 (decisão de deferimento)” 或 “授权通知书 (Decision to Grant a Patent)” 副本, 其包含作为 PPH 请求依据的具有可专利性/可授权的权利要求;

3.6 OEE 申请中具有可专利性/可授权权利要求副本;

3.7 上述 3.4 规定的审查意见通知书中引用的所有非专利文件副本。若引用文件为专利文献, 申请人不必提交该文件, 除非两局难以获取该文件, 可能要求申请人提交该文件。

3.8 若 3.4、3.5、3.6 或 3.7 中所述文件非英文或该国语言，申请人需提交译文。

## 流程

4. 一旦收到 PPH 请求，两局将进行以下流程：

4.1 两局将努力快速评估参与 SIPO-INPI PPH 试点项目的请求。

4.2 若接受参与 SIPO-INPI PPH 试点项目的请求，该申请将以优先模式处理。

4.3 若参与 SIPO-INPI PPH 试点项目的请求未能符合上述所有要求，申请人将被告知结果以及请求存在的缺陷。申请人有至少一次补正的机会，以在适用的国内法提供的时间期限内克服请求存在的缺陷。若未能及时补正请求，申请人将被告知结果，该申请将被移出 SIPO-INPI PPH 试点项目。

4.4 各局将决定如何使用 OEE 的工作结果。

4.5 如需要，两局可开展特定流程，例如，采用超出本技术指南规定的额外灵活性，以更好地适应自身术语或法律程序。

## 评估和修改

5 两局可评估和修改本技术指南，如下所示：

5.1 两局可按照各自标准随时对 SIPO-INPI PPH 试点项目进

行中期评估。

5.2 两局可就 SIPO-INPI PPH 试点项目中期评估交换信息并考虑随时公布中期评估结果。

5.3 基于评估结果，应一局要求并经书面一致同意，两局可对 SIPO-INPI PPH 试点项目的要求、流程或条件进行修改。

5.4 若修改 SIPO-INPI PPH 试点项目的适用条件，各局将相应修改并公布本技术指南及两局各自的流程指南。

5.5 一旦处理完毕 SIPO-INPI PPH 试点项目接受的所有专利申请，将在效率和效用方面评估该项目。

# 附件

分入以下 IPC 分类号的专利申请可向 INPI 请求参与 SIPO-INPI PPH 试点项目。SIPO-INPI PPH 试点项目不包括涉及医药领域的申请，即在主分类号及副分类号下分入 A61K 的申请。

## I. 信息技术

	技术领域	IPC 分类号
1	机电产品，能源	F21#, H01B, H01C, H01F, H01G, H01H, H01J, H01K, H01M, H01R, H01T, H02#, H05B, H05C, H05F, H99Z
2	试听技术	G09F, G09G, G11B, H05K
3	电信	G08C, H01P, H01Q
4	电通讯技术	H04#
5	基础通讯处理	H03#
6	计算机计算	G06# (not including G06Q), G11C, G10L
7	信息技术方法管理	G06Q
8	半导体	H01L
9	其他	B61#, B60K, B60L, B60W, B62D, B62J, F02D, G02B, G02F, G03G, G08G, H01S, H05H

## II. 包装技术

	技术领域	IPC 分类号
1	包装/ 解除包装方法或装置 标签或标记装置或方法	B65B, B65C
2	用于存储或运输物品或材料/ 包装元件/包裹的容器	B65D

III. 计量技术: G01V, G01S

IV. 化学技术: B01J, C08#, C07#



## **Technical Guidelines of PPH Pilot Project between INPI and SIPO**

The Technical Guidelines established under the Memorandum of Understanding signed between the State Intellectual Property Office of the People's Republic of China (SIPO) and the National Institute of Industrial Property of Brazil (INPI) on November 13 2017, about the PPH INPI-SIPO Pilot Project are as follows:

