

The State of Intellectual Property in Latin America

Legal trends, economic
development and trade

THE STATE OF INTELLECTUAL PROPERTY IN LATIN AMERICA

LEGAL TRENDS, ECONOMIC DEVELOPMENT, AND TRADE

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The State of Intellectual Property in Latin America:
Legal Trends, Economic Development, and Trade.
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B&R Latin America IP

B&R is an Intellectual Property law firm with a continental practice and 10 years of experience. It handles cases on Spanish speaking Latin American countries on issues of Trademarks, Patents, Copyrights and a variety of related IP issues. The firm has unparalleled expertise in management of Patent Portfolios and cross-border management of IP assets. This report has been elaborated thanks to the firm's experience, to its IP attorneys network, and a team of IP researchers. The firm is an active member of the Colombo-American Chamber of Commerce –AMCHAM–, The International Trademark Association –INTA–, the Colombian Association for IP –ACPI–, the International Chamber of Commerce –ICC– and the Public Interest IP Advisors –PIIPA–.



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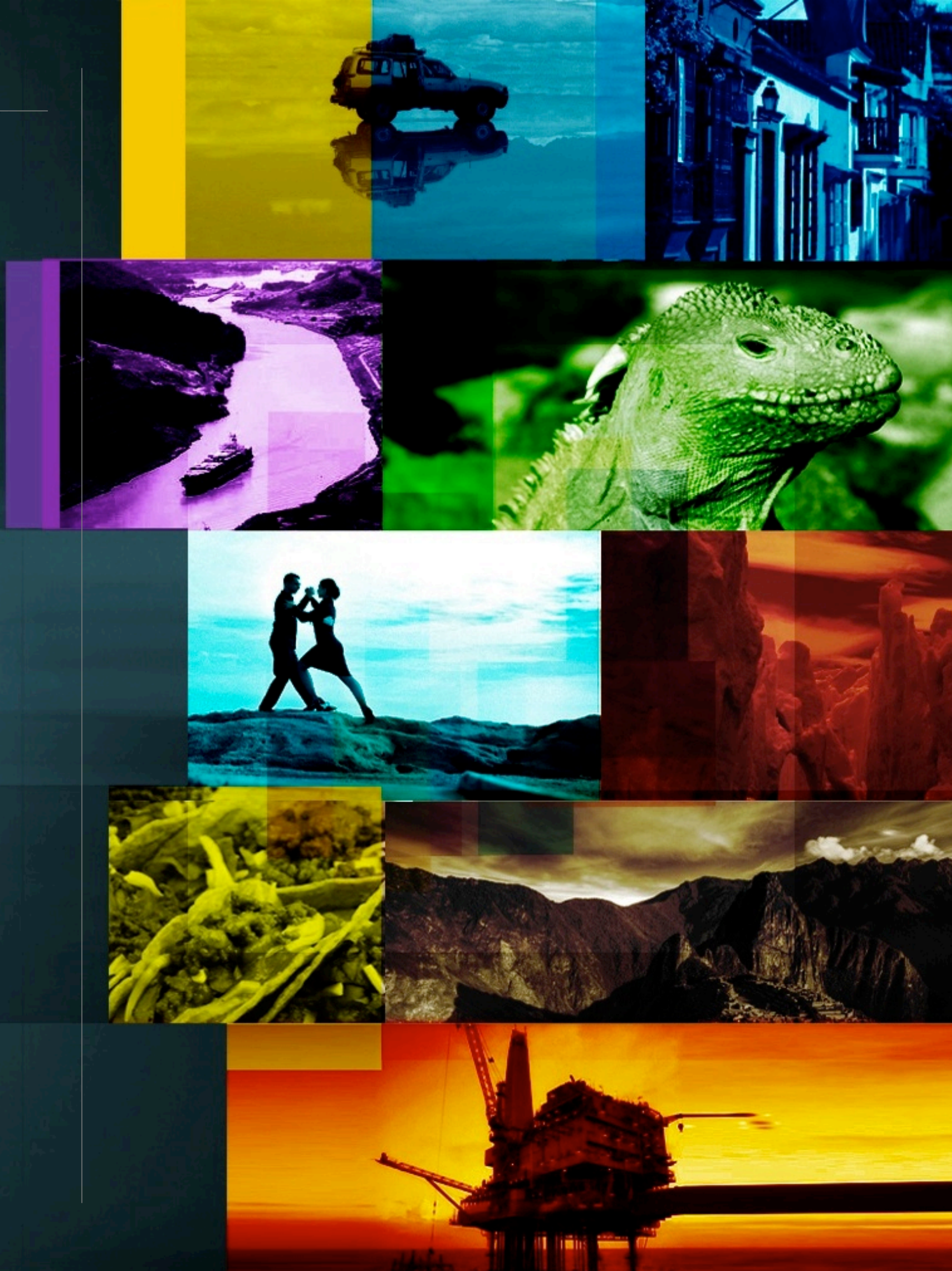
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INTRODUCTION

Introduction - Latin America in Perspective



Introduction: Latin America in Perspective.

Latin America has seen an explosion of productivity in the realm of intellectual property (IP) in the form of patents, and trademarks, although other forms of IP have seen strong growth as well.

Interestingly, very few scholars have analyzed the current state of intellectual property protection in the region. However, in today’s knowledge-based information economy, intellectual property rights are poised to spearhead the region’s future growth. Trade and foreign investment-friendly policies implemented since the 1990s have paved the way for legal reforms strengthening intellectual property rights. As nations, institutions, and firms have come to appreciate the value of non-physical assets in the information age, the region has gradually stepped up its protection of intellectual property rights. These reforms in the region have borne fruit, as shown by rising intellectual property applications, productivity, and investment from abroad.

This report focuses on the current state of intellectual property protection in Latin America and examines how the region arrived at this point. Specifically, the report explores the significant economic and legal trends that Latin America has experienced, looking at historical data to pinpoint when and where growth and change has been most significant. This report will dissect the data to attempt to pinpoint and analyze the causes of these trends.

To give a brief description of the findings of this report, it will look at the regional and national systems in place for protecting intellectual property, and will explain how these systems have been strengthened and will continue to do so in the future. Furthermore, the paper will discuss the influence that international trade agreements and intellectual property treaties have had on IP systems in Latin America. These sections will provide the groundwork for dissecting the state of IP in the region. Furthermore, this section of the paper will explore the strengths and weaknesses of intellectual property law in the region generally, and provide a vision for the future of business and IP in Latin America.

Then, the paper will take a detailed look at two specific forms of IP protection: patent protection and trademark protection. This section will examine the region’s major trends with these two forms of IP.

Despite its reputation as a region which has historically shown disdain for copyright protection, Latin America is strengthening its efforts to promote this sort of creative activity.

Next, the report will explore which Latin American nations are most successful in IP, legally and economically, and will pinpoint which nations need to improve their regimes of protection. This section will spotlight specific Latin American nations, and specific industries, to illustrate positive and negative examples of intellectual property protection in the region.

The road behind

Protection for intellectual property in Latin Americaⁱ, though a seldom-studied topic, is extremely interesting because of the roundabout path the region has taken to come to its current position. In the past three decades, the region has transformed itself from one lacking in serious IP protection to become one of the fastest growing IP sectors in the world. In addition, the region has become extremely attractive to foreign investors. What has emerged is a favorable state of IP protection in an area that is experiencing positive trends, creating economic opportunities that were mostly non-existent in the 1970s. As this report will explain, it appears that the region is poised to continue these positive trends, as protection is only strengthening throughout the region. For inventors, investors, and creators, both foreign and domestic, these developments mark a new era of prosperity for Latin American intellectual property industries.

In order to fully appreciate the current state of intellectual property in Latin America, one must understand the historical context from which these rights have evolved. Latin America is not a region with a history of holding IP rights as a priority, and compared to other IP markets such as the United States and Europe, the IP protection and exploitation in Latin America has plenty of room for growth and improvement. With this context in mind, the region’s development of effective IP rights and a growing culture of respect for IP in an extremely short amount of time are nothing short of revolutionary. Additionally, while some problems remain in the region with regards to enforcement and piracy, the youth of the region’s IP system should be seen as a sign of the vast potential for growth in Latin America’s IP markets as reforms take root.

Several factors have combined to create the framework conditions for strengthened intellectual property rights protection and have laid the groundwork that has made the region attractive for international trade and foreign investment.

GRAPH 1 Latin American Trade Blocks
(Andean Community / Mercosur / NAFTA / DR-CAFTA)



The Andean Community

The policies behind intellectual property rights in the Latin American community have shifted drastically in the last three decades. The predominant ideology in the region shifted from one of isolationism and trade substitution to one of trade liberalization and market openness. This shift can be seen most prominently in the views of the Andean Community of Nations regarding the protection of intellectual property. A brief case study of the Andean Community and intellectual property serves to illustrate the greater changes that have been seen throughout the entire region.



In 1969, several countries of Latin America formed a trading block now known as the Andean Community of Nationsⁱⁱ by entering into the Cartagena Agreement. Modeled on the European Economic Community, the Andean community eventually created a judicial body called the Andean Tribunal of Justice in 1979, which was modeled after the European Court of Justice.ⁱⁱⁱ The Andean Court of Justice is now the third most active international court.^{iv}

The Andean Community was organized by the then underdeveloped nations of Western South America to promote regional economic growth, to control foreign investment, and to harmonize national laws. From its beginnings, the regulation of intellectual property within its member states has been an integral goal of the Andean Community, and this goal is specifically addressed in the Cartagena Agreement.

The Cartagena Agreement organized the Andean Community as a supra-national body with legislative, executive, and eventually judicial bodies. Member states have delegated the Community the authority to create legislative enactments known as "Decisions", and at the regional level these Andean Community Decisions trump inconsistent domestic laws. The Decisions of the Andean Community are meant to act as the domestic laws of the member countries rather than to serve as a broad treaty.^v

The Andean Community has the right to issue Decisions, and to issue preliminary rulings interpreting their own Decisions for courts at the national level. However, unlike European Patent Office and similar regional registration systems, the Andean Community does not possess a regional registration office.

Notably, Mercosur, or the Southern Common Market, is another South American trading bloc founded in 1991 with the Treaty of Asuncion. The Success of the Andean Community can be seen in contrast to the relative failure of Mercosur.^{vi} Mercosur's membership consists of Argentina, Brazil, Paraguay, Uruguay, and new member Venezuela. However, this institution acts more specifically as a customs union, and it has not exerted the same domestic law making power as the Andean Community. Mercosur did not finalize its common customs code until 2010. Additionally, unlike the Andean Community, in the past Mercosur has swayed to national pressure by regularly permitting politically negotiated settlements to the trading bloc's rules.^{vii} While designed to open up markets in the formerly protectionist region, Argentina, Brazil, and especially new member Venezuela have recently instituted some protectionist policies. Therefore, despite strong IP markets in most of its member nations, most notably in Brazil, the region has not seen the same enthusiasm for pro-IP and liberal market reforms as have Andean Community nations.

Additionally, Mercosur was formed much more recently, making it difficult to examine Latin America's long term development through the lens of Mercosur. Nevertheless, many of the regional trends discussed below mostly apply to Mercosur's member nations as well due to common economic and international pressures, and the domestic IP laws of Mercosur's members have largely been strengthened in accordance with regional trends. However, for clarity these regional trends will be discussed in reference to the Andean Community. The individual nations of Mercosur will be discussed in the sections that follow.



The Trade Substitution Era

For its first few decades, the Andean Community practiced import substitution policies in order to protect national industries. Fearing that foreign investment would harm less developed Latin American nations whose domestic industries may not be able to compete, the region looked upon intellectual property rights as inherently suspicious instruments of foreign imperialism. The overall success of these protectionist policies has been questioned. However, it is clear that subsequent events would shift the views of the Andean Community towards policies more favorable to foreign investment and stronger intellectual property protection.

The early Decisions highlighted the importance of the region's economic and development goals and deemphasized the property rights of investors accordingly. These decisions placed extensive licensing restrictions and regulation on IP protection for foreign inventors, and patents and trademarks were largely treated as a mechanism for transferring technology from foreign firms.^{viii} The protection granted to patents and trademarks was minimal until the 1990s.

Forces of Change

In the early 1990s, the Latin American region's former isolationist policies experienced a dramatic shift in favor trade liberalization and foreign investment. Several factors combined to facilitate these pro-IP developments.

First, Latin America experienced a debt crisis in the late 1980's that pushed the Andean Community to the threshold of failure.^{ix} This crisis created substantial economic leverage for the Inter-American Development Bank, the World Bank, and the IMF.^x These institutions conditioned the receipt of funds with very favorable credit terms on a series of reforms to liberalize and deregulate the region. These policies, known as the Washington Consensus, pressured member states and the Andean Community to adopt liberal market reforms to create open economies. Furthermore, these market reforms were combined with specific efforts to strengthen intellectual property rights in the Andean community.

The debt crisis, pressure from international financial institutions and the emerging international trade system pushed reform in Latin American countries

Second, the other major factor which influenced the evolution of intellectual property rights in the region, along with the Latin American debt crisis and the reforms encouraged by the Washington consensus, was the emerging international trade system. The emergence of the WTO and TRIPS along with regional and bilateral trade agreements placed pressure on Latin America to conform to international standards of intellectual property protection. The doors to foreign investment and IP protection that had been cracked open by the Washington Consensus reforms were flung open by the adoption of TRIPS. By 1994, the Andean Community's intellectual property law was mostly compliant with the requirements of TRIPS, which largely adopted the international standards of protection dictated by the Paris Convention on the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, long recognized in Europe and other nations.

Summary of Andean Intellectual Property Decisions 1974-Present

Decision Number	Summary	Date
Decision 24	Extensive regulation and licensing restrictions on IP for foreign investors	1970-1991
Decision 85	Granting minimal protection to trademarks and patents	1974-1991
Decision 291	Reducing regulation and licensing restrictions in IP of foreign investors	1991-Present
Decision 311	Modestly expanding TM & Pat protection, including pharmaceuticals	1991-1992
Decision 344	Making IP Rules mostly compliant with TRIPs standards	1994-2000
Decision 351	Common Provisions on Copyright and Neighboring Rights	1993-Present
Decision 486	Current IP Rules, updating procedures and enforcement mechanisms	2000-Present
*Source Islands of Effective Adjudication		

Andean states opposed strong IP protection, fearing that domestic industry would suffer. However, the region recognized that complying with international standards of IP protection embodied in TRIPS would be Latin America's ticket to the emerging global trading party.^{xi}

These legislative reforms on the regional level were coupled with institutional reforms on the national level. In the 1990s, Bolivia, Colombia, Ecuador, Peru, and Venezuela all restructured their domestic intellectual property departments in an attempt to modernize.^{xii} In 1992, Peru launched the National Institute for the Defense of Competition and the Protection of Industrial Property (INDECOPI), and Colombia restructured and greatly improved the Superintendent for

Industry and Commerce (SIC) in the same year. INDECOPI, SIC, and other national IP agencies received international aid from sources such as the USA, the IPII, and WIPO in the form of funding and training.^{xiii} This aid helped the systems to modernize, become more efficient, and build reputations as autonomous and consistent institutions that are committed to the rule of law.

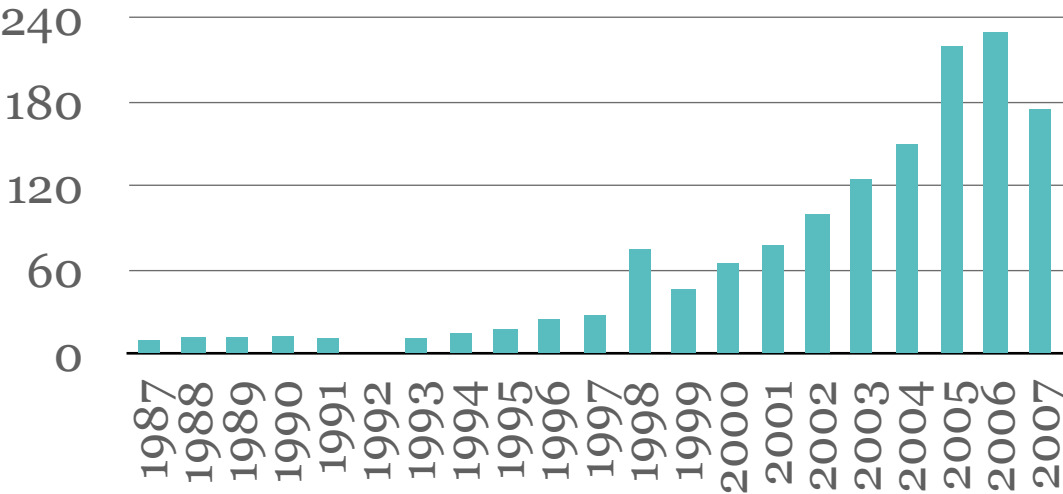
Effective Reform

Nevertheless, while regional and national governments can create laws that protect intellectual property rights, it does not necessarily follow that these rights are effectively enforced. Indeed, on a general level one can be concerned with the efficacy of the Andean Community and its member states in providing effective mechanism for the enforcement of these rights.

