Draft amendments to the Federal Law on Industrial Property Protection (LFPPI): analysis and new developments

Victor Ramírez and Carlos Reyes of OLIVARES investigate the latest developments in trademark protection in connection with industrial property protection.

This article aims to highlight and analyze some relevant new developments relating to trademark protection in the draft amendments to the Federal Law on Industrial Property Protection (LFPPI), presented on September 13, 2025, to the Senate and currently under discussion.

Although this article does not attempt to cover all the proposed reforms, we are placing special emphasis on those changes that we believe deserve special attention due to their impact on the industrial property protection system in Mexico.

Maximum deadlines and deemed approval in industrial property procedures

One of the main and controversial reforms consists of establishing maximum deadlines for the Mexican Institute of Industrial Property (IMPI) to respond to applications for registration of industrial property rights. In addition, the concept of presumed approval ("afirmativa ficta") is being proposed by the reporting legislator: if the IMPI does not issue a response within the established deadline, the requested right will be considered automatically granted.

This measure seeks to streamline the procedures for registering patents, industrial designs, and distinctive signs. However, it has been described as populist and controversial because, although it addresses the backlog in the processing of application files, it does not address the underlying problem: the lack of personnel at the IMPI, largely due to the diversion of IMPI resources to purposes other than the services that the Institute should provide.

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In this regard, although the reform responds to the need to streamline or reduce the response time in the registration of industrial property rights by the IMPI, thereby providing legal certainty both to applicants and to third parties who may have conflicting rights, the delay in responding to applications by the IMPI is largely due to the Institute's lack of resources, mainly human, but also material resources. A blind affirmative approval response, which would resolve in a positive sense all applications for protection of rights filed with the Office that are delayed or unanswered within the established time frame, without addressing the aforementioned lack of human and material resources, would entail a significant risk of obtaining non-examined exclusive rights – which would have to be contested through costly and lengthy contentious nullity proceedings – over distinctive signs that should have been refused as contrary to the relevant law, such as signs that are intrinsically unregistrable, generic or descriptive, or for clearly infringing prior rights of third parties.

Therefore, although this proposal would apparently help reduce IMPI's backlog in resolving pending cases, it is likely that the problems it would cause would be greater and more serious than the backlog in processing applications.

Human resources and technical basis for the reform

In this regard, the bill does not contemplate an increase in personnel or investment in training for IMPI staff, actions that could help resolve the delays and, in turn, ensure adequate technical examination of industrial property rights registration applications. Furthermore, there is no information in the proposed reform allowing us to think that the reforms are based on a technical study that may take into account the number of staff available at the institute, the average time required to analyze applications, or that the proposed deadlines for issuing responses are based on any kind of technical criteria.

As a result, we do not believe that the proposed amendments take into account, in relation to this proposed change, the importance of industrial property rights as a key element for innovation and economic development, and could lead to the granting of rights without proper examination or with insufficient review. This would imply the granting of registration of distinctive signs without a minimum study of their distinctiveness or the existence of a risk of confusion with prior rights.

Therefore, as noted, this would result in a significant increase in the granting of rights subject to some cause for invalidity and, consequently, in invalidity proceedings, placing an even greater burden on IMPI staff, who are already overworked, affecting both the study and the intrinsic value of these rights that are essential for innovation and economic development.

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Online processing and new grounds for infringement

Additionally, the reform proposes the implementation of online procedures for requests for administrative declarations of infringement, which will undoubtedly streamline the processing of these actions that are so important for the protection of industrial property rights. In addition, new grounds for administrative infringement of industrial property rights are incorporated in the project, including those carried out through the use of artificial intelligence and ambush marketing, classifying these behaviors as acts of unfair competition.

Résumés

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Victor focuses chiefly on counseling, negotiating and prosecuting Industrial Property disputes (nullity, caducity and infringement proceedings) before the Mexican Patent and Trademark Office (IMPI). Since joining the firm in 1999, Mr Ramirez has served clients across a variety of industries, including high-tech, electronics, and software, and has helped to develop anti-counterfeiting and antipiracy strategies to protect and enforce companies' intellectual property rights in both administrative and criminal venues, as well as on appeal in the courts.

