

Patent And SMEs In Latin America: Colombia

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The “Promotion of technological development and innovation” is one of the policies set by the Colombian Government for the growth of the country’s economy with the objective of strengthening the national business sector through innovation.

About 10 years ago, a comprehensive overview of the status of innovation in Colombia showed low investment in the activities of *science, technology and innovation* (hereinafter STI) in addition to the low participation of Colombian nationals in the Industrial Property System, namely the protection through patents of invention.¹ It was found that the tax benefits introduced since the 90’s were not stimulating investment in STI, and the main cause was the lack of knowledge of nationals about how the Intellectual Property System operates in our country.

Thus, in 2008, public policies aimed at strengthening Intellectual Property began to be introduced, notably *Conpes 3533 of 2008*² which recommended the implementation of training activities, manuals, bulletins to disseminate knowledge about the Intellectual Property System between these nationals, it also recommended the strengthening of the institutions responsible for administrating the system, to make its work more efficiently.

Following similar lines, *Conpes 3834 of 2015* established the need to introduce tax deductions and improve the conditions and alternatives for access to tax benefits. In addition, it was recommended to enable early stage companies and SMEs to make deductions when they invest in STI. Although presently they do not generate net incomes, they will be able to deduct

investments in innovation in the future when they must pay income tax. However, this benefit is only applicable within the following four taxable periods according to *Law No. 1819 of 2016*.

In addition, in the *National Development Plan*³ for 2014 to 2018 approved by *Law No. 1753 of June 9, 2015*, it was established within the Government policies: “To promote technological development and innovation as an engine of business growth and entrepreneurship” with the objective of increasing the use of the Industrial Property System for innovation activities, aiming to increase the number of patent applications filed by nationals, and leaving the Government agency Colciencias the task of developing programs to support patentability procedures in companies, universities, research and technological development centers, as well as citizens. In addition, it was set as a goal that investment in STI would reach one percent of GDP by 2018, starting from an estimated investment in 2014 of 0.5 percent of GDP.

Consequently, new changes were introduced to implement the public policies, among which we consider necessary to emphasize the following:

1. Regarding the Superintendence of Industry and Commerce (hereinafter SIC) which is the entity in charge of administering the Industrial Property System:

1.1 Reorientation of the entity’s mission; in addition to being the authority in charge of granting industrial property rights, it also has a pedagogical objective of promoting knowledge about the Industrial Property matters, for which the following programs have been developed:

- Creation of the Intellectual Property Academy (IPA) in 2011, which organizes training activities for the promotion and generation of a culture of protection, use and utilization of the Intellectual Property system. The micro and small companies that attend the courses of IPA have a discount of 25 percent in the official fees for the industrial property proceedings.

3. The *National Development Plan* is the plan that the President of the Republic presents to Congress at the beginning of his term with the guidelines of the Government. The topics should include political, economic, social and security issues of the country. Once Congress approves the Plan, the President and his work team must begin to develop the policies that lead to compliance with it. (For additional reference, please consult http://www.banrep cultural.org/blaavirtual/ayudadetareas/politica/plan_nacional_de_desarrollo).

1. Report of the “Superintendence of Industry and Commerce” published in *Industrial Property 2020*, according to WIPO, in developed countries more than 50 percent of the patent applications are filed by residents of the country. For instance, in Spain more than 90 percent of patent applications have been filed by nationals in recent years. On the other hand, in emerging economies WIPO suggests that this figure is around 20 percent. In Brazil and Argentina, the participation has been close to 20 percent, while in Chile it has been around 10 percent in recent years. Unfortunately, in Colombia that figure has not reached even eight percent.

2. The *National Council for Economic and Social Policy*, known by its acronym CONPES, is the highest planning authority and serves as an advisory body to the Government in all aspects related to the economic and social development of the country and it also coordinates the related agencies for decisions on economic and social policy (For additional reference, please consult <https://www.dnp.gov.co/CONPES/Paginas/conpes.aspx>).