### **Requirements for requesting participation in the PPH INPI-SIPO Pilot Project**

1. In order to be eligible to participate in the PPH INPI-SIPO Pilot Project, the following requirements must be met:
  - 1.1. The CN or BR application for which participation in the PPH INPI-SIPO Pilot Project is requested and the corresponding application filed with the other Office must meet the requirements specified in the Offices' respective Procedures Guidelines.
  - 1.2. The application for which participation in the PPH INPI-SIPO Pilot Project is requested and the corresponding application filed in the other Office must have the same earliest date, either the priority or filing date – belonging to the same patent family. All patent applications linked are acceptable.
  - 1.3. The earliest patent application of the patent family must have been filed under the Paris Convention at the INPI or the SIPO or, under the PCT, at the INPI or the SIPO as Receiving Office.
  - 1.4. Patent applications are eligible for the request for PPH at SIPO; and patent applications and utility model applications are eligible for request for PPH at INPI.
  - 1.5. For an application to be valid as the basis of a request for participation in the PPH INPI-SIPO Pilot Project, it must have been substantively examined, including for novelty and inventive step, by the Office of Earlier Examination (OEE). It means that the results of the patent applications issued by SIPO can be used as basis for request for PPH at INPI; and the results of patent applications and the results of utility models issued by INPI can be used as basis for request for PPH at SIPO.
  - 1.6. The examination work product accepted as the basis of request for the PPH at the Office of Later Examination (OLE) is the “*Decision to Grant a Patent*” issued by SIPO or the “*decisão de deferimento*” issued by INPI for a patent application of the same patent family examined by the Office of Earlier Examination (OEE). It must have the explicit indication that the patent application will be granted.



1.7. All claims in the application for which a request for participation in the PPH INPI-SIPO Pilot Project is made must sufficiently correspond to the patentable/allowable claims in the corresponding application(s). Claims are considered to sufficiently correspond when, accounting for differences due to claim format requirements, the claims in the application for which PPH is requested have the same or narrower scope that the claims in the corresponding application(s).

1.8. Substantive examination of the OLE application for which participation in the PPH INPI-SIPO Pilot Project is requested should not have begun.

1.9. The OLE application is open to the public.

### **Limitations**

2. The INPI-SIPO PPH Pilot Project has the following limitations:

2.1. The number of requests for the PPH in each Office will be respectively limited to 200 (two hundred) cases, 20 of these requirements can use the PPH Mottainai framework.

2.2. The SIPO intends to accept all applications containing claims of any classification. The INPI intends to accept all applications containing claims directed to information technology inventions, packaging technology industry, measuring technology, as well as chemistry technology. In any case, the pharmaceutical applications are excluded from the PPH INPI-SIPO Pilot Project. Applications for which participation in the PPH INPI-SIPO Pilot Project is requested must be classified by INPI in any of the International Patent Classification codes specified in the Annex, or any subdivisions thereunder.

2.3. Divisional patent applications will not be accepted, unless (i) they are directly divided from the original application, as well as (ii) the division of the application has been required in the Office of Earlier Examination (OEE).

### **Documents required for participation in the PPH INPI-SIPO Pilot Project**

3. Each Office will decide the necessary documentation that should be submitted in order to meet the requirements of the PPH INPI-SIPO Pilot Project. The documents will be determined in the OLE's Procedure Guidelines. The documents may include, among others:

3.1. A request for participation in the PPH INPI-SIPO Pilot Project;

3.2. The claims in a sufficient way to correspond to claims which were considered to be patentable/allowable at the OEE. Claims should have the same or narrower scope;

3.3. A claim correspondence table that shows the relationship between the claims of the OLE application and those of the OEE application that were considered patentable/allowable; or, when applicable, a declaration that the claims are merely translation from the OEE claims considered patentable/allowable;

3.4. Copies of the work products (search reports and substantive examination reports) issued by the OEE in relation to the OEE application, and translations if necessary.