Carlos Reyes, Senior Trademark Attorney at OLIVARES

He joined OLIVARES in October 2008 and has more than 30 years of experience in Intellectual Property prosecution and IP litigation. His practice is now mainly focused on the areas of counseling and trademark registration. In summary, he provides counseling regarding trademarks registrability and brings its experience on trademark prosecution and litigation, answering objections related to absolute and relative grounds of refusal, and prepares and files trademark oppositions before the Mexican PTO (IMPI).

As senior attorney in OLIVARES trademark team, he has helped to secure trademark protection in Mexico to several important trademarks, in particular relating trademark distinctiveness and likelihood of confusion.

New developments in the definition of distinctive signs

With regard to distinctive signs, it is proposed to amend Article 172 of the Federal Law on Industrial Property Protection, which regulates the signs that can constitute a trademark, including paragraphs VIII, IX, and X, explicitly mentioning new types of non-traditional trademarks as objects of protection, namely position, motion, and multimedia trademarks.

In this regard, these non-traditional marks are mentioned in the reform project but not defined, even in a minimal way, which would have been desirable. We would also have preferred the inclusion of the special requirements for their registration in general terms, which would help to clearly define the object of the protection requested and its scope when granted, both with respect to the owners of the trademark rights and with respect to third parties. As we know, position marks are defined as specific ways in which a trademark is placed on a product, multimedia marks as those that contain a combination of image and sound, and motion marks as those that consist of a movement or change in the position of the elements of the trademark, wording which it would have been desirable to include.

Modification of trademark registration prohibitions and protection of cultural heritage

The bill also incorporates mechanisms for the recognition and protection of traditional knowledge, particularly in relation with Indigenous communities. Among the proposed actions are the establishment of rules to prevent the misappropriation of artisanal designs and the requirement for authorization and benefit sharing for the use of cultural resources. These provisions arise in response to recent conflicts related to cultural appropriation that have affected Mexican communities.

Changes are thus contemplated in the article relating to prohibitions on trademark registration, specifically in Article 173 of the LFPPI, which highlights the incorporation in the proposed reform of an additional paragraph (XXIII) that extends the grounds for prohibiting the registration of trademarks to signs that are identical or confusingly similar to *"elements that form part of or are clearly linked to the development of cultural heritage, traditional cultural knowledge and expressions, as well as manifestations associated with them and the collective intellectual property of indigenous and African-American peoples and communities"*.

In respect thereof, although the inclusion in the Federal Law on Industrial Property Protection of a prohibition on the registration of trademarks related to cultural heritage, traditional knowledge, and cultural expressions is considered an important step forward, which, as noted, is a legislative response to high-profile cases of appropriation of traditional Mexican designs by foreign fashion designers, we are concerned that this prohibition is being established without having any parallel progress in the cataloging of these so-called traditional cultural knowledge and expressions.

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That is, without the existence of a reasonably reliable catalog or database, accessible not only to the general public but also to the individuals or communities entitled to such protection, which would define both the object of protection and the peoples or groups benefiting from it. Thus, there will be no legal certainty regarding the protection that is intended to be regulated. Indeed, this lack of definition of the object and, also, of the subjects of protection will, on the one hand, lend itself to the possibility of rejecting applications for the registration of trademarks considered, in a discretionary or arbitrary manner, to be identical or similar to "alleged" elements of cultural heritage, traditional cultural knowledge and expressions that may not actually exist as such and, on the other hand, will not exclude the granting of exclusive rights of use over elements that are indeed protectable.

Proposed modifications on the trademarks' description by the applicants in the applications filed before IMPI

Finally, it is equally important to mention the amendment to Article 214 of the Law, which includes a paragraph stating that any omission or error in the information submitted by the applicant, in relation to the elements reproduced in the trademark for which protection is not sought and in the description thereof, would be corrected by the Institute *ex officio* in accordance with the sign incorporated in the section on representation of the sign. In this regard, we should mention that granting this power to IMPI to modify the description of the sign proposed in the application, which does not seem to contemplate granting the applicant the right to comment on it, through prior notification, may lend itself to arbitrary modification of the sign applied for.

In conclusion, even if we find the issues mentioned regarding response times, presumed approval, and the lack of a clear definition of the object of protection in the area of cultural heritage, the proposed amendments to the LFPPI – and the debate thereof-represent an important step forward in the consolidation of a modern industrial property protection system in Mexico.

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