- Creation of the SIC Móvil project in 2011, whereby officials of the entity travel to various cities in the country in order to promote the services provided by the entity in the field of Industrial Property.
 - Granting jurisdictional functions to the SIC through *Law No. 1564 of 2012*, creating a judge specialized in Industrial Property issues. These kinds of functions were also granted to the National Direction of Copyrights. Thus, these specialized judges encourage protection, as it strengthens the system of enforcement in relation to acquired rights.
- 1.2 Greater efficiency in the administration of the Industrial Property System, for which a new technological platform was implemented and began operating on July 18, 2016 and allows the online filing of Industrial Property proceedings, including patent applications, with the purpose of facilitating such procedures for the users. An estimated discount of 18 percent in official fees is applicable for the online filings this year.
- An online filing platform was also implemented in the National Direction of Copyrights.
- 1.3 Micro, small and medium-sized enterprises have an additional 25 percent discount on official fees for the filings of industrial designs and layout designs for integrated circuit applications and the petitions of the patentability exam for patents of invention and utility models.

It is necessary to note that the fees for the filing of patent applications have been reduced since 2013. In 2012, the filing fee for a patent application was USD \$205.00, and in 2013 the fee was USD \$174.00. The big decrease was in 2016 when the rate was reduced to USD \$28.00, and in 2017 the rate is still quite low at USD \$31.00.

- 1.4 In addition, SIC is part of several programs to encourage STI such as:
- *Technology and Innovation Support Center Program* (hereinafter TISC), which comes from WIPO to facilitate access to information and technology services. Currently, these centers are located in Bogotá, Palmira, Barranquilla, Ibagué, Neiva, Quibdó, Medellín, Pereira, Popayán, Cali, Cartagena, Bucaramanga, Rionegro and Manizales. During 2016, 3,909 consultations on Industrial Property were handled, 305 projects were identified as eligible for protection, and 143 patent applications, four industrial design applications and 344 trademarks were filed through this program.⁴
 - *The Inventor Assistance Program* (hereinafter IAP), which is a project that comes from WIPO and WEF (the World Economic Forum), has the purpose of putting in contact inventors and small businesses with limited financial resources with attor-

neys specialized in Intellectual Property matters to receive legal advice during the prosecution of their patent applications without any charge. The program in Colombia is coordinated through the TISC and the *Center of Technological Information and Support of the management of the Industrial Property* (hereinafter CIGEPI), which is a unit within the SIC in charge of providing technological information services and specialized guidance on *Industrial Property issues and Technology and Innovation Support Center Program* (TISC).

Since the end of 2015, 22 projects have participated, 11 have been selected, seven were already filed as patent applications and the other four inventions are still in drafting to be filed as patents shortly.⁵

In fact, TRIANA, URIBE & MICHELSEN's team, through its partner Fernando Triana accepted by WIPO to be part of the legal advisors offered by the program in Colombia, advised a natural person with the drafting of the patent application, the application was then filed and the firm handled the prosecution of the patent application without any charge for professional fees. The only expenses taken on by the inventor relates to the official fees, which have had significant discounts as previously noted.

2. Strengthening of Colciencias, which through *Law No. 1286 of 2009* is the National Administrative Department of Science, Technology and Innovation, having its own budget, and executing public policies for the promotion of science, technology and innovation including the alliance with diverse sectors to promote areas of knowledge that are essential to the development of the country. Currently, Colciencias is leading the following programs:
- Patents Brigade, began in the third quarter of 2015 with the purpose of finding innovation projects and co-financing the protection of such projects as patent applications, mainly working through universities, research centers, technology development centers, companies and independent inventors. However, it only operates in five cities (Bogotá, Medellín, Cali, Barranquilla and Bucaramanga), therefore, it was necessary to carry out

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4. Figures taken from the TISC report for the year 2016 which was provided by the CIGEPI.

5. Figures submitted by the CIGEPI.

an operation covering the national territory, which is intended to be covered by the Strategy National Convention for the Protection of Inventions.

- *National Strategy for Protection of Inventions*, being a program led by Colciencias, SIC and INNpulsa Colombia (Business Growth Management Unit of the National Government, created in February 2012 to promote entrepreneurship, innovation and productivity). The purpose is to increase the number of patent applications in the country, with the main attraction of financing up to 90 percent of the total costs of the patent application. In the first phase, 29 patent applications will be filed before SIC in the first half of 2017, and in the second phase, they intend to cooperate with at least 36 additional patent applications.⁶

The public policies will be measured in 2019, to analyze their effectiveness from 2014 to 2018, however, please note what the statistics show us up to this moment.