In spite of the need for increased enforcement of IPRs, the data and the literature show that the Community's protection of IP is especially effective and IP is seen as one of the victories of the Community, regardless of the efficacy of the Andean Community in other sectors where questionable success can be found.^{xiv}

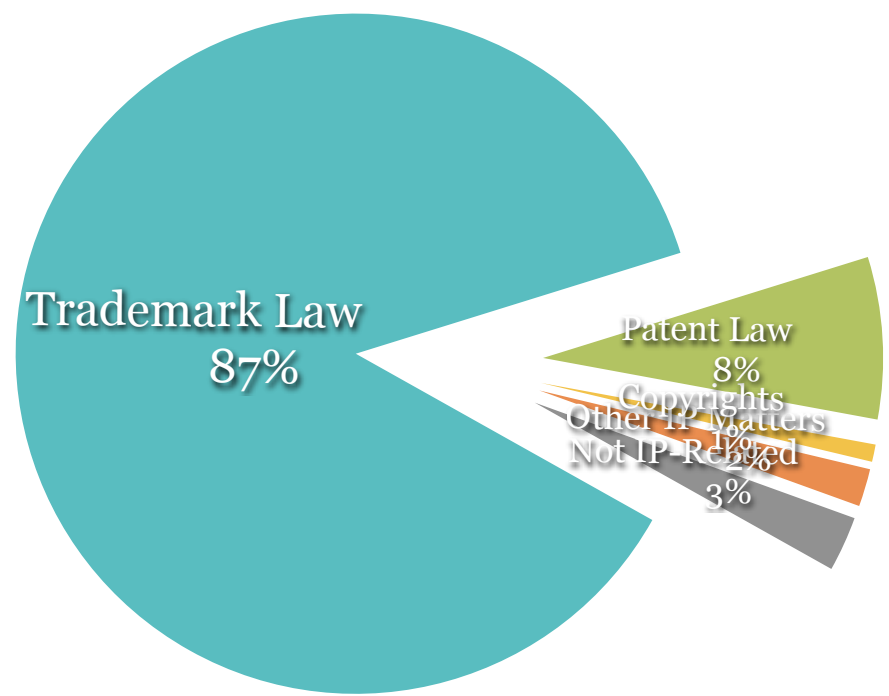
There are several reasons for the Andean Community's success in establishing an intellectual property legal regime. First, there are fewer loopholes in the construction of IP rules, leaving less room for individual member nations to interpret laws in questionable ways. Second, the Andean Tribunal of Justice has consistently interpreted its own law in an attempt to establish its reputation as a reliable court and to reinforce its authority over national courts. Third, the system has an effective mechanism of enforcement that allows for the settlement of disputes, which has reduced the need for extra-legal means such as bribery and corruption.^{xv}

GRAPH 2 Number of ATJ Preliminary Rulings 1987-2007



The Andean Tribunal of Justice is overwhelmingly dominated by IP rulings. 97% of Andean preliminary rulings through 2007 involved intellectual property issues. Of the 1338 Tribunal rulings through 2007, 1165 (87%) address trademark rules, 103 (8%) involve patent rules, 11 (>1%) address copyrights, and 24 (>2%) address other types of IP. Less than 3% of the Tribunal’s rulings come from an area outside IP.^{xvi}

GRAPH 3 Rulings of the Andean Tribunal of Justice by topics



Colombia has been the most active country in requesting Andean IP rulings, followed by Ecuador and Peru, and these countries continue to be the strongest IP markets in the Andean Community. On the other hand, Bolivia and Venezuela^{xvii} have not been very active in the ACJ; suggesting a lack of importance has been placed on IPR in those countries.

As will be shown, investors have voted with their feet, showing confidence in the legal system, with the numbers of patents and trademarks filed in the region exploding in the years following these reforms.^{xviii} The growing demand for IP protection and the increasing number of disputes regarding these rights shows that the region and its investors increasingly appreciate the economic value of these

rights. In the early and mid-1990s, most patent and trademark applications were uncontested, but by the mid-2000s the number of opposed applications outnumbered uncontested applications two-to-one.^{xix} That businesses and their counsels would take the time and expense to oppose an IP application suggests that they appreciate the economic value of these property rights and that the legal system in place is sufficient to protect those rights.

Consistently, a specialized IP bar has developed in the region to protect the intellectual property rights of their clients. Many more IP law firms exist in the region now than in the 1990s, and publications have arisen to aid practitioners.^{xx}

All of the above evidence suggests that effective reforms have created a reliable IP legal system in the Andean Community. However, while looking at the legal and economic development of the Andean Community helps to sketch the broad strokes for the development of IPR in the region, it is also necessary to investigate developments on the national level, including those nations outside the Andean Community.

Regulatory Framework

Trade and IP

Clearly, the trend in the region is towards stronger IP protection, coupled with a more effective rule of law. The goal of these reforms is obviously to foster investment and innovation. However, from an investor’s standpoint, the economic gains from more effective IP enforcement coupled with deregulation of industry and access to markets with cheaper resources can easily be undone with restrictive tariffs and similar types of governmental intrusion. Therefore, an equally important factor in the equation has been the role of free trade agreements. The significant effects of free trade agreements in fostering the development of stronger intellectual property markets in Latin America have been based on two main factors: reducing tariffs and providing incentive for further legal reform.

WTO/ TRIPs and FTAs

On the national level, two dominating but interrelated factors that have led to favorable strengthening of intellectual property protection in Latin America—the growing importance of multilateral intellectual property treaties, and the emergence of free trade agreements. These reforms have reduced the barriers to entry for investment in Latin America.

With vast amounts of valuable natural resources and cheap labor, the Latin American region is a natural site for foreign investment. However, firms were reluctant to do business there because of the lack of protection for property, including IP, along with the threat of national appropriation. This barrier was coupled with isolationist policies that instituted costly tariffs in order to protect local industry.

By the mid-1990s, many of the Latin American nations had enacted legislation which made them at least nominally compliant with TRIPS. Desirous of funding from the Bretton Woods institutions and avoiding trade sanctions from commercial partners such as the United States, countries in the region largely adopted IP friendly legal reforms. Nevertheless, an additional factor emerged as a further catalyst for reform—free trade agreements. These agreements strengthened IP protection, encouraged institutional reforms, fostered private investment, and lowered the barriers to entry for firms to do business across borders.^{xxi} Perhaps the most significant aspects of free trade agreements are the provisions relating to the reduction of tariffs.

The implementation of lower barriers to entry in the form of reduced tariffs, along with the strengthening of domestic IP laws, has made the Latin American region extremely attractive for IP investment. The first Latin American nation to enter into a free trade agreement was Mexico with the ratification of North American Free Trade Agreement (NAFTA) in 1994. Since then there has been a proliferation of free trade agreements in the region.

Implementation of lower barriers to entry in the form of reduced tariffs, along with the strengthening of domestic IP laws, has made the Latin American region extremely attractive for IP investment.

Mexico is undoubtedly one of the region’s powerhouses. The country has succeeded in integrating with international markets (including FTAs with the USA, EU, Japan, Chile, Israel, Canada, Colombia, and several others). Other trade agreements in the region are more recent, and therefore data is limited. However, the gains that have been experienced by Mexico will undoubtedly be seen elsewhere in the region as these trade agreements bear fruit.

Importantly, several requirements for domestic IP reform are embedded within free trade agreements with the United States. In addition to the requirement for national treatment on all IP protection, the agreements contain obligations that require contracting parties to adopt several international treaties that dramatically strengthen IP protection and largely conform to international standards. The treaties parties must ratify include the WIPO Internet Treaties, the Patent Cooperation Treaty, the Trademark Law Treaty, and the Madrid Protocol, among others. These agreements are extremely important because they force the contracting parties to

modernize their intellectual property systems and to integrate with the international filing systems embodied in the PCT and Madrid System. These reforms are beneficial to both foreign and domestic firms, making it easier for foreign investors to obtain protection within the region and making it easier for domestic firms to obtain protection for their intellectual property internationally. Furthermore, strong IP rules that are effectively enforced give foreign investors the confidence to do business in the region.^{xxii}

Free Trade Agreements with the United States	
Contracting Party	Date Entered Into Force
Chile	1-Jan-04
Colombia	15-May-12
Panama	Signed and approved, not yet in force 12-Oct-11
Peru	1-Feb-09
Mexico	1-Jan-94
Dominican Republic (CAFTA-DR)	1-Mar-07
Costa Rica (CAFTA-DR)	1-Jan-09
El Salvador (CAFTA-DR)	1-Mar-06
Guatemala (CAFTA-DR)	18-May-06

Since the implementation of NAFTA, the region has seen a proliferation of free trade agreements. Bi-lateral free trade agreements have been entered into between the United States and Chile, Peru, Panama, and Colombia. Additionally, the region has implemented the Dominican Republic—Central America Free Trade Agreement (CAFTA—DR). Also, there have been proposals for the establishment of a free trade agreement with Ecuador.

Latin America is one of the the fastest growing trading partners with the United States.^{xxiii} From 1999 through 2009, total U.S. trade with Latin America grew by 82% compared to 72% for Asia (largely driven by trade with China), 51% for the European Union, 221% for Africa, and 64% for the world as a whole.^{xxiv} It is fair to attribute much of this growth to the trade liberalization and IPR reforms that are reflected in the free trade agreement model of the United States.

However, the United States is not the only government that recognizes the value of open trade with Latin America. Importantly, in the past decade the European Union (EU) and the European Free Trade Association (EFTA) have shown a large amount of interest in the region. The EU-Mexico Global Agreement was signed in 1998 and the EU-Chile Association Agreement was signed in 2002. Additionally, there have been talks between the EU and Mercosur, Andean nations

such as Colombia and Peru, and Central America. Additionally, the EFTA has entered into trade agreements with Mexico, Chile, Colombia, and Peru.

Free Trade Agreements with the European Union

<u>Contracting Party</u>	<u>Date Entered Into Force</u>
Mexico	1-Jul-00
Chile	Feb-03
Colombia	Signed 26-Jun-12
Peru	Signed 26-Jun-12
Mercosur	Negotiations Ongoing
Central America	29-Jun-12

Free Trade Agreements with the EFTA

<u>Contracting Party</u>	<u>Date Entered Into Force</u>
Mexico	1-Jul-01
Chile	1-Dec-04
Colombia	1-Jul-11
Peru	1-Jul-11

These developments show that the world is recognizing Latin America's economic potential and value as a trading partner. Furthermore, the regions market liberalization policies encouraged by the west have benefitted the region's trade as a whole. China has exploded onto the scene as a significant trading partner with Latin America.^{xxv} Between 1999 and 2005, China's imports from Latin America increased by a factor of seven and its exports to the region more than tripled.^{xxvi} China currently has free trade agreements with Costa Rica, Chile, and Peru.^{xxvii}

Free Trade Agreements with China

<u>Contracting Party</u>	<u>Date Entered Into Force</u>
Chile	Oct-06
Peru	Signed 28-Apr-09
Costa Rica	1-Aug-11

GRAPH 4 China's trade with Latin America 1985 - 2005



Additionally, Asia's prominence in the region extends beyond just fast-growing China. Colombia entered into a free trade agreement with the Republic of Korea, already a large Latin American trading partner, on June 26th, 2012.^{xxviii} Over a ten year period, the agreement will remove 95.1% of tariffs on Colombian goods and 96.7% on South Korean goods.^{xxix} Additionally, Korea has free trade agreements with Peru and Chile while negotiations are ongoing with Mexico.^{xxx}

Free Trade Agreements with the Republic of Korea

<u>Contracting Party</u>	<u>Date Entered Into Force</u>
Chile	1-Apr-04
Peru	Aug-2011
Colombia	Signed 26-Jun-12
Mexico	Negotiations Ongoing

Current Regional State on IP

Emerging Player in the International System

As can be gathered from the above discussion, the major trend in the Latin American region has been towards openness and international cooperation. The benefits of membership within the international IP system can be illustrated by lessons learned from the Patent Cooperation Treaty (PCT), of which most Latin American nations are signatories. The PCT is an international registration system that makes it much easier for inventors to register their patents in multiple jurisdictions. Most Latin American states have acceded to the treaty, and these states have seen boosts in their patent applications as a result. Early adopters in the region, such as Brazil, which adopted the PCT in 1970, have accumulated significant benefits in the form of foreign applications and investment.

The benefits of the international system will continue to accrue in Latin America as the region becomes more integrated with international standards. Colombia recently became the first South American country to join the Madrid System of Trademark Registration, and all other countries with FTAs with the United States are required to eventually join the Madrid System as well. Working similarly to the PCT, the Madrid System allows for applicants to apply for a trademark in their domestic market, and subsequently this application can be extended internationally to any member of the Madrid System, making the process of filing in several international markets much easier. Other Latin American nations such as Brazil have expressed their desire to join the Madrid System, and as more countries in the region join the system the market for intellectual property will only improve.

The IMF predicted that Latin America's economy will grow by 3.7% in 2012, compared to 3.5% for the global economy.

Likewise, in terms of pure economic growth, Latin America is in a strong position. The IMF predicted that Latin America's economy will grow by 3.7% in 2012, compared to 3.5% for the global economy.^{xxxix} The effect of this economic growth will be the increased competition in the Latin American marketplace and more foreign as well as domestic investment, expanding the IP market and making strong protection of intellectual property even more necessary for businesses.

Foreign Investment in Latin America

In addition to the legal reforms of the 1990s in the region to strengthen IP protection, several other factors have combined to make Latin America attractive for foreign investment. By themselves, stronger IP laws would have done little to foster investment in the region. In addition, most Latin American countries have gone through institutional reform to privatize and deregulate many industries.

Importantly, the region has developed the framework conditions to take advantage of these legal and institutional reforms. Investors are concerned with factors that affect the level or risk associated with doing business in a particular location. There are location specific regions that make Latin America especially attractive for foreign investment, including new market potential, lower costs for production inputs, low inflation, openness to trade, and stable exchange rates.^{xxxiii} Additionally, the region has seen increasing investment in its broadband infrastructure and its information and communication technology (ICT), which provide the backbones for modern information economies.^{xxxiii}

However, market potential and stronger laws on the books are insufficient to address the fears of most investors. From a practical standpoint, many investors are concerned with the rule of law in the nations where they invest—factors which point to investors' desires for predictability. Investors desire secure ownership of their property and enforcement of contracts, both of which require impartial courts that will uniformly apply the law in similar situations. Additionally, investors are concerned with political stability and other governmental factors that may interfere with their ability to earn profits, such as taxes, corruption, and industry regulation.^{xxxiv}

Top 5 most important factors for determining whether if to invest in a country:

1. Adherence to rule of law,
2. Recognition and upheld of property,
3. High level of political stability,
4. To have a relatively efficient and effective court system,
5. Relatively low levels of government restrictions on investments and capital flows

A large portion of investment in the form of foreign direct investment comes from multinational enterprises. Studies on the major factors influencing the decisions of MNE's whether to invest in a particular nation illustrate the importance of Latin America's legal transformation in the realm of IP over the past 20 years. The protections of property interests, relative political stability, and openness to trade have paved the way for foreign investment. However, the emergence of independent judges and impartial courts in the field of intellectual property protection has given investors the confidence to exploit these favorable market conditions.^{xxxv} In a study on the most important factors relevant to CEO's of MNE's investing in the region listed the top five most important factors for determining if to invest in a country are 1) adhered to the rule of law, 2) recognized and upheld property rights, 3) had a high level of political stability, 4) had a relatively efficient and effective court system, and 5) had relatively low levels of government restrictions on investments and capital flows.^{xxxvi}

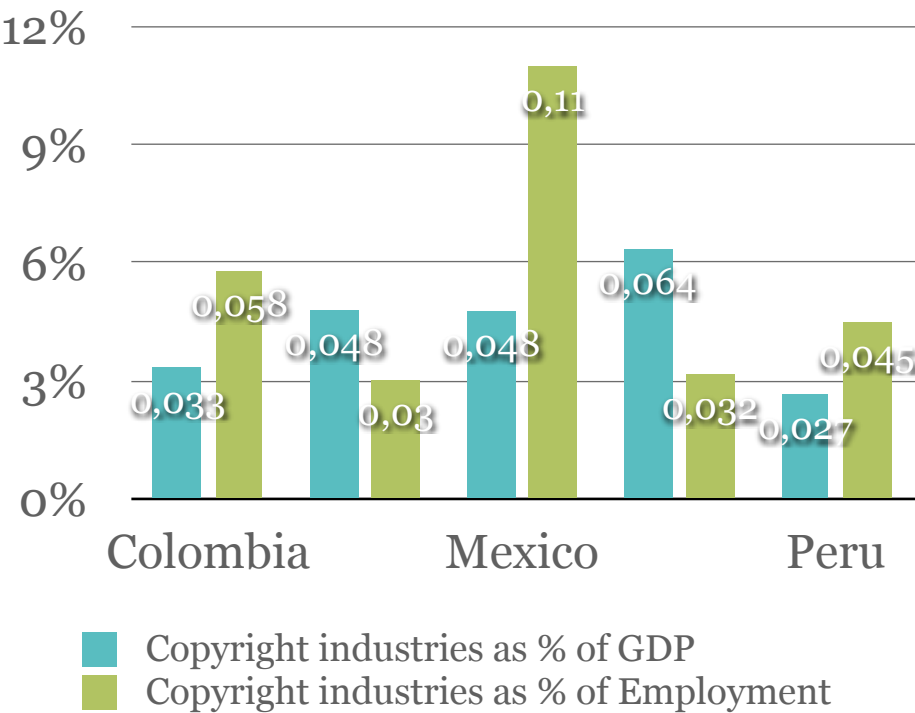
Copyright

While this report focuses on patent and trademark trends, the region’s copy-right laws have experienced similar trends towards stronger protection that is in line with international standards. However, anecdotal evidence suggests that the region has not developed the same culture of respect for the copyright industries as has emerged for industrial property rights, and copyright piracy through physical and digital means is a huge problem.^{xxxvii}

Nevertheless, the available data shows that the copyright industries are significant contributors to the economies of Latin American nations. As seen below, the data shows that as a percentage of the share of GDP (blue) and as a percentage share of employment (red), copyright industries significantly contribute to the region’s economies despite questionable enforcement of copyright laws.^{xxxviii} Against world averages of 5.4% of GDP share and 5.9% for employment share, the Latin American economies are performing admirably for a region that has historically downplayed the importance of copyright laws.

