

Lula Disrespects Private Property, “Taking” Foreign Investors’ DPP

By Lawrence A. Kogan

Brazilian obligatory licensing law motivated politically

Some time ago the media was discussing the right of the Thai and Brazilian governments to declare a compulsory patent license for medicine, obtained by foreign pharmaceutical companies that do business within those two countries. The truth is the Brazilian government concluded that the Brazilian law and the WTO allow the government to issue compulsory licenses for medication used to combat AIDS. Arguably, Lula was encouraged by the Thai government’s controversial issuing of three compulsory licenses. The justification for the illegal expropriation of private property for Brazil was that it was necessary to protect the “public interest/good”, according to the country’s Constitution and Intellectual Property Law. Lula’s government also argued that these actions appropriately implemented Article 31 of the WTO’s TRIPS agreement, that when they correspond with the Doha Declaration, reflects a greater leniency in “allowing governments to declare (subjectively) a ‘national emergency’ and to issue compulsory licenses for any reason, without consulting with the owner of the foreign patent.”

Arguably, Brazil’s stance was forged and encouraged by NGOs in the developed world, motivated by propaganda and ample resources. These groups, apart from their socialist party ideology, are now focusing on the elimination of private property as their central pillar in the international legal field. It is clear that the Brazilian government is using the NGOs to promote a new global anti-IP paradigm of open source access in the area of health assistance and the spread of information that will prevent strong private property rights, particularly American patent owners, publishers and trade secrets. It is clear that this new world paradigm is a key part of President Lula’s national innovation plan.

Moreover, it is common knowledge that in the past Lula has favored the poor, the uneducated, and his national labor unions in order to assure his reelection. This favoritism was necessary due to a series of corruption scandals involving some of his closest collaborators, and for his government’s inability to implement public education, pension and infrastructure measures that the educated would have held him responsible for. The uneducated are not better off in economic or social terms even though they receive monthly assistance in exchange for votes (Bolsa Familia program). The capital markets are also not better off than what they would have been, not including a relative calm during the first and second quarters. In each one of these cases, the groups are not less dependent than they were prior to the election. It is clear that the well being of the people and their ability to care for themselves did not improve one bit.

After signing the order to “break” the patent for AIDS medication, Lula advised that this could occur with other licenses if prices cannot be afforded. Furthermore, even after various warning



by foreign investors that Lula's actions are slowing foreign direct investment into Brazil, Lula has responded by saying that the benefit of "breaking" the patents is to the benefit of Brazilians and world citizens alike. If Lula's tone is more like Robin Hood than head of state, it's probably not a coincidence.

Besides the rhetoric, Lula's government can't provide businesses with the guarantee that the research and development that has guided foreign direct investment, scientific innovation and technology, and economic growth will continue at the current pace. Lula will also not be able to guarantee to small and medium sized that they will have the technical capacity to compete internationally. The government is also under pressure to maintain positive relations with the United States, Brazil's largest trade partner, and some hope that President Lula's stance on property rights does not harm the relationship.

In conclusion, Brazilian businesses and investors in biotechnology, pharmaceuticals, chemicals, software, automobile and aeronautical sectors should ask themselves if the patents, commercial secrets and copyrights they currently enjoy will be next in Lula's sights.