

FEDERAL COURT OF APPEALS FOR THE 2ND CIRCUIT

APPEAL NO. 5095710-55.2021.4.02.5101/RJ

REPORTING APPELLATE JUDGE: FEDERAL CIRCUIT JUDGE SIMONE SCHREIBER

APPELLANT: ABPI – BRAZILIAN INTELLECTUAL PROPERTY ASSOCIATION
(PLAINTIFF)

APPELLANT: THE FEDERAL UNION (DEFENDANT)

APPELLANT: BPTO – NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY
(DEFENDANT) APPELLEES: THE SAME

CASE SUMMARY

ADMINISTRATIVE AND CONSTITUTIONAL. CIVIL APPEAL. PUBLIC CIVIL ACTION. INDUSTRIAL PROPERTY. STRUCTURAL NON-CONFORMITY OF THE BPTO. JUDICIAL INTERVENTION IN PUBLIC POLICIES. APPEALS DENIED.

I. CASE UNDER REVIEW

1. Civil appeals filed by the Federal Administration and the BPTO, as well as a cross-appeal by ABPI, against a judgment that partially granted a public civil action filed by ABPI aiming to correct the state of institutional non-conformity of the BPTO. The main request seeks to compel the BPTO to draft a detailed plan for the improvement of its activities and the Federal Administration to transfer the full revenues collected by the BPTO, ensuring sufficient resources for the plan's execution.

II. QUESTION UNDER DISCUSSION

2. There are two issues under discussion: (i) defining whether the state of non-conformity in the BPTO's operations justifies the intervention of the Judiciary to determine the adoption of structural measures; (ii) establishing whether the Federal Administration is obliged to transfer the full revenues collected by the BPTO to guarantee its financial and operational autonomy.

III. REASONS FOR THE DECISION

3. Judicial intervention in public policies is exceptional and is justified in the face of state omission that compromises fundamental rights, in accordance with the Supreme Federal Court (STF) understanding in RE No. 684.612 (Theme 698).

4. The BPTO's state of non-conformity – evidenced by structural deficiencies such as staff shortages, high turnover, budgetary insufficiency, and technological inefficiency – harms the protection of industrial property,

constituting a violation of the fundamental right provided for in Art. 5, XXIX, of the Federal Constitution of 1988.

5. Although the BPTO's revenues have the nature of a "public price," there is no absolute right to the full amount of these resources, as they are subject to the Federal Administration's budgetary control, in accordance with the legal regime of autarchies and current budgetary legislation (Law No. 4.320/64).

6. The Judiciary cannot impose upon the Federal Administration the transfer of 100% of the BPTO's revenues, but it can determine the transfer of the resources necessary for the implementation of the restructuring plan, respecting fiscal balance and administrative discretion.

7. The original judgment respected the separation of powers by determining that the BPTO must draft a restructuring plan, while it falls to the Federal Administration to ensure the resources necessary for its execution, without imposing specific administrative management measures.

IV. PROVISIONS AND THESIS

8. Appeals denied.

Judgment Thesis:

1. Judicial intervention in public policies is permitted when state omission that compromises fundamental rights is proven, provided that the limits of the separation of powers are respected.
2. The BPTO must draft an institutional restructuring plan based on a technical diagnosis, and the Federal Administration must ensure the resources necessary for its implementation, without this implying the full transfer of its revenues.
3. The BPTO's revenues, although of a non-tax nature, integrate the Federal Administration's budget and are subject to budgetary control; it is not possible to judicially impose the total decoupling of these resources.

RULING

Having seen and reported these records in which the above-indicated parties are involved, the 1st IP Specialized Panel of the Federal Court of Appeals for the 2nd Circuit decided, unanimously, to DENY the appeals filed by the Federal Administration and the BPTO, as well as to the cross-appeal filed by ABPI, and, *ex officio*, to correct the timeframe provided in the provisions of the first-instance final decision, pursuant to the report, votes, and trial notes that are part of this ruling.

Rio de Janeiro, March 3, 2026.

SIMONE SCHREIBER Reporting Appellate Judge