Hard data on copyright is limited. However, experts have said that the region has made great strides in terms of growing a culture of respect for copyright laws.^{xxxix} Specifically, it has been noted that Brazil, Colombia, Chile, Costa Rica, and Mexico have made strides in terms of enforcement, especially regarding software piracy.^{xl}

GRAPH 5 Economic Contribution of Copyright Industries (WIPO)



Moving Forward

The evidence shows that Latin America is doing well as a region. Despite the worldwide recession marked by the 2008 financial collapse, some countries in Latin America such as Brazil bucked the world trends by experiencing IP growth during this period.^{xli} The region’s resilience to the current worldwide economic downturn has made Latin American markets even more attractive centers for investment.

Market liberalization and positive IP legal reforms in the region have helped Latin America become an attractive region for foreign investment in intellectual property. However, the story does not end there, as some serious problems remain in the region regarding piracy and enforcement. Indeed, nine Latin American nations remain on the United States’ intellectual property watch list.^{xlii} Estimates of the economic value of lost revenue due to the region’s many different forms of IP piracy remain high.^{xliii}

US Industry Estimated Losses 2000-2004 in millions USD			
Country	Copyright	Pharmaceuticals	Counterfeit Goods
Argentina	134.5	203.6	
Brazil	960.9		
Chile	114.7		
Colombia	137.6		
Costa Rica	11		
Dominican Republic	15.3		
Ecuador	29.5		
Guatemala	8		
Mexico	852.2		1.96
Paraguay	137.8		
Peru	102.5	62	
Uruguay	9		
Venezuela	95	10	

*Source: Foreign Infringement of Intellectual Property Rights: Implications for Select US Industries

Piracy hurts not only foreign international inventors and creators, but also hurts domestic innovation and creativity and helps organized crime by fostering black markets. Furthermore, piracy has become a public health issue, with the emergence of pirated pharmaceuticals that do not conform to industry standards and sometimes contain harmful ingredients.^{xliv} Nevertheless, many domestic enforcement agencies in Latin America have recognized the evils that piracy brings with it and are making concerted efforts to reduce piracy in the region. Countries have engaged in a series of capacity building efforts, with the aid of the US PTO, the EPO, and WIPO, for the purpose of educating officials and updating systems to improve domestic IP institutions.^{xlv}

Recently, there has been a push towards regional integration, an extremely positive development with potentially huge ramifications for the efficiency and growth potential of the IP markets in Latin America.^{xlvi} The idea, which has been labeled PROSUR, proposes to coordinate and integrate the activities of the domestic IP offices in Argentina, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Suriname and Uruguay.^{xlvii} The preliminary agreement between the countries was signed on 5 July 2012, and Inter-American Development Bank is funding the project.^{xlviii} With the large increase in the number of patent applications in the region, the PROSUR agreement has the potential to drastically improve the efficiency of Latin America’s domestic IP offices.^{xlix}

<i>PROSUR - Regional Cooperation System on Industrial Property</i>
<i>CADOPAT - Support System for the Management of Patent Applications</i>
<i>e-PEC - Electronic Platform for Collaborative Examination</i>

A similar initiative for integration was created by the Mexican PTO. The web-based platform, labeled CADOPAT, shares the information from patent examinations with more than 9 countries from Central America, the Caribbean, and now Colombia. Unlike the PROSUR initiative, CADOPAT is a one-way flow of information, but once again it comes to demonstrate the desire for integration in the continent. Finally, Argentina and Brasil have created the e-PEC, which is a trilingual platform allowing the PTOs to exchange information on identical patent applications. WIPO has been close involved in these projects, providing their own experience with their WIPO Case Platform.

Unlike the US and Europe, where IP policy is embedded in the fabric of their legal systems, Latin American nations do not have longstanding histories and traditions of protecting intellectual property.¹ With this in mind, the strides that the region has taken in the field of intellectual property show that the regions culture and respect towards intellectual property have made a complete about face. However, that is not to say that the region is issue free. Looking forward, to fully take advantage of the global market, Latin America must ramp up its efforts to reduce piracy, increase its reporting capacity, and fully align itself with the global system.

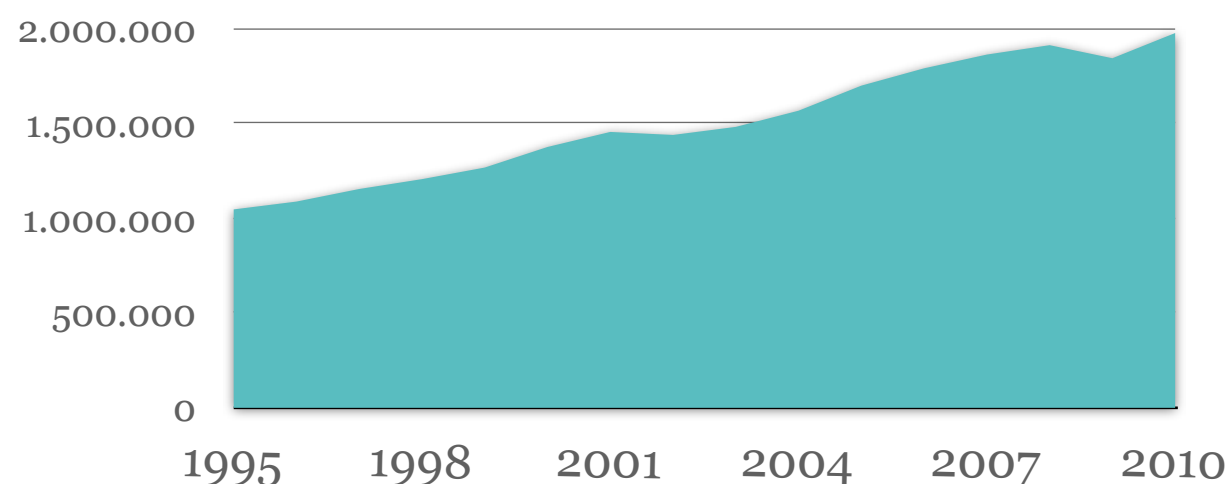
Chapter I - Trademarks and Patent trends in Latin America



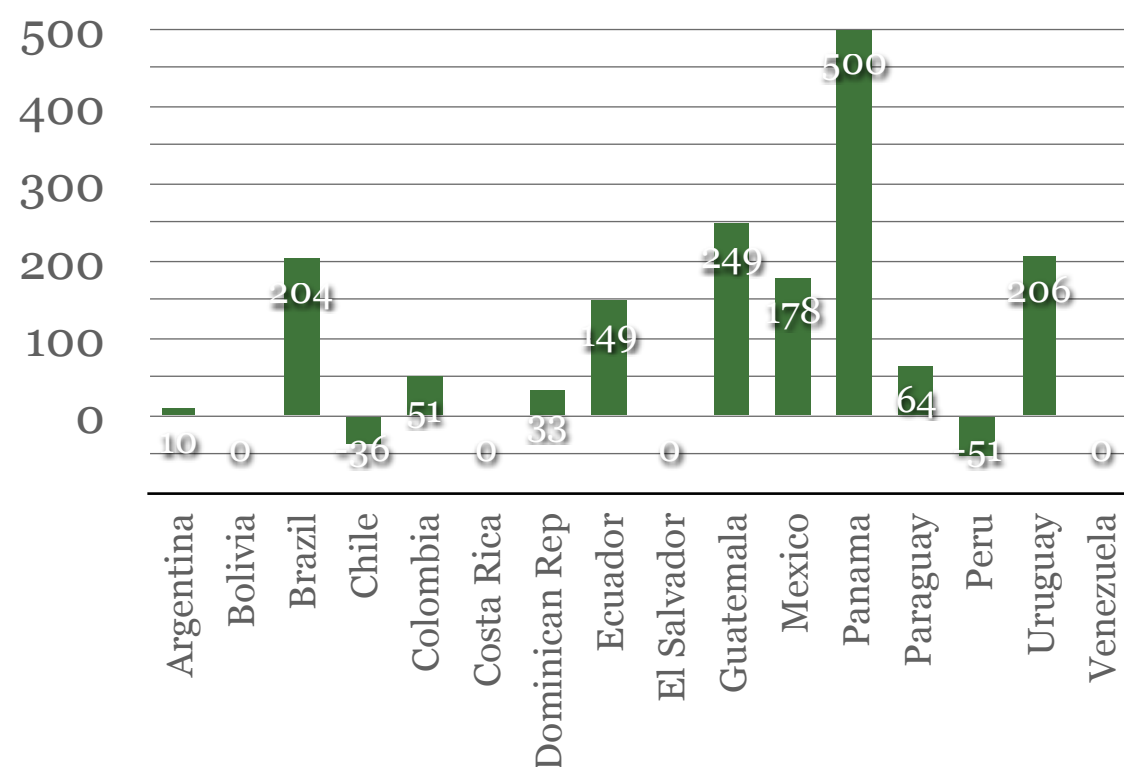
Part I: Trademark and Patent Trends in Latin America

Latin America has followed the trends of other Middle Income countries by experiencing significant growth in recent years. However, while much attention has been paid to the BRICS as emerging global economic forces, very few scholars have focused on the growth and potential in the Latin American region as a whole, and even fewer have focused this inquiry on intellectual property

GRAPH 6 Patent Applications Worldwide



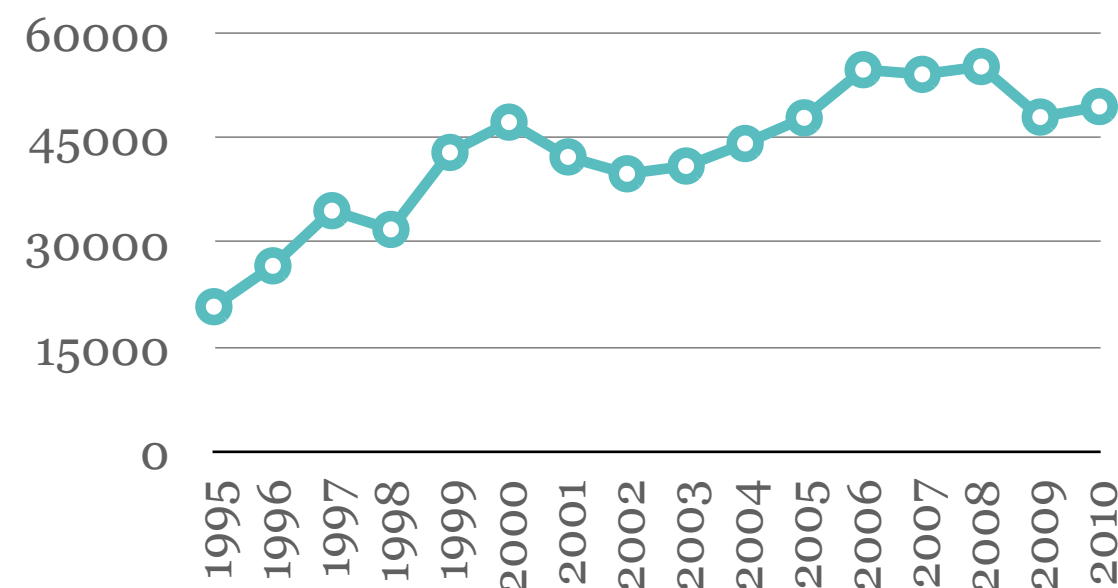
GRAPH 7 Patent Applications Growth 1995-2010



The case of Patents

Patenting has been the main driver of growth for the region's intellectual property market. Remarkably, for a region that 20 years ago had very few protections for intellectual property, patent growth in Latin America has outshined the world averages in recent years.

GRAPH 8 Latin America Patent Apps

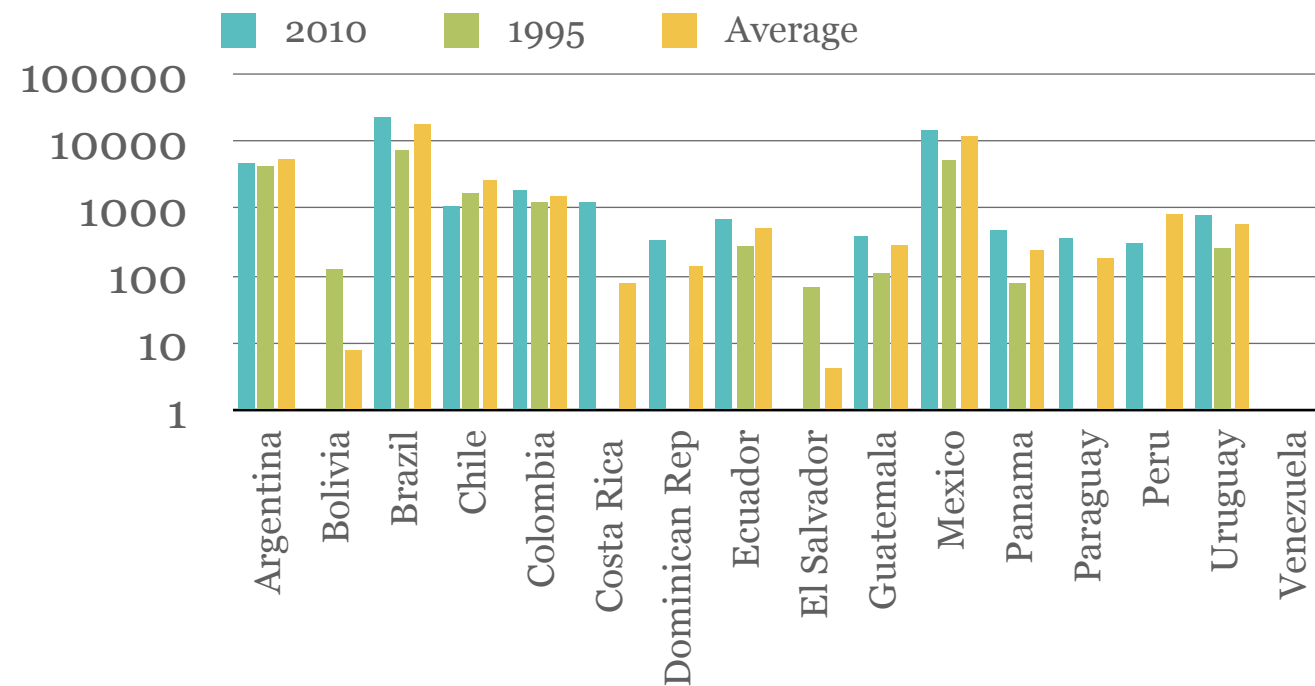


Since the mid-1990s, there has been an eruption of patent applications in Latin America. For the period between 1995 and 2010, the region experienced incredible growth of 137.91%, or 8.62% per year, based on all reported patent applications in the region. Over that same period of time, patent applications worldwide grew by 88.89%, averaging 5.56% growth per year.

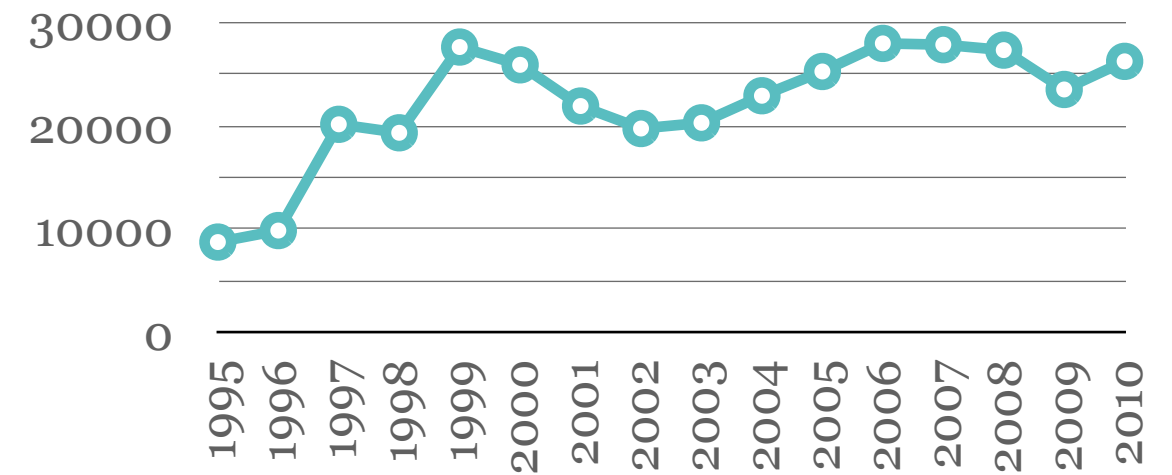
While domestic applications in the region have also experienced significant growth, the main driver of growth for patent applications in Latin America has been foreign patent applications. Clearly, foreign investors have responded to new economic opportunities in the region by taking advantage of the stronger IP protection that has evolved over recent decades.

If one isolates the patent applications in the region from select foreign nations, this growth becomes even more pronounced. Isolating the major innovative nations of the United States, Germany, China, Japan, France, and the Republic of Korea, one finds that the region experienced staggering growth of 200.74% for the period between 1995 and 2010. The applications in the region of these economic powerhouses grew at an average rate of 12.55% per year.