According to information available in the SIC,⁷ in 2008 the number of patent applications was 2,031 of which 125 were filed by residents, while 1,906 were filed by non-residents, which means that only six percent of applications were filed by Colombian residents.

In 2016, the number of patent applications was 2,203⁸ of which 545 were filed by residents and 1,658 were filed by non-residents. In other words, the percentage of patents filed by residents was 25 percent, which shows an increase in the participation of residents in the Industrial Property System, concerning patent applications. Such an increase, of course, has been possible due to the measures taken by the Government to promote the knowledge and the use of the System of Industrial Property, including the increase of investing in STI.

In 2006, the investment in STI as a percentage of GDP was 0.401 percent, a figure that timidly grew year after year until it eventually reached 0.711 percent by 2016. The investment in research and development, as a percentage of GDP, was slightly increasing by 0.149 percent per year and reached 0.271 percent in 2016.

After reviewing the origin of the investments within the period 2006–2016,⁹ 53.67 percent came from

the public sector, 44.53 percent came from the private sector and 1.80 percent came from international resources, increasing the investment in the head of the private sector, since in 2006 the average investment was 41.93 percent, a figure that has been progressively increasing until 2016 with an investment percentage of 53.22 percent.

In addition, if we focus on R&D activities, while in 2006 the private sector investment was calculated at 41.93 percent, the figures increased to 53.22 percent in 2016, however, a statistic is not found that allows us to determine how much of that private investment corresponds to small, medium or large companies.

Speaking to one of the legal advisors of the *Colombian Association of Micro, Small and Medium Enterprises in Bogotá* (ACOPI), Mr. Pedro Alarcón, said that the insight from the association is that the small and medium enterprises do not know the System of Industrial Property yet; the sector just until now is giving importance to the trademarks and in general speaking to distinctive signs, and concerning innovation, this matter is seen as a something only achievable for large companies. In fact, according to the experience of this entity, they do not receive doubts or concerns about technology or innovation issues that their partners take to the association to receive guidance.

In addition, small and medium enterprises struggle every day to meet with all the regulations imposed to have formalized businesses and to see how their products and/or services can be sold, therefore, they don't have the time to even think about innovation.

The aforementioned allows us to conclude that even when there are public policies, and indeed measures, that have been taken to create a consciousness about the importance of innovation for entrepreneurs and in general for the citizens, for now, it seems that small and medium enterprises are still far from receiving the message since many of them still ignore the Industrial Property System, and do not even consider what kind of technology is available in the relevant sector and much less are in a position to innovate since they are dealing with the urgent things of each day, putting aside important things like innovation as key not just for expanding but even for maintaining the businesses in the market.

Therefore, the pedagogical activities have not yet properly reached the SMEs, detecting that there still exists a lack of knowledge and dissemination about the Industrial Property System, and that entrepreneurs indeed learn about all the programs developed for STI and its benefits, without ignoring the efforts that have been made to-date, but unfortunately such programs are not being effectively used, namely by small and medium-sized enterprises. ■

Available at Social Science Research Network (SSRN): <https://ssrn.com/abstract=3009345>

6. Figures included in the statement of the Director of Colciencias, Mr. Alejandro Olaya, available at <https://www.innpsacolombia.com/es/entrada/en-marcha-segunda-fase-de-la-estrategia-nacional-para-proteccion-de-inventiones>.

7. Statistics from OCyT (Colombian Observatory of Science and Technology), <http://ocyt.org.co/es-es/InformeAnualIndicadores>.

8. Statistics from SIC, <http://www.sic.gov.co/sites/default/files/files/Propiedad%20Industrial/Estadisticas/PATENTES-2016-Ver-2017-01-14.pdf>.

9. Statistics from OCyT (Colombian Observatory of Science and Technology), <http://ocyt.org.co/es-es/InformeAnualIndicadores>.