

PORTUGAL - PATENT PROTECTION UNDER THE INDUSTRIAL PROPERTY ACT

Notification of a Mutually-Agreed Solution

The following communication, dated 3 October 1996, from the Permanent Mission of the United States to the Permanent Mission of Portugal and to the Dispute Settlement Body, is circulated at the request of those delegations.

The Governments of the United States of America and Portugal wish to notify the Dispute Settlement Body that they have reached a mutually satisfactory solution to the matter raised by the Government of the United States in WT/DS37/1, dated 6 May 1996, concerning the term of patent protection required by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Portugal and the United States mutually confirm the TRIPS Agreement became applicable to developed countries on 1 January 1996, and that Article 33 of the TRIPS Agreement requires Members to grant a patent term that lasts not less than 20 years from the filing date. Portugal and the United States further mutually confirm that, with respect to developed-country members, Article 70.2 of the TRIPS Agreement requires, among other things, that the provisions of Article 33 of the TRIPS Agreement be applied to all patents that were in force on 1 January 1996, and to all patents that are granted based on applications that were pending on 1 January 1996.

Consequently, Portugal has issued Decree Law 141/96 confirming that all patents that were in force on 1 January 1996, and all patents granted after this date based on applications that were pending on 1 January 1996, will receive a term of protection that lasts either 15 years from the date of grant of the patent or 20 years from the effective filing date of the patent, whichever term is longer.

Based on these developments, Portugal and the United States have agreed to terminate consultations on this matter and the United States wishes formally to withdraw this matter from further attention under the provisions of the Dispute Settlement Understanding. The agreement is without prejudice to the rights or obligations of either Member under the Agreement Establishing the World Trade Organization.