3.5. Copy of the “decisão de deferimento” or the “Decision to Grant a Patent” containing the patentable/allowable claims that are the basis for the PPH request;

3.6. Copy of the patentable/allowable claim(s) from the OEE application(s);

3.7. Copies of all non-patent documents cited in the office action(s) identified in point 3.4 above. If the cited document is a patent document, the applicant is not required to submit it, unless the Offices have difficulty in obtaining it, in which case the applicant may be asked to submit it.

3.8. If the documents from the items 3.4, 3.5, 3.6 or 3.7 are not in English or in the country’s language, the applicant must file a translation of them.

## **Procedures**

4. Once received a PPH request, the Offices will follow the procedures bellow:

4.1. The Offices will endeavor to evaluate quickly the requests for participation in the PPH INPI-SIPO Pilot Project.

4.2. If the request for participation in the PPH INPI-SIPO Pilot Project is accepted, the application will be processed in a priority manner.

4.3. If the request for participation in the PPH INPI-SIPO Pilot Project does not meet all the requirements set forth above, the applicant will be notified and the defects in the request will be identified. The applicant will have at least one opportunity to correct the identified deficiencies in the request within the time limits provided under the applicable national law. If the request is not corrected in due time, the application will be removed from the PPH INPI-SIPO Pilot Project and the applicant will be notified.

4.4. Each Office will decide how to use the OEE’s work products.

4.5. The Offices can, if they wish, develop specific procedures, for example, to better adjust to its own terminology or legal process, and adopt additional flexibilities beyond the requirements set in these Technical Guidelines.

## **Evaluation and Modification**

5. The offices can evaluate and modify these Technical Guidelines as following:

5.1. The Offices may perform an intermediate evaluation of the PPH INPI-SIPO Pilot Project at any time and in accordance with their own criteria.

5.2. The Offices may exchange information about the intermediary evaluation of the PPH INPI-SIPO Pilot Project and consider publishing the intermediate evaluation

results at any time.

5.3. The Offices may modify the conditions, procedures or requirements of the PPH INPI-SIPO Pilot Project by request of either Office and by mutual consent, in writing, based on the evaluation results.

5.4. If the conditions applicable to the PPH INPI-SIPO Pilot Project are modified, these Technical Guidelines and the Offices' respective Procedures Guidelines will be amended and published by each Office accordingly.

5.5. The PPH INPI-SIPO Pilot Project will be evaluated in terms of efficiency and usefulness, once all the patent applications accepted in the project have been processed.

## ANNEX

The patent applications classified at the following International Patent Classification (IPC) codes can participate at the PPH INPI-SIPO Pilot Project at INPI. In any case, applications related to pharmaceutical area, understood as those classified as A61K in the main or secondary classification, are excluded from the PPH INPI-SIPO Pilot Project.

### I. Information Technology

	<b>Technical Field</b>	<b>IPC Codes</b>
1	Machinery and electrical appliances, energy	F21#, H01B, H01C, H01F, H01G, H01H, H01J, H01K, H01M, H01R, H01T, H02#, H05B, H05C, H05F, H99Z
2	Audiovisual technology	G09F, G09G, G11B, H05K
3	Telecommunications	G08C, H01P, H01Q,
4	Electric Communication Technique	H04#
5	Basic Communication processes	H03#
6	Computer technology	G06# (not including G06Q), G11C, G10L
7	Methods of information technology for management	G06Q
8	Semiconductors	H01L
9	Miscellaneous	B61#, B60K, B60L, B60W, B62D, B62J, F02D, G02B, G02F, G03G, G08G, H01S, H05H

### II. Packaging Technology

	<b>Technical Field</b>	<b>IPC Codes</b>
1	Machines or methods of packaging / unpacking Labelling or tagging machines or processes	B65B, B65C
2	Containers for storage or transport of articles or materials/packaging elements/ packages	B65D

### III. Measuring Technology: G01V, G01S

### IV. Chemistry Technology: B01J, C08#, C07#