GRAPH 9 Patent Application Totals per Country

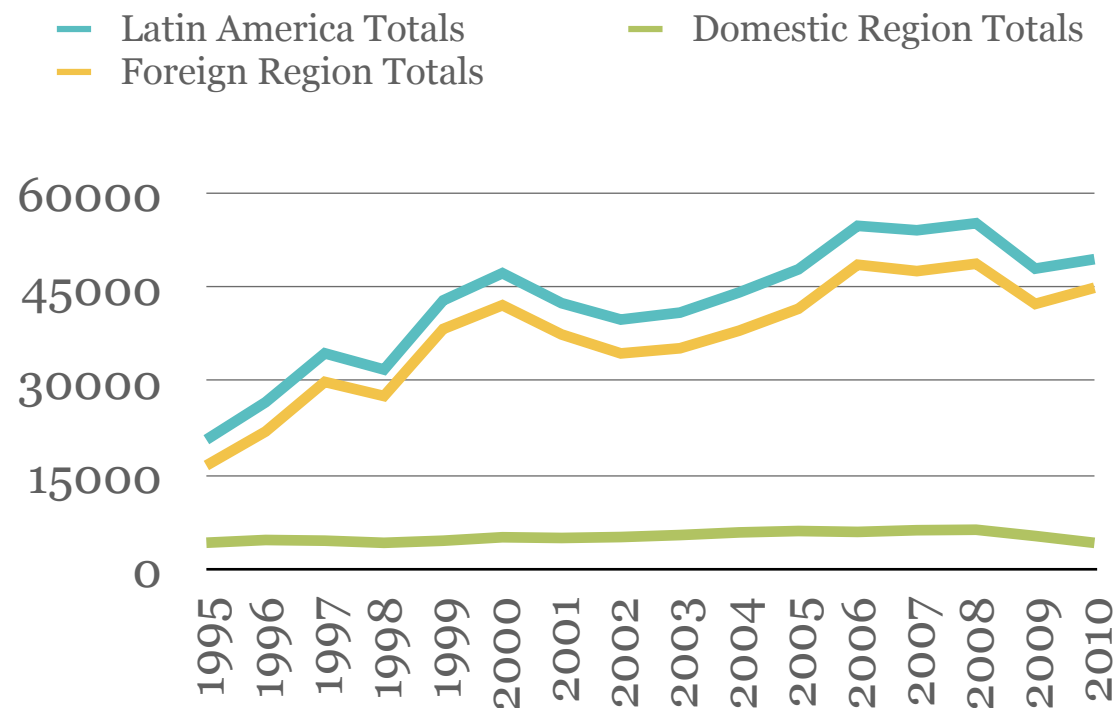


GRAPH 11 Major Origins Filing in Latin America Totals

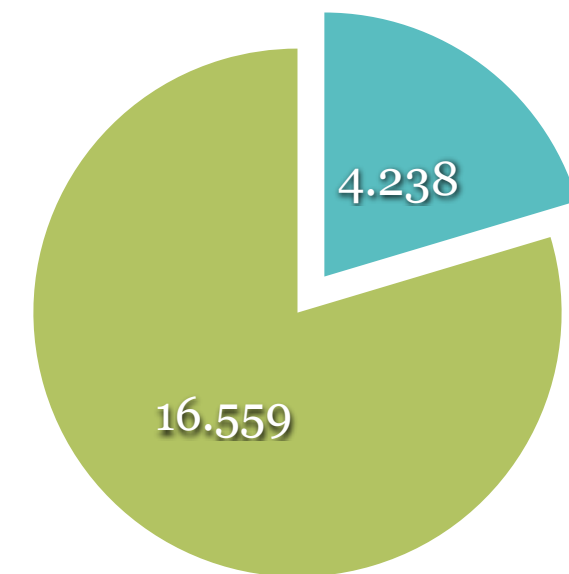


This sustained double digit growth in patent applications by major origin nations for a decade and a half is even more impressive when one considers that Latin American patent applications felt the effects of worldwide recessions between 1999 and 2002 and in 2009. The region experienced significant drops in patent applications during these periods, but the evidence shows that the region rebounded very strongly in both cases.

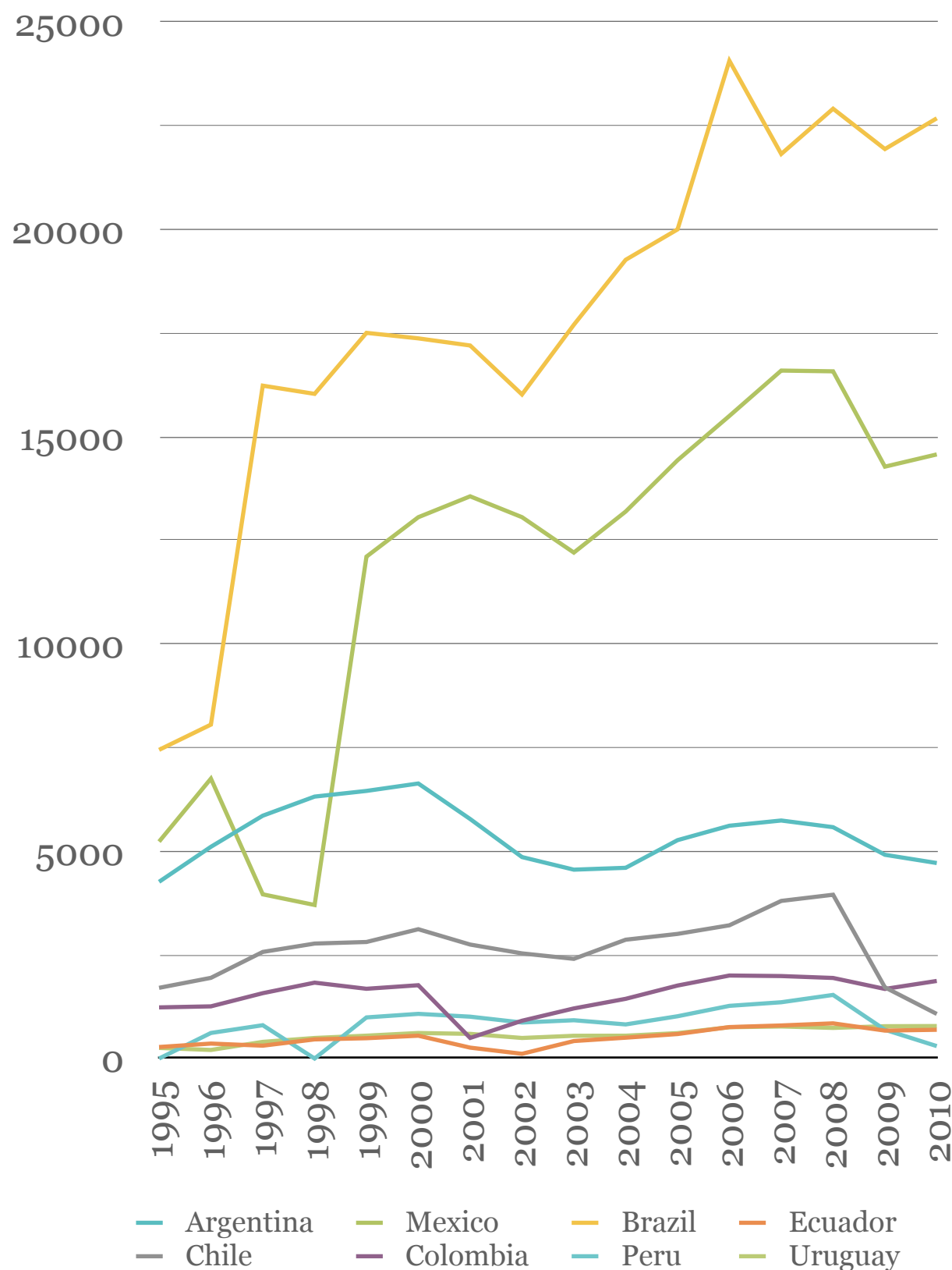
GRAPH 10 Patent Applications Domestic v Foreign



GRAPH 12 Domestic v. Foreign Applications Totals



GRAPH 13 Growth in Patent Applications per Country



Investment in Knowledge:

The Emergence of the Knowledge Based Regional Economy

The overarching legal trends that have shaped IP protection in the region for the past 20 years are described above. However, the legal trends only tell part of the story. In addition to investment in legal institutions, judicial competency, and market reforms, Latin American nations have also invested in knowledge and infrastructure. These investments have started to bear fruit in the form of more domestic innovation.

Latin American innovation has historically focused on manufacturing, agriculture, mining, and commodities.^{li} However, this has been changing in recent years. It is now largely recognized that knowledge assets are extremely valuable and consist of a large degree of the world's GDP.^{lii} We live in a knowledge based economy based on global competition and trade. In turn, knowledge driven innovation is a decisive factor in the relative competitiveness for nations and firms alike. Knowledge based industries have increased their share of GDP and grown faster than the overall economy, while the shares of agriculture, manufacturing, and mining continue to decline.^{liii}

Recognizing the need to compete effectively in the global marketplace, Latin America has made a concerted effort to modernize its technology infrastructure. Deregulation of the telecommunication industry in the 1990s set the table for the region's current efforts to increase its investment in knowledge.^{liv} In an attempt to catch up with more developed nations, Latin American nations have invested heavily in information and communication technology (ICT). These positive reforms in the regions ICT are largely driven by the same factors that have driven Latin America's growth over the past two decades: deregulation and privatization, legal and institutional reform, and more favorable public policy.^{lv} This combination of factors set the table for both domestic and foreign businesses to take advantage of more opportunities to invest in ICT.

Investment in knowledge: Total amount of expenditures in R&D, education, training, and software

The importance of this sort of investment cannot be understated. ICT serves as the backbone of knowledge economies and can make other sectors of the economy more productive.^{lvi} ICT also allows other forms of innovation to realize their economic potential by matching buyers and sellers and facilitating technology transfer. Furthermore, ICT facilitates collaboration between firms and across borders.

Latin America first experienced accelerated expansion of telephone land lines^{lvii}. This growth later shifted its emphasis to the area of cellular telephone capacity and 3G capacity.^{lviii} The pronounced growth in this area is remarkable, as the region now has more than one cellular unit per person.^{lix} More recently, internet and broadband access are on the rise, but the level of internet penetration varies largely from country to country across the region.^{lx} There have been several industry specific initiatives to encourage development in this area, including specific proposals by the Inter-American Development Bank and the creation of the Broadband Commission for Digital Development by UNESCO and UTI.^{lxi}

Latin American countries recognize the value of investing in knowledge and information. Middle-income economies such as those in Latin America invest disproportionately in software and other ICT to catch up to high-income countries.^{lxii} Investment in knowledge per GDP, which determines the percentage of national economies dedicated to investments in knowledge, has recently seen solid growth in Latin America: Argentina, Brazil, and Uruguay recorded double digit growth from 2003 to 2008^{lxiii}. Additionally, education counted for more than 80% of all investments in knowledge in Argentina, Bolivia, Chile, Colombia, Peru, and Mexico.^{lxiv}

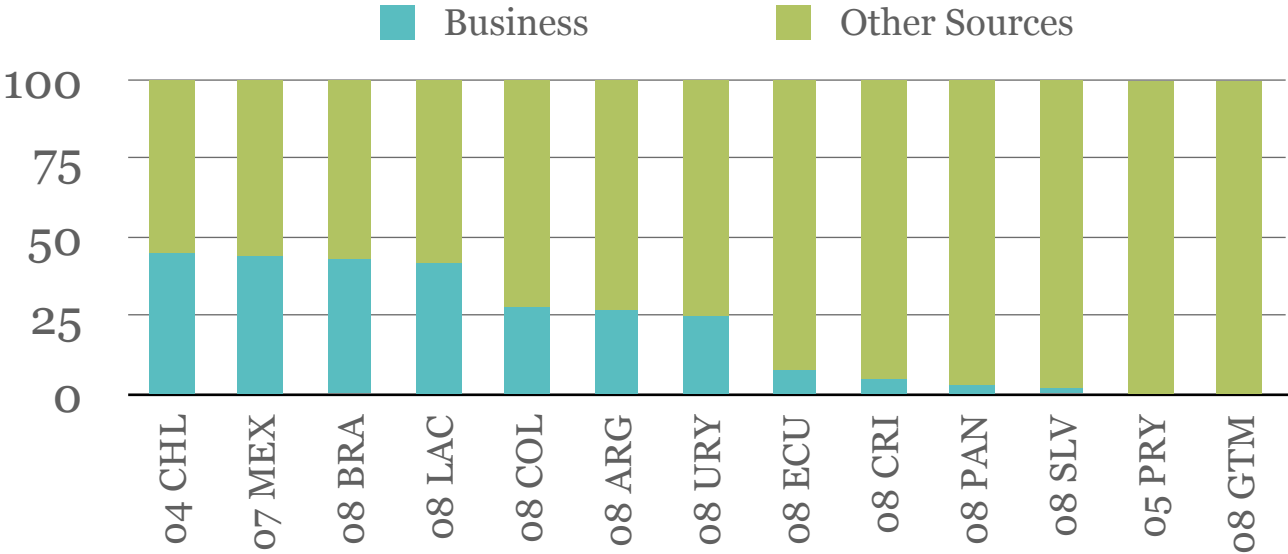
Investment in knowledge, understood as the total amount of expenditures in R&D, education, training, and software^{lxv}; now makes up a significant share of GDP for many of Latin America’s fast growing economies. The region can be separated into 3 groups based on investment in knowledge and technological capacity^{lxvi}:

Economically advanced nations	Nations with significant national capacity	Nations that fare poorly in this area
Argentina Brazil Mexico Venezuela	Colombia Ecuador Peru Costa Rica Uruguay	Guatemala Bolivia Paraguay Panama And others.

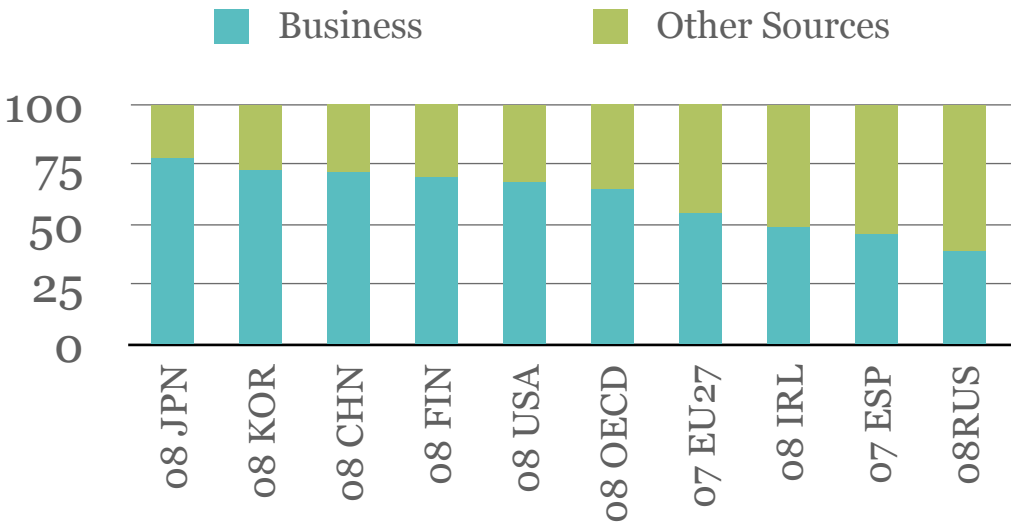
Nevertheless, while some of the regions less developed economies are lacking in technological sophistication, the significant gains that the region has made as a whole should eventually carry over to the other nations in Latin America.^{lxvii}

With the exceptions of Brazil and Mexico, the region’s R&D is still largely conducted by the public sector.^{lxviii}

GRAPH 14 R&D Expenditure by Funding source, 2008 (or Latest Available) Latin America & Caribbean

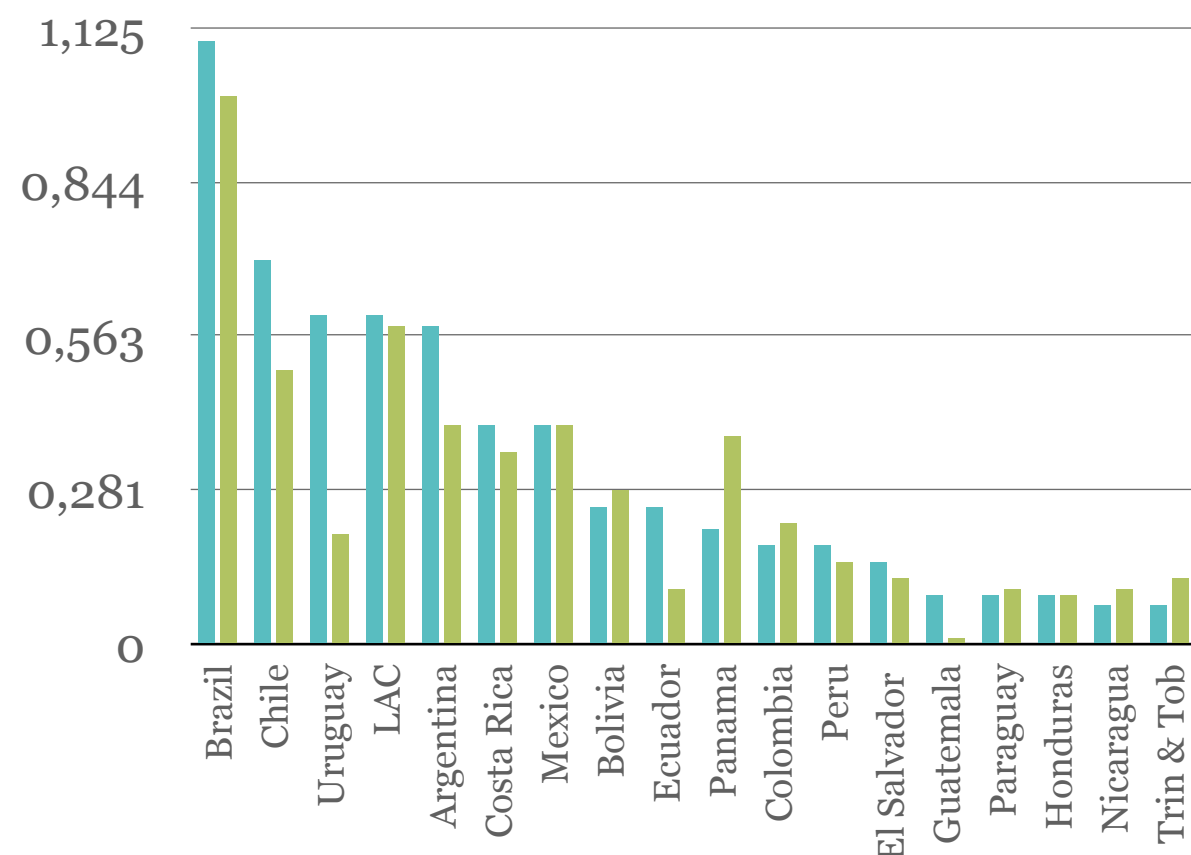


GRAPH 15 R&D Expenditure by Funding source, 2008 (or Latest Available) Other Countries



*Source: Interamerican Development Bank, *The Imperative of Innovation: Creating Prosperity in Latin America and the Caribbean*, 2nd Edition, 2011. Available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=36526246>

GRAPH 16 R&D Expenditure as a Percentage of GDP 1998 (or Nearest Available) and 2008 (or Latest Available)



*Source: Interamerican Development Bank, *The Imperative of Innovation: Creating Prosperity in Latin America and the Caribbean*, 2nd Edition, 2011. Available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=36526246>

Latin America's recent advancement in IP protection, continued investment in education, and increased technological capacity will bear fruits in the future as the talent pool in the region grows. The advancement that the region has made in these areas contributes to the education system, which improves the human resource system, which in turn supports the production and innovation system.^{lxxix}

All of these improvements highlight the strides that the region has made on various levels: the government level with institutional and legal reforms, the university level with investments in education, and the firm level by exhibiting confidence in the market.^{lxx}

Spotlight on the Pharmaceutical Industry

The Latin American pharmaceutical industry is one of the fastest growing in the world. Some nations such as Brazil and Mexico have long been pharmaceutical powerhouses, but other Latin American nations have made headway into this competitive industry.

In terms of pure revenue, in 2009 the top eight pharmaceutical markets in Latin America were worth more than \$30billion USD.^{lxxi} Experts have estimated the value of the regions total market at over \$45billion USD.^{lxxii} The region's total market is expected to grow at a rate of over 10% per year over the next seven years.^{lxxiii} This attractive growth will continue to attract more interest in the region from major pharmaceutical companies.

In 2009 the top eight pharmaceutical markets in Latin America were worth more than \$30billion USD

There are several drivers of this growth in the region. One of the major factors influencing this growth is the age of the population—the demographic of citizens over 65 is becoming larger, increasing the demand for drugs treating elderly diseases such as Alzheimer's and arthritis.^{lxxiv}

Brazil is Latin America's largest pharmaceutical market, growing at double digit rates and accounting for over \$14billion USD. Brazil has a fairly strong domestic market, accounting for about 30% of the companies, and generics account for about 20% of Brazil's market.^{lxxv}

Mexico is the region's second largest pharmaceutical market, with NAFTA and strong protection for patents opening the door to international markets in the early 1990s.^{lxxvi} Mexico is one of the most attractive destinations for foreign manufacturers.^{lxxvii}

Peru and Colombia have recently signed free trade agreements with the United States. Stronger IP protection and lower tariffs will undoubtedly induce investors to these fast growing pharmaceutical markets.^{lxxviii} In addition, another important factor is the efforts of national governments to increase access to healthcare. For example, Peru has recently adopted legislation that will provide universal healthcare for its citizens.^{lxxix}

On the other hand, the pharmaceutical industries in countries like Chile and Argentina have grown and developed strong domestic industries due to protectionist regulations.^{lxxx} However, these markets are less attractive to foreign investors as a result. Additionally, Venezuela's lack of IP protection limits the opportunities for investment in that country's pharmaceutical market.

The economic growth of Latin America has significantly contributed to the growth of the pharmaceutical market. Pharmaceutical sector growth and the growth of the Latin American economies generally are complimentary. While this trend is to be expected, as pharmaceutical growth is one of the main contributors to the region's recent success, this also creates risk because continued growth of the region's pharmaceutical industry is dependent on growth of GDP. This is coupled with the fact that the domestic healthcare industries in many Latin American nations are vulnerable to economic instability due to low insurance coverage and out of pocket payments.

Investors have noticed the region's opportunities, and companies are finding Latin America an attractive center for research and development.^{lxxxix} There are now an estimated 4,000 clinical trials being conducted in Latin America.^{lxxxii}

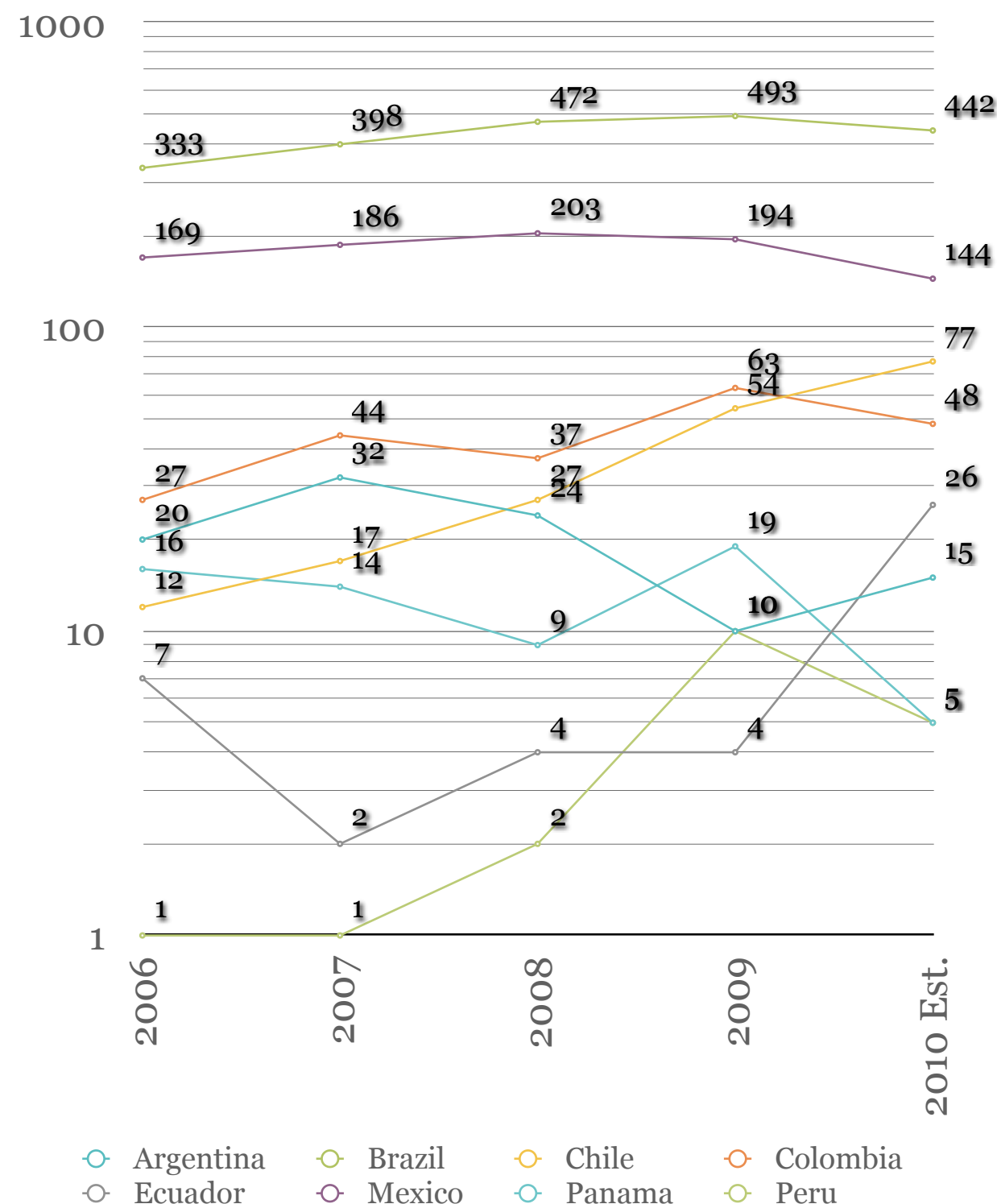
Patent Cooperation Treaty for the International Registration of Patents

Underscoring the importance of full adherence to the international IP system, part of the reason for the region's explosive patent growth is that countries have had time to exploit the adoption of the Patent Cooperation Treaty, which greatly reduces the transactions costs for protecting inventions in multiple jurisdictions.

Patent Cooperation Treaty

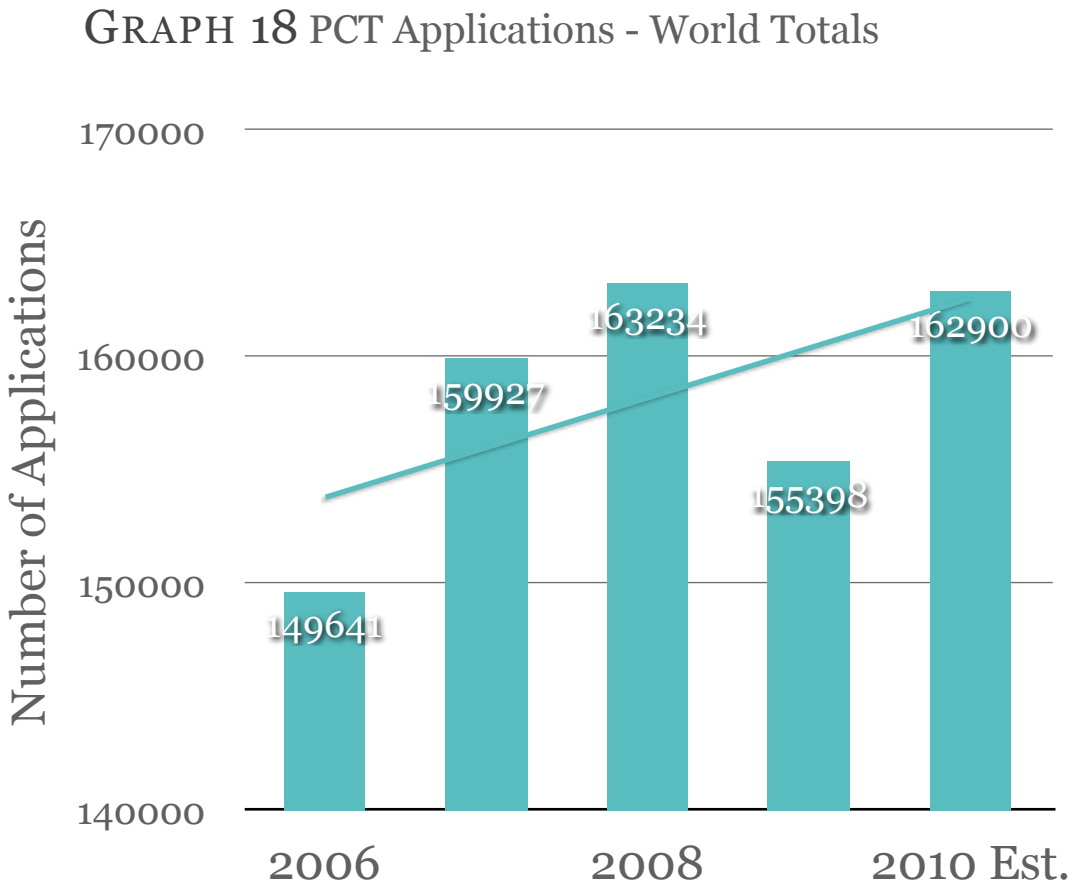
Contracting Party	Date Treaty Entered Into Force
Brazil	9-Apr-78
Chile	2-Jun-09
Colombia	28-Feb-01
Costa Rica	3-Aug-99
Dominican Republic	28-May-07
Ecuador	7-May-01
Guatemala	14-Oct-06
Mexico	1-Jan-95
Panama	Will become bound on 7-Sep-12
Peru	6-Jun-09
El Salvador	17-Aug-06

GRAPH 17 PCT International applications by countries



The PCT now has 146 contracting states, including the majority of the Latin American countries featured in this study.^{lxxxiii} Interestingly, Brazil and Mexico are the two most successful Latin American nations in terms of patent applications, and they were the first two Latin American nations to adopt the PCT in 1978 and 1995 respectively.

The PCT makes it possible to obtain patent protection for a particular invention in a number of jurisdictions by filing one international patent application. International applicants must first file a patent application in their domestic patent office before starting the international phase. In addition to reduction in administrative red tape and simplified application procedures, the PCT makes the process of obtaining international patent registration much cheaper. By reducing the transactions costs for international patenting, the PCT opens up contracting nations to innovation from all over the world. In 2010 the Patent Cooperation Treay -Another WIPO-administered treaty- reached 2.000.000 patent applications, making it one of the most succesful IP treaties so far.



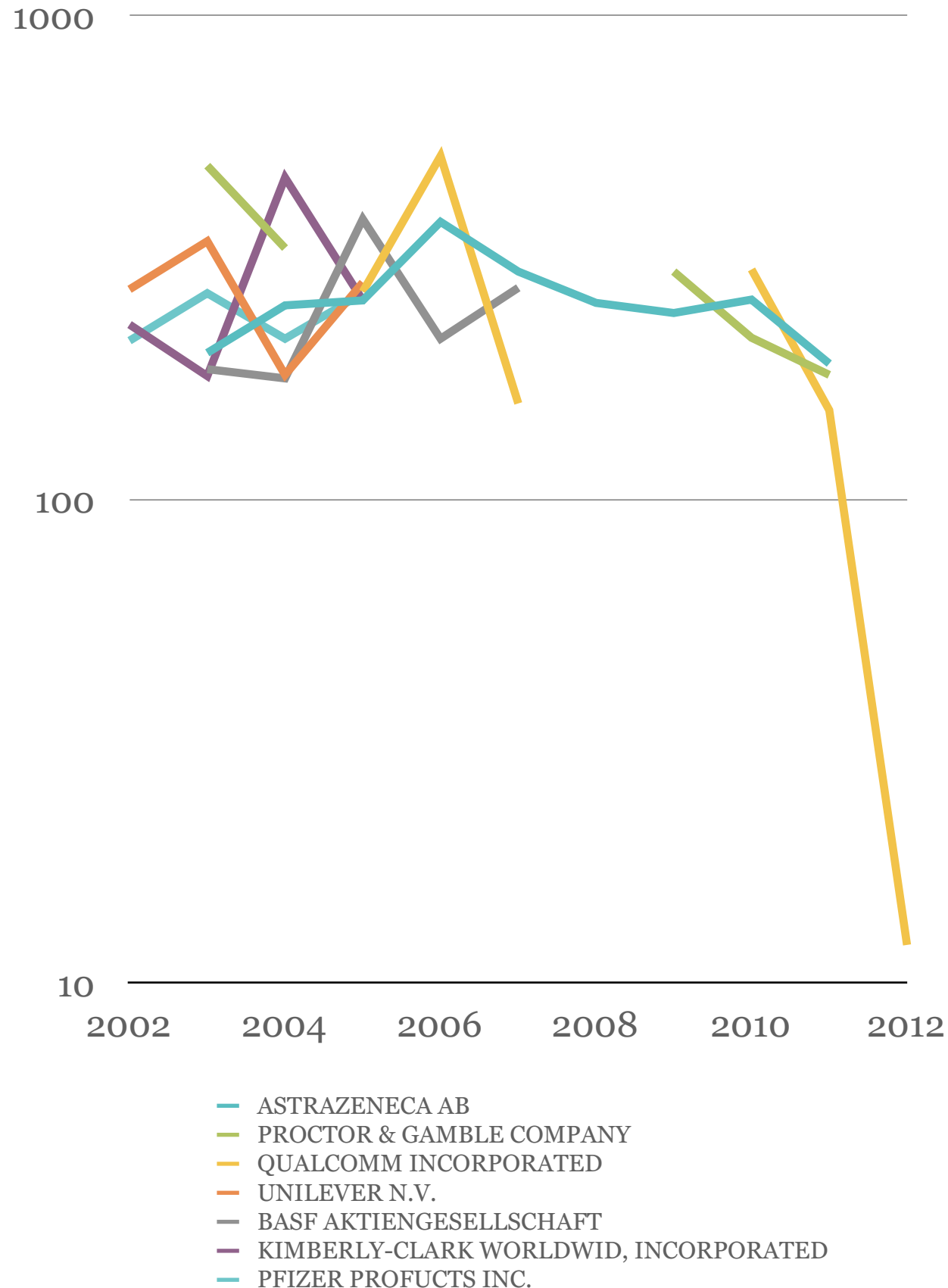
Patents in Latin America at the Firm and Industry Level

The table below provides a snapshot of the major patenting firms in the region for the past ten years. From a firm level analysis, it is clear that pharmaceutical companies are at the forefront of patenting activity. Additionally, as can be seen below, the largest patenting firms are all large multinational enterprises. This is consistent with the overall trend that foreign patent applications have been the drivers of the recent growth of patents in Latin America.

For the purpose of simplicity and clarity, patents listed under like-named wholly owned subsidiaries have been combined. For example, patents registered under the Proctor & Gamble Company, Inc., were combined with the patents from Proctor & Gamble Worldwide to come up with the number of patents for that company for the region.

<u>Firm Name</u>	<u>Firm Totals 2002-2012</u>	<u>Industry</u>
ASTRAZENECA AB	2330	Pharmaceuticals
The Proctor & Gamble Company	1514	Consumer Goods & Pharmaceuticals
NOVARTIS AG	1512	Pharmaceuticals
QUALCOMM INCORPORATED	1404	Telecommunications
UNILEVER N.V.	1353	Consumer Goods
MICROSOFT CORP	1237	Computer Technology & Online Services
BASF AKTIENGESELLSCHAFT	1233	Chemicals
KIMBERLY-CLARK WORLDWIDE, INCORPORATED	1131	Personal Care Products & Paper Goods
PFIZER PRODUCTS INC.	962	Pharmaceuticals
WYETH	935	Pharmaceuticals

GRAPH 19 Patent Applications Top Firms



Of the top ten patenting firms, four are large multinational companies that deal almost exclusively in pharmaceuticals or medical technology, and five of the top ten manufacture some sort of pharmaceuticals. The largest patent applicant in Latin America, with over 2,300 applications since 2002, is AstraZeneca AB, a large multinational pharmaceutical manufacturer, followed by Proctor and Gamble and Novartis AG, which have both filed over 1,500 patents in the region since 2002.

Besides pharmaceuticals, of the remainder of the top ten patenting firms, the biggest industries are consumer goods and personal care products, making up three of the top ten firms. Proctor & Gamble, Unilever, and Kimberly-Clark are large, well-known, and well-diversified multinational companies producing everything from consumer goods and personal care products to over the counter medicines (P&G). These firms have filed over 1,500, over 1,350, and over 1,130 patent applications since 2002 respectively.

Next, two of the top ten firms are in the telecommunications & computer technology industries. Since 2002, Qualcomm has filed over 1,400 patent applications and Microsoft has filed over 1,230 patent application, marking the growing importance of communication technology to the region.

Lastly, one of the top ten firms is a German Multinational chemical manufacturer named BASF Aktiengesellschaft, one of the largest chemical manufacturers in the world.

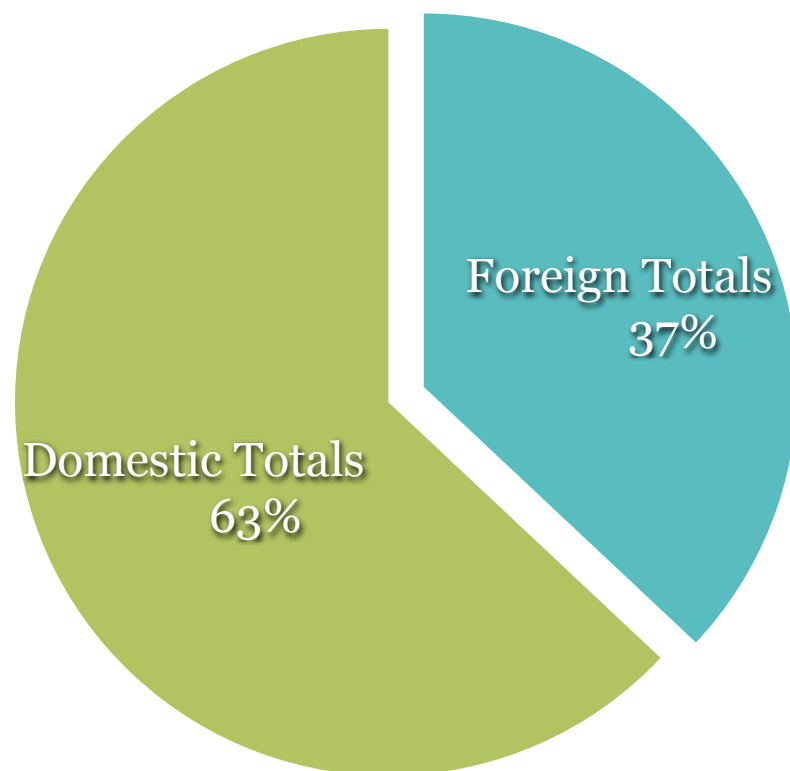
It appears that patenting activity by the largest firms does not follow any clear identifiable pattern. Some firms tend to file every year, such as AstraZeneca which tends to file over 200 applications per year, while others may file a large amount of patents one year and then not file any for several years, such as Proctor & Gamble which filed over 330 applications in 2004 and then no more were reported until 2009. These differences represent the different patenting strategies of individual firms.

The case of Trademarks

Overview & General Trends

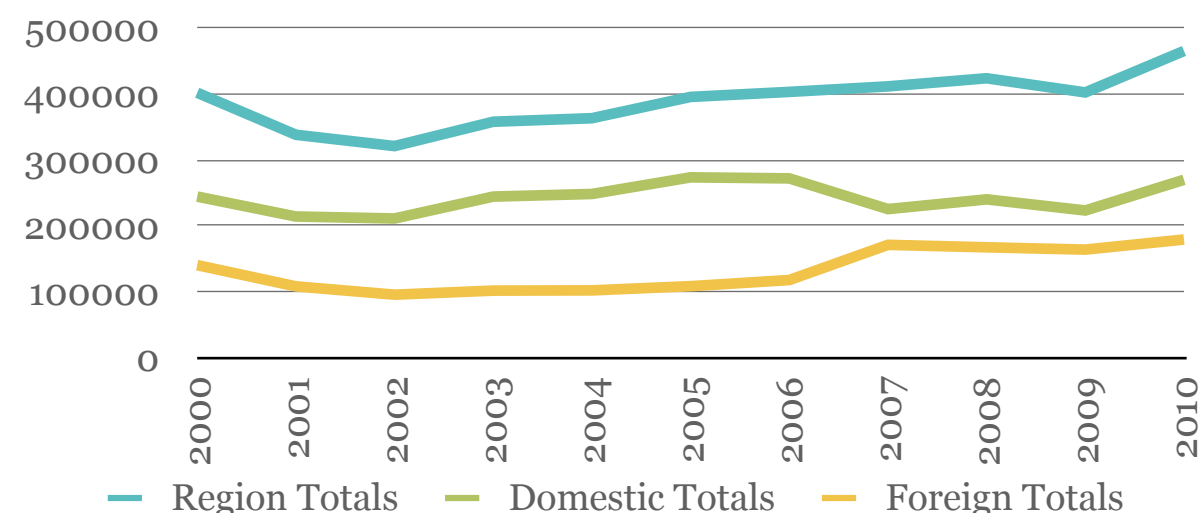
Trademarks in Latin America have seen modest growth in the past decade as well, albeit not coming on par with the explosive patent growth the region has experienced. There are several reasons for this disparity. First, in developing countries trademarks applications have historically been more evenly distributed between foreign and domestic applicants, as opposed to patents applications which are driven by foreign applicants.^{lxxxiv} The driver of growth for trademarks is largely from domestic rather than foreign applicants. Second, and more importantly perhaps, the countries in Latin America have not aligned with the Madrid System, the international system for registering trademarks, while on the other hand, many Latin American nations have ascribed to the PCT, the Madrid System's patent equivalent discussed above.

GRAPH 20 Trademark Applications: Foreign v. Domestic 2010



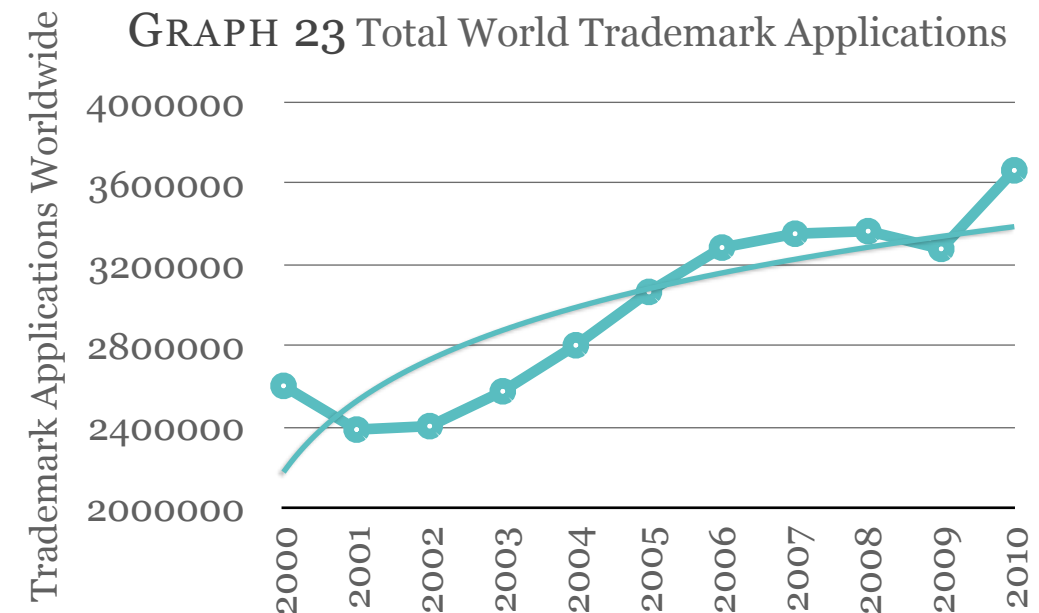
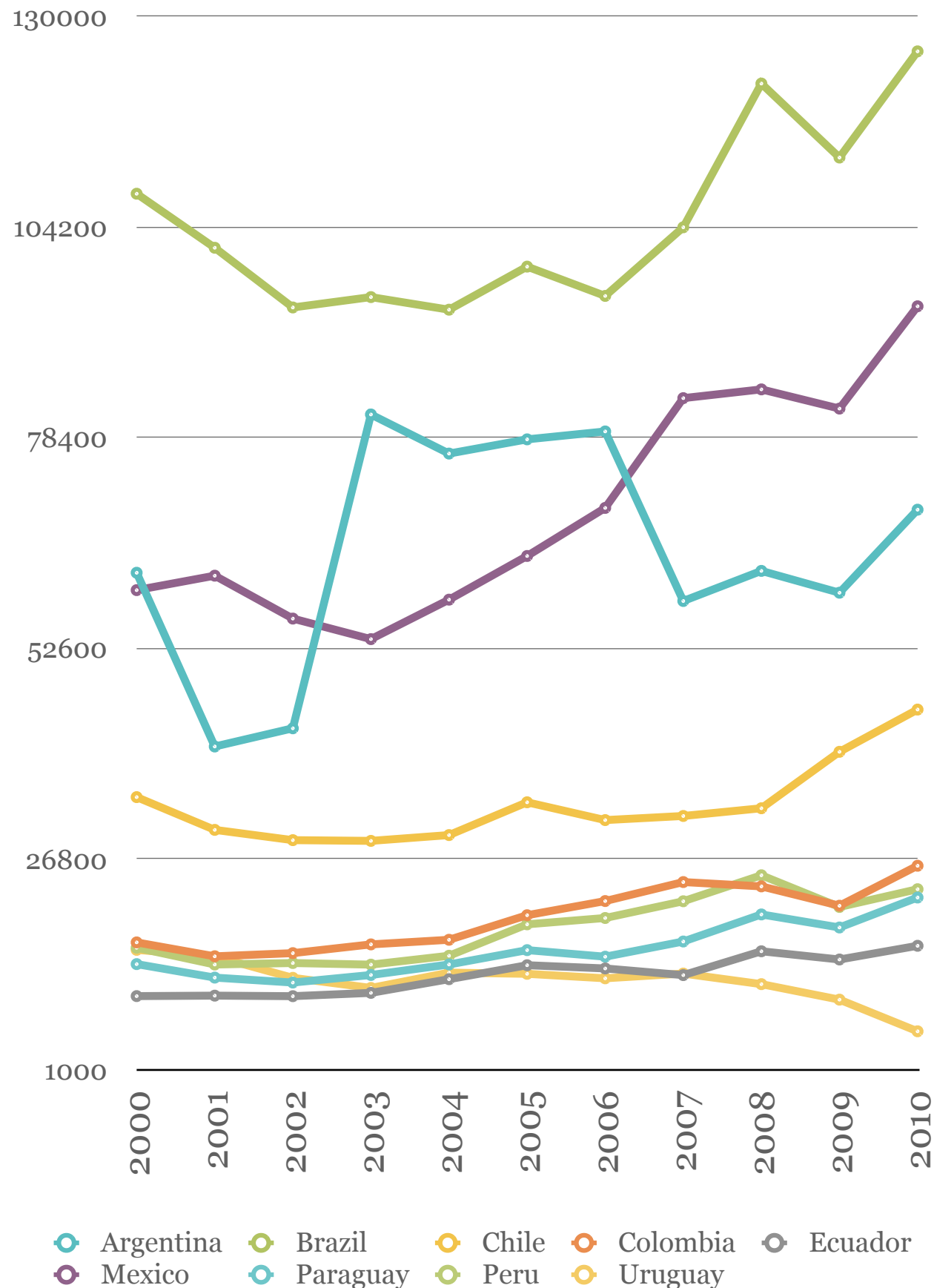
Nevertheless, several Latin American countries have shown significant trademark growth, with applications increasing by 16.96% since 2000, at an average of 1.54% per year. However, due to inconsistent filing, this number is deflated. Several countries had not reported trademark applications for several years. To obtain a complete growth rate for the period, this report uses proxy values to obtain the growth rate by determining the average trademark applications in those countries over the years where data was available. As most of these countries have experienced positive growth trends, substituting average applications for missing values makes this a very conservative estimate of growth.

GRAPH 21 Trademark Applications Foreign v. Domestic Region



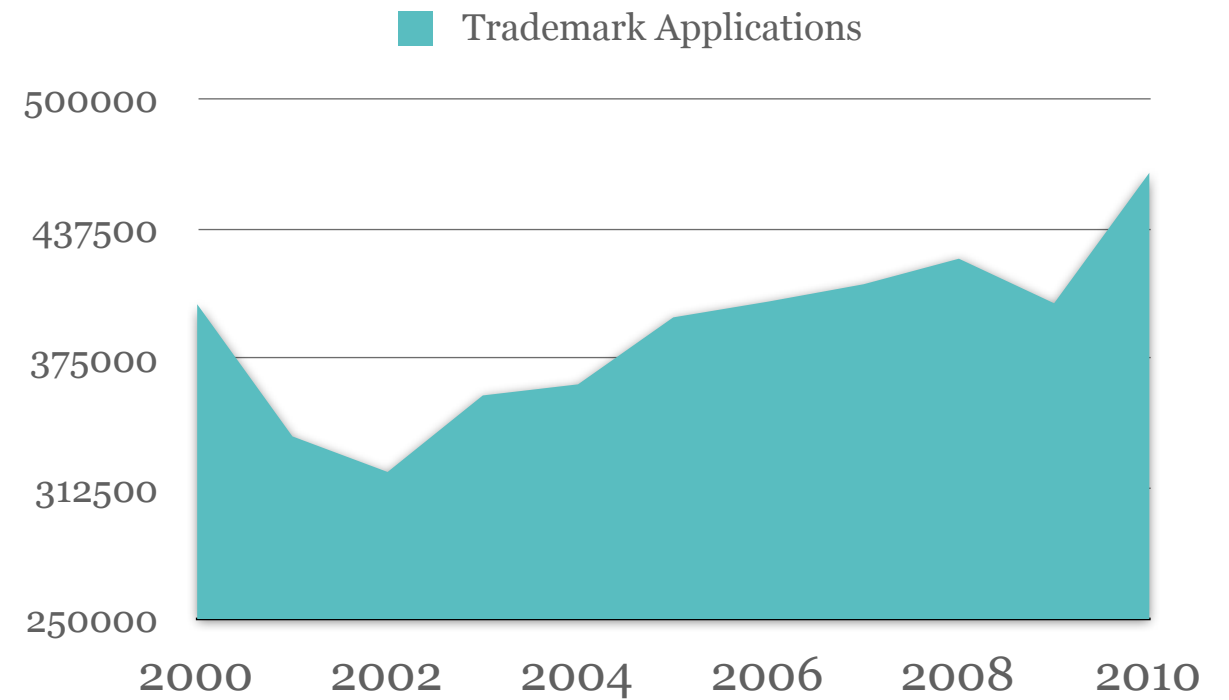
Trademark applications in Latin America have experienced solid growth, despite serious drops in the number of applications being filed during the early 2000's. This is mostly due to the fact that the 2000s decade marked the end of serious political crises in Latin America. Between the years 2000 and 2005, Argentina defaulted on its debts, sinking the country in a severe economic crisis; Ecuador had a *coup d'état*; both Chile and Peru suffered political and social instability because of presidents Pinochet and Fujimori, respectively; and Colombia was just coming out from a time when narcotrafic and internal conflict made it difficult for legitimate business to succeed. Latin America achieved an amazing recovery from such crises, and is considered to be an increasingly important player in the world economy. Significant political instability, that could damage foreign investment remains only in Venezuela and Argentina, where governments have once again assumed protectionist policies; Mexico, although it has become a stronghold for drug trafficking, is not likely to be economically harmed in the short term, because of the strenght of its economy and because its problem is mostly concentrated in rural areas. Another factor to be considered in the 2000s decade is the 2009 financial crisis where dips in the Latin American market were consistent with worldwide trends.

GRAPH 22 Regional Overview for TM Applications



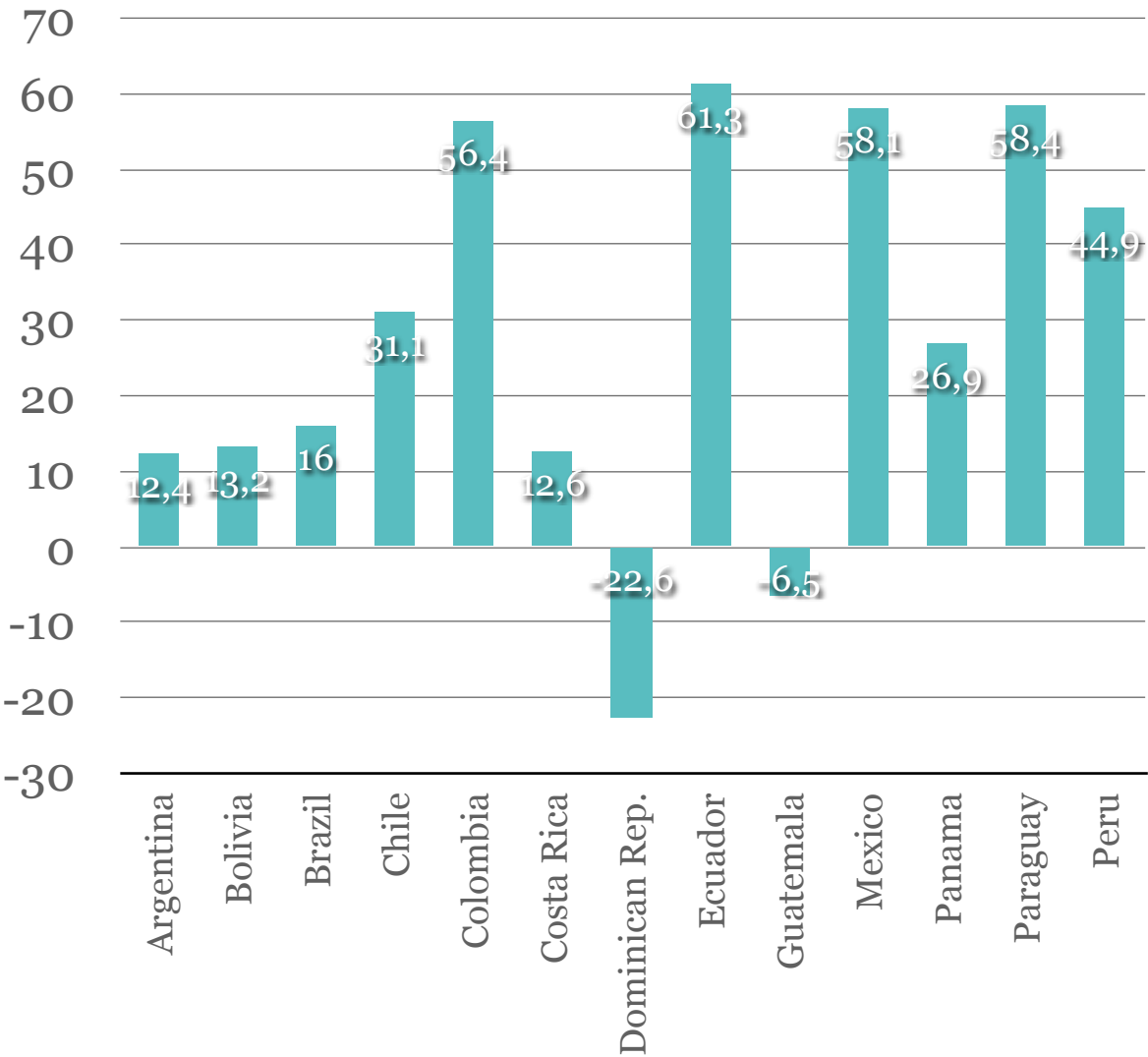
Additionally, the world values are inflated by the extreme proliferation of Chinese trademark registrations worldwide. Since 2000, worldwide the number of trademark applications has grown by 40.87%, at an average of 3.72% per year. However, Chinese trademarks account for a large portion of this growth.^{lxxxv}

GRAPH 24 Trademark Applications for Latin America

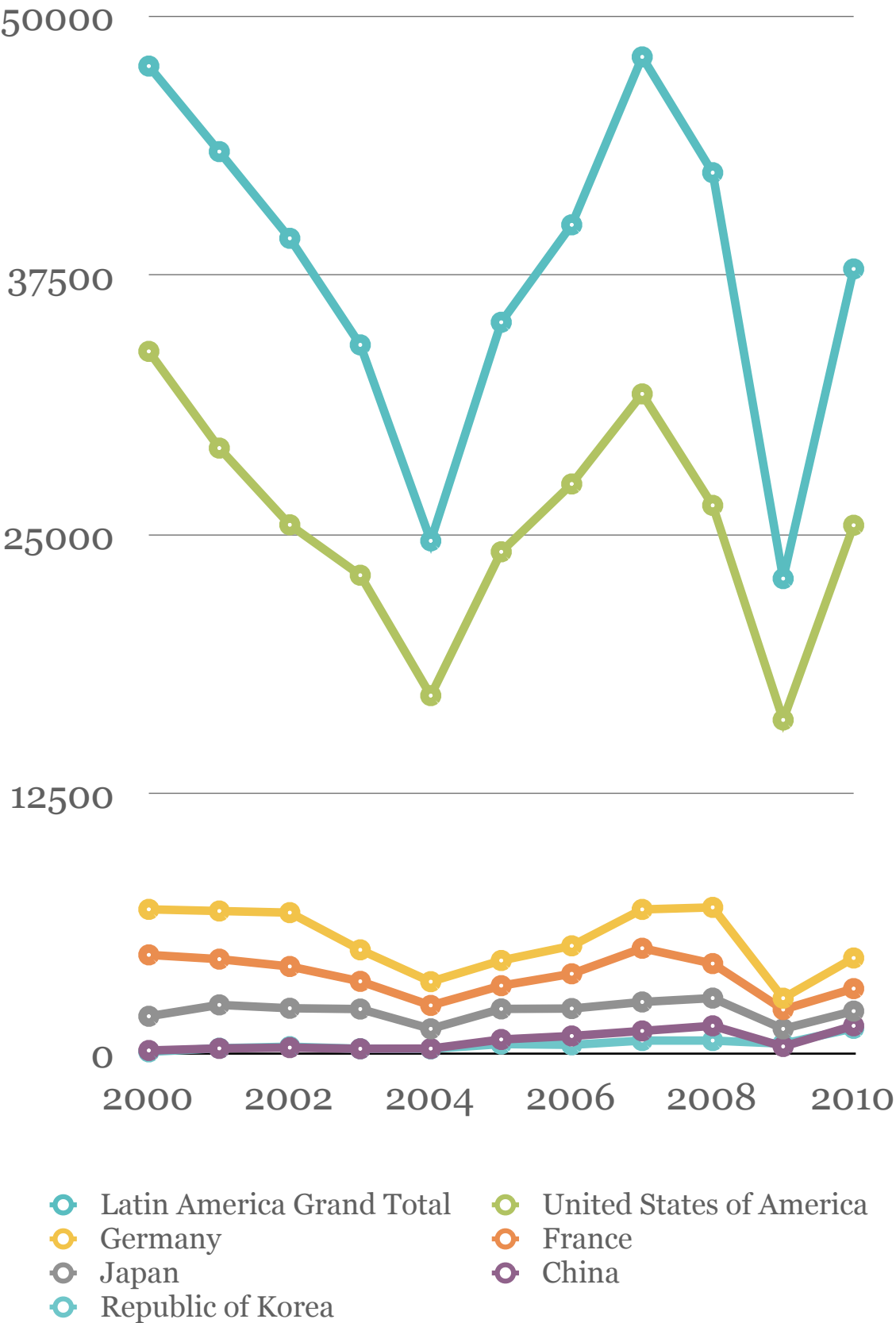


In addition, several Latin American countries have seen pronounced trademark growth that has outpaced regional and world averages. Some of the countries that have seen very positive trademark growth include Colombia, Ecuador, Mexico, and Paraguay.

GRAPH 25 TM Growth Rate 2000-2010



GRAPH 26 Trademark Applications from Major Origins



Isolating the trademark applications in the region from the six major origins of France, Japan, Korea, Germany, China, and the United States, the growth trends are not nearly as clear, unlike patent applications where these major origins showed even more pronounced growth rates. This discrepancy largely reflects the relative importance of domestic versus foreign applications as drivers of growth in the region's trademark and patent applications. For patents, the region's trends largely followed the applications from the major origins since foreign applicants largely drive patent growth in the region. On the other hand, trademarks are dominated by domestic applications. The region has experienced positive trademark growth despite fluctuating applications from major offices. In fact, trademark applications by the major offices declined from 2000 to 2010.

New Developments in Latin American Trademarks: Emergence of the Madrid System

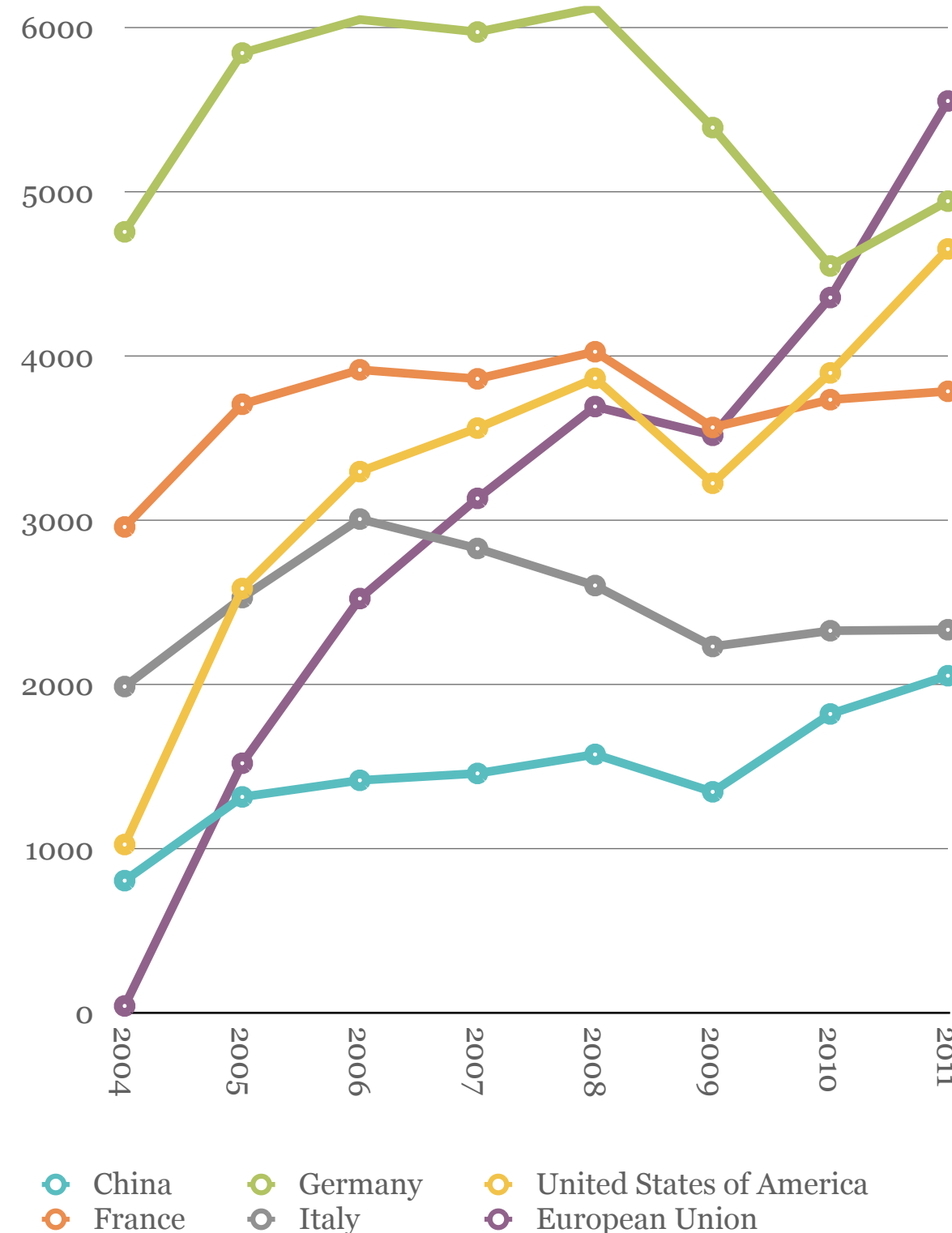
In 2012, Colombia adopted the Madrid System for the International Registration of Trademarks. In doing so, Colombia became the first South American nation to do so, and the only Latin American nation to have joined the Madrid System since Cuba joined the Protocol in 1995. Mexico had already joined the Madrid System back but withdrew its ratification in 1943; now the Madrid Protocol has been approved by the Mexican parliament, but deposit of the instrument before WIPO's headquarters and institutional implementation of the Protocol's procedures is still due; the Mexican PTO has estimated that the Protocol will be fully working in two years time.

There are now 87 members of the Madrid System worldwide.^{lxxxvi} Colombia's accession to the Madrid System marks a new era for trademark registration in Latin America. Like the PCT, the Madrid System makes it much easier to obtain international protection for trademarks. Applicants in member countries can simply file one application in their domestic trademark offices, which can then be protected in other countries party to the Madrid System.^{lxxxvii} Additionally, the System makes subsequent maintenance of the trademark much easier by allowing applicants to administer their rights from one office.^{lxxxviii}

The European Union and the United States, also members and very active users of the Madrid Protocol are expected to become two of the main applicants with Colombia as a designated country, since they already have FTAs with this country. The Colombian economic growth also makes it an attractive market for international investment.

Colombia's adoption of the Madrid System signals the tip of the iceberg. Several other nations have committed to joining the Madrid System in time, and others have expressed their desire to join the international system signaling the emergence of this important trend for the future Latin American trademarks. The Superintendency for Industry and Commerce, as well as WIPO -which administers the Madrid System- have stated that they intend to make Colombia a pioneer for other Latin American countries to follow.

GRAPH 27 Top Applicants Under Madrid Protocol



*Source: WIPO, Statistics Under the Madrid Protocol, Available at: <http://www.wipo.int/madrid/en/statistics/>

Cuba has not been an active user of the Madrid Protocol, filing less than 5 international applications per year in average as Office of Origin (Information for Cuba as Designated Country is currently not available). This only reflects the correlation between the economic strenght of a country and the interest from foreign investors in promoting and protecting their trademarks. The 5 most designated countries in international trademark registrations are:

Number of international registration where each country was designated.

	2004	2005	2006	2007	2008	2009	2010	2011
China	7579	11724	13749	14527	15892	13273	14237	16584
European Union	87	5792	10043	11920	13698	11844	13701	15375
USA	5647	10731	12697	13329	14463	12190	13024	14432
Russia	8548	11360	12750	13726	14878	12765	12768	14160
Switzerland	9530	12542	13533	13679	14078	12456	11759	12779

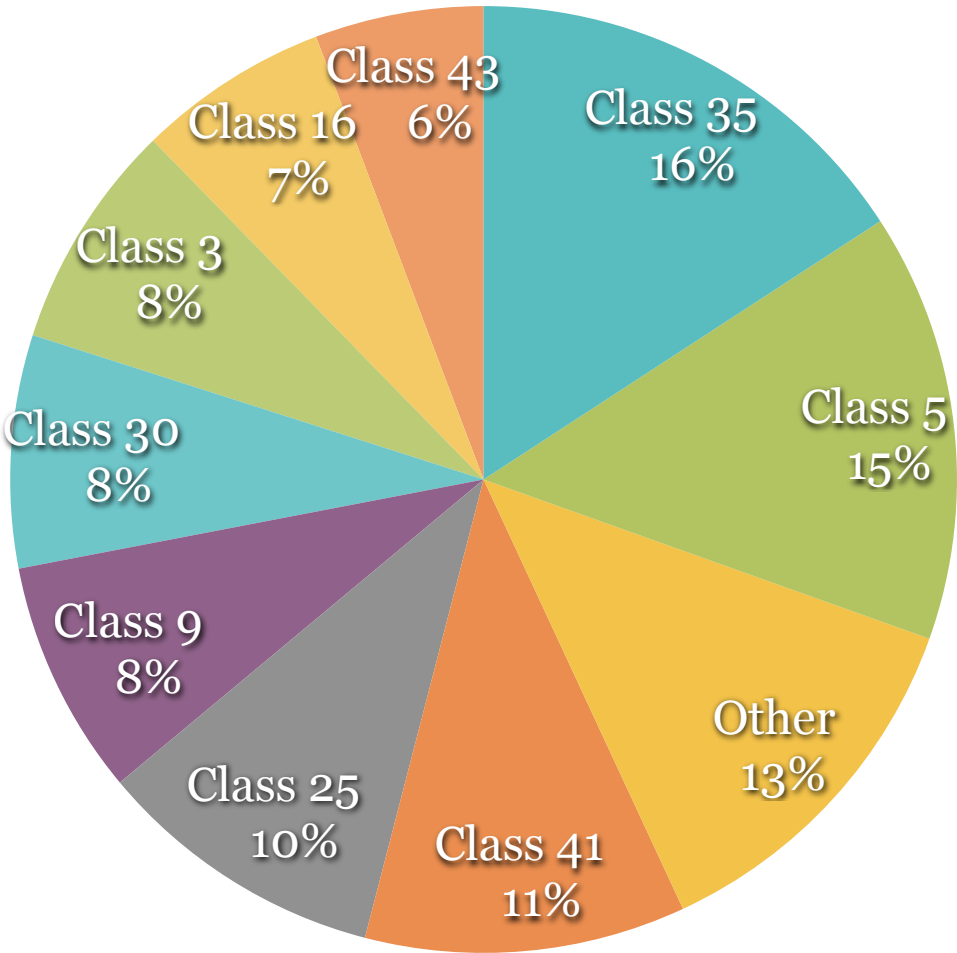
Trademarks by industries: Who are the biggest players?

The Nice Classification is a system of classification for identifying goods and services in trademark registrations used in many nations and administered by WIPO. The figure below is a summary of the top ten trademark classes for Latin American’s applications in 2010. The breakdown of the most important classes of trademarks in the region provides a picture of what are the most important business sectors in the region’s economy.

The data shows that Latin American trademark applications have largely followed the trends indicated by the region’s patent performance. As noted above, Latin American nations have experienced marked growth in pharmaceuticals and medical technology. At the same time, countries in the region have invested in knowledge and education in order to catch up to more developed nations outside the region. The top three classes are advertising for business, pharmaceuticals, and education & training, respectively.

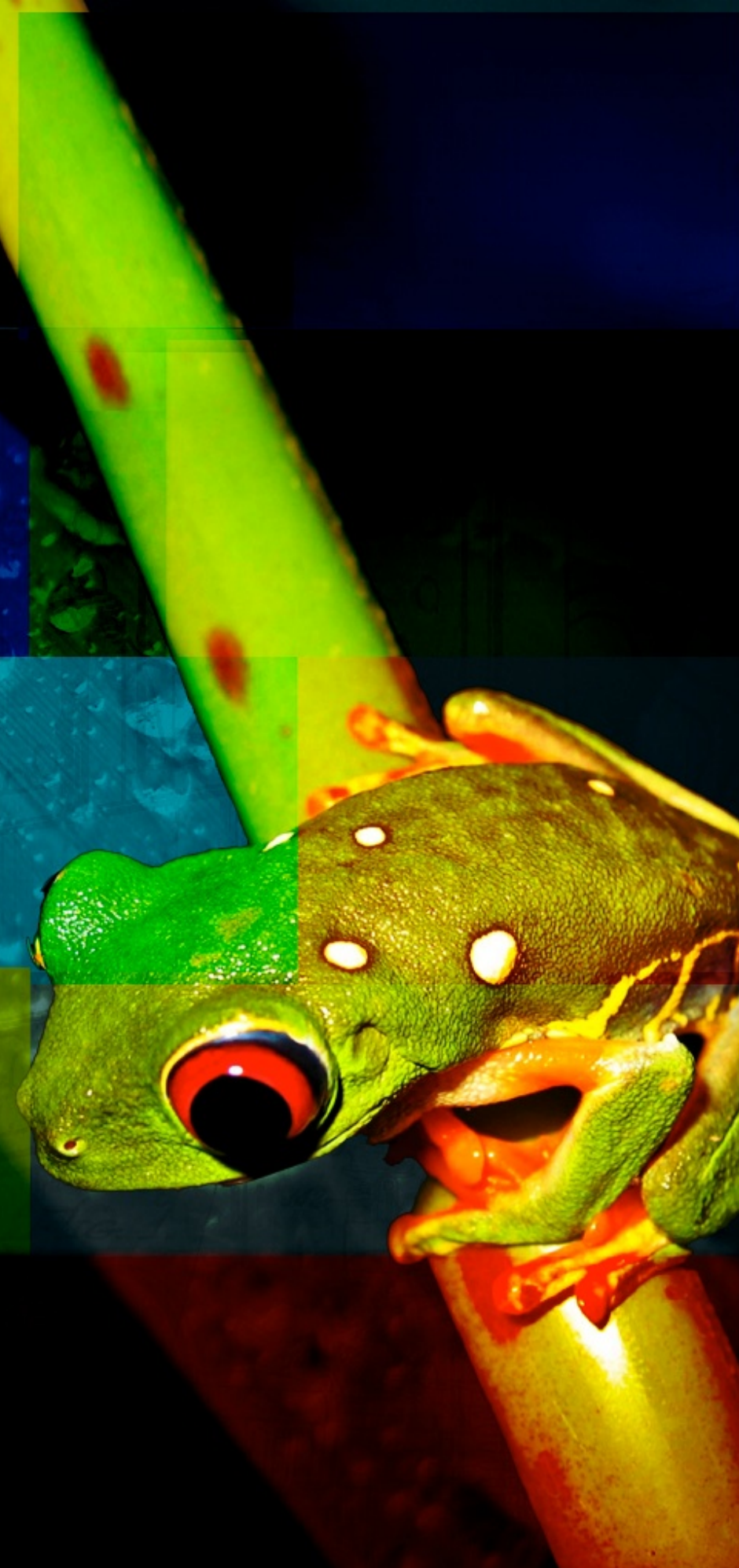
The remaining classes largely reflect the overall makeup of the Latin American economy, with large numbers of trademarks being filed in the classes for scientific instruments, commodities, clothing, chemicals, and services.

GRAPH 28 Top 10 Trademark Classes Filed in Latin America



To see classes check Appendix 1

Chapter II - National Systems



CHAPTER II: National Systems—Positives, Negatives, and New Developments

Latin America is characterized by both the existence of efforts for regional integration and deep differences in domestic IP regulations

The domestic intellectual property regimes vary greatly from country to country in terms of their efficiency, effectiveness, and adherence to international standards. The last decade has witnessed a fast transformation of IP in the region, from the restructuring of several IP offices to the increased openness of national parliaments to take IP issues more seriously. The general trends have been very positive, with a few exceptions mostly due to great political instability.

A proliferation of specialized IP law firms is a consequence of this *renaissance* of Latin American IP, exploiting a whole new market for legal services. The same is true for the business strategies of both domestic companies and foreign investors: Trademarks and Patents portfolio management is now a priority in any serious business strategy, and the enforcement and commercial exploitation of IPRs is increasingly profitable, making multinational companies move more valuable IP assets to their Latin America branches. Not only is this great news for the business environment, but is also a source of technology transfer for the region, where other businesses will have the opportunity to license and to eventually make commercial use of technologies in the public domain.

Of the Latin American nations covered in this report, only Brazil, Colombia, Chile, Mexico, and Peru issue annual reports from their domestic patent and trademark offices. This fact reflects the relative strength of the domestic IP regimes on those countries.

Indeed, data reporting from national offices tends to be a serious problem in the region. WIPO's database lacks data on certain Latin American nations for specific years, and sometimes for entire countries. For example, neither El Salvador nor Venezuela has reported trademark data since the year 2000.^{lxxxix} Additionally, respected organizations such as the IMF and publications like the Economist have questioned the reliability of the figures that have been reported by Latin American nations, and specifically Argentina.^{xc}

This portion of the report will attempt to identify specific IP trends within each country while highlighting the positive and negative aspects of each country's IP regime. Due to the region's large growth in applications in the first decade following the year 2000, many countries experienced a large backlog in applications at their domestic offices due to insufficient staffing, outdated technologies, and inefficient procedures. These backlogs resulted in unreasonably long application pendency times. According to information available from the few annual reports that have been published, much of the effort of Latin America's domestic offices in recent years has been geared towards improving internal systems.^{xc}

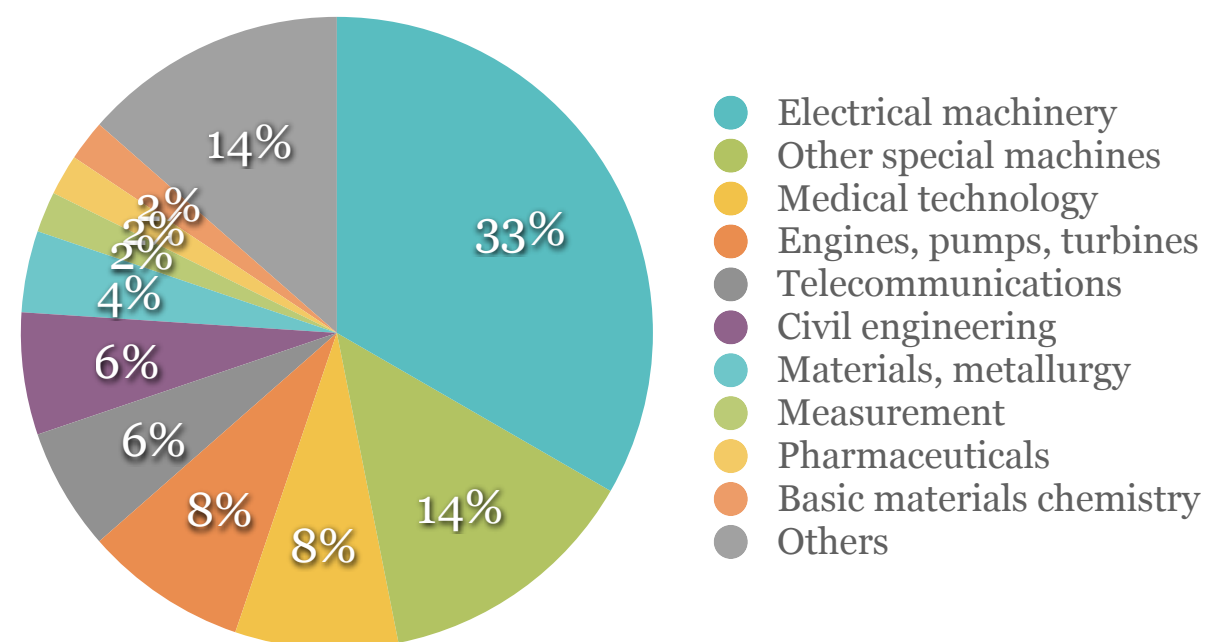
The Andean Community

Bolivia

Bolivia doesn't have one of the most extensive demands for protection of intellectual property in the region. As a member of the Andean Community of Nations, Bolivia has the right to refer cases to the Andean Tribunal of Justice, which is largely dominated by IP disputes. However, Bolivia has only referred three cases to the ATJ in twenty years.^{xcii} This is largely due to the lack of economic development and minimal demand for IPR in the country.^{xciii}

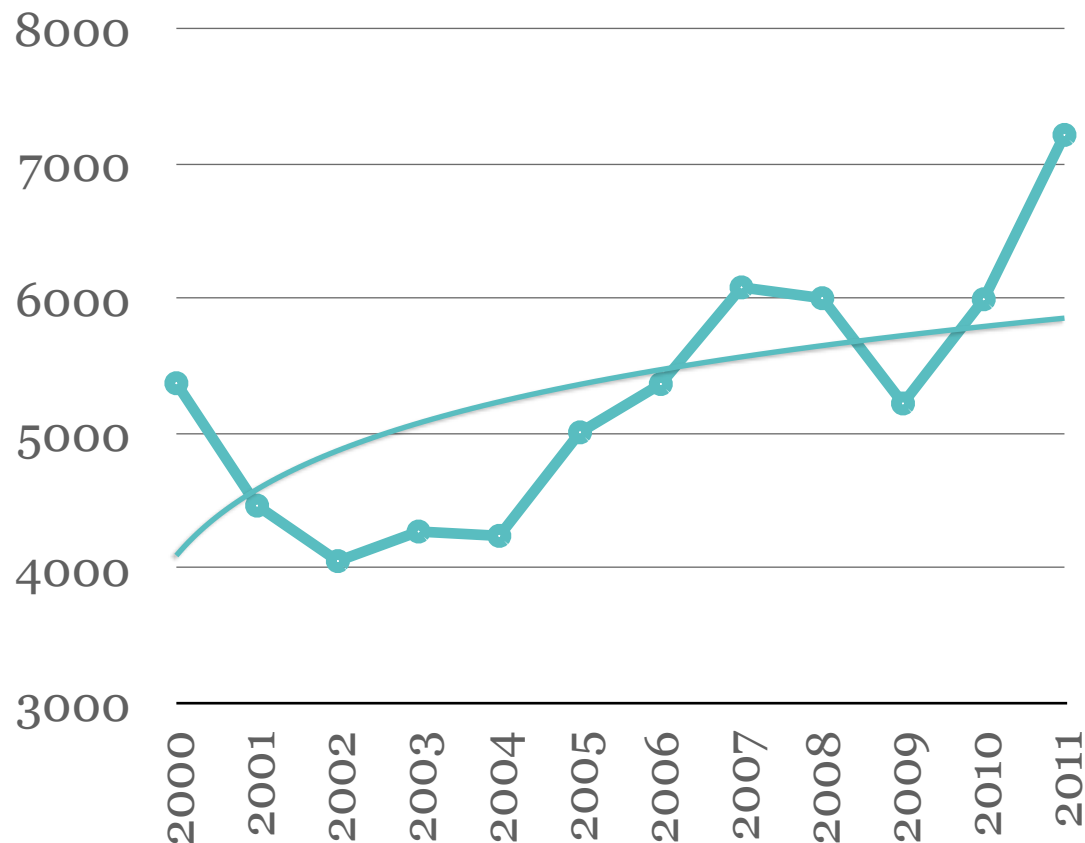
Bolivia's patent applications are centered on low tech manufacturing, with some activity in the pharmaceutical, medical technology, and telecommunications industries. However, Bolivia has not reported patent data since 1995, when the country had a total of 123 patent applications. This low number and Bolivia's overall lack of available data should be an indicator of the weakness of the country's patent regime.

GRAPH 29 Bolivia Patent Applications by Top Fields of Technology



The available data indicates that Bolivia has performed very well with trademark applications, which grew 120% from 2000 to 2011. The country has not reported data to WIPO since 2007, but the national PTO keeps on reporting on their annual report, which was included in the chart below. For this eleven year period, Bolivia’s trademark applications grew at a rate of 10.9% per year^{xciv}.

GRAPH 30 Bolivia Trademark Applications



Colombia

The B&R team in Colombia helped in the research of this country section. Special thanks to attorneys Juan Sebastián Salazar Gutierrez and Eliana Maria Reyes.

Colombia is one of the leading markets for IP in Latin America, with a growing economy only surpassed by Mexico and Brasil in Latin America^{xcv}; and its IP regulation is moving forward with huge steps.

Colombia has recently made some significant updates to its IP regulation. Most significantly was Colombia’s adoption of the Madrid Protocol. The Madrid System made some significant changes to Colombia’s trademark registration system. It allows for the international registration of trademarks with the filing of a single application and a single payment for official fees, and it also allows to register a trademark application in Colombia filing an application at the PTO of any of the 86 countries that have approved the Protocol. International applications are established as initially dependent on the national application, and the fees were established as Individual Fees according to the Madrid Protocol^{xcvi}. The approval and implementation of the Madrid Protocol marks the entrance of Colombia to one of the most important treaties for trademark procedures, and reassures the country’s leadership in IP matters.

Colombia has approved all of the major IP treaties, is the most active member of the Andean Community in IP issues and litigation, and is one of the few countries where IP is being discussed in mainstream political debates. It’s PTO, the Superintendency for Industry and Commerce, has a reputation as one of the most efficient government agencies in the country and maintains remarkably good relations with the domestic IP community, currently being one of the main sources for the spread of IP knowledge in the country.

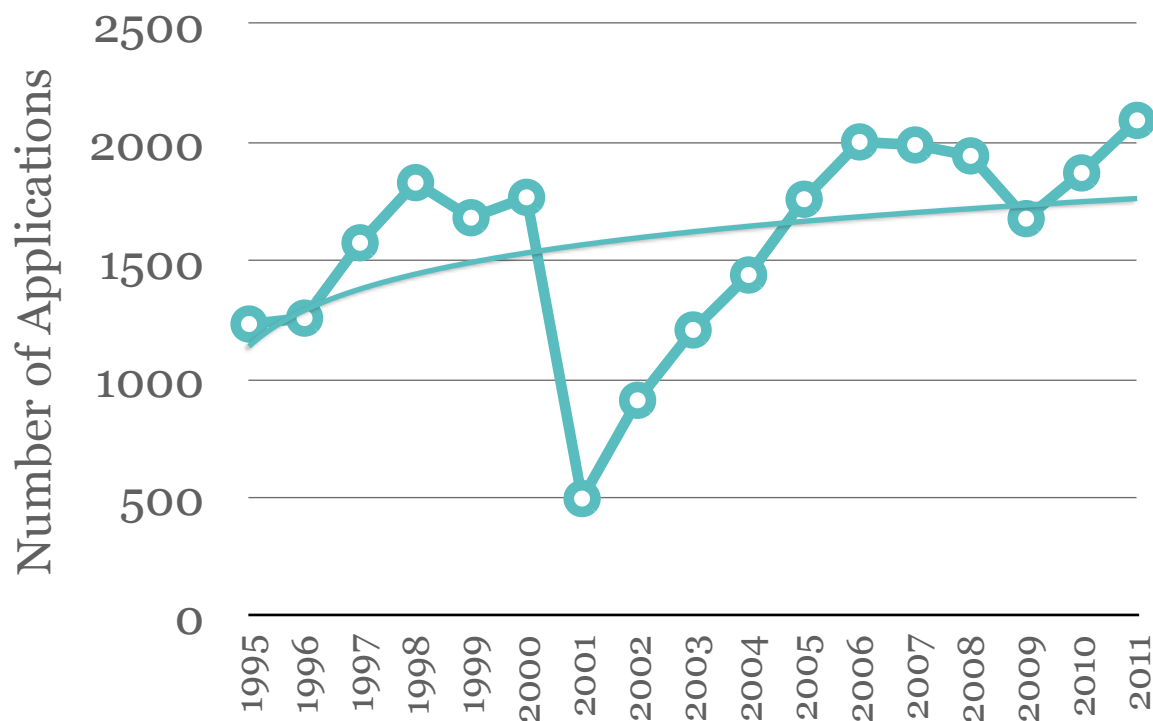
Importantly, Colombia recently adopted a decree that drastically simplified the registration procedures and eliminated much of the red tape for IP applications.^{xcvii} Furthermore, the Colombian patent and trademark office, SIC, passed an additional measure called SIC Resolution 21447 (2012) to simplify its procedures. For example, powers of attorneys no longer require legalization or notarizations, certificates of incorporation are no longer required, and multiclass trademark applications are allowed. Additionally, the resolution clarified the regulations for electronic filings and the 10th version of the Nice Classification was adopted.^{xcviii}

Another major development for Colombia’s IP protection was its adoption of the free trade agreement with the United States.^{xcix} As previously noted Colombia was required to approve several treaties, such as the Madrid Protocol and the trademark Law Treaty. Additionally, Colombia was encouraged to create a platform for electronic applications in IP matters. 70 staff members from SIC have received training on the TLT and its changes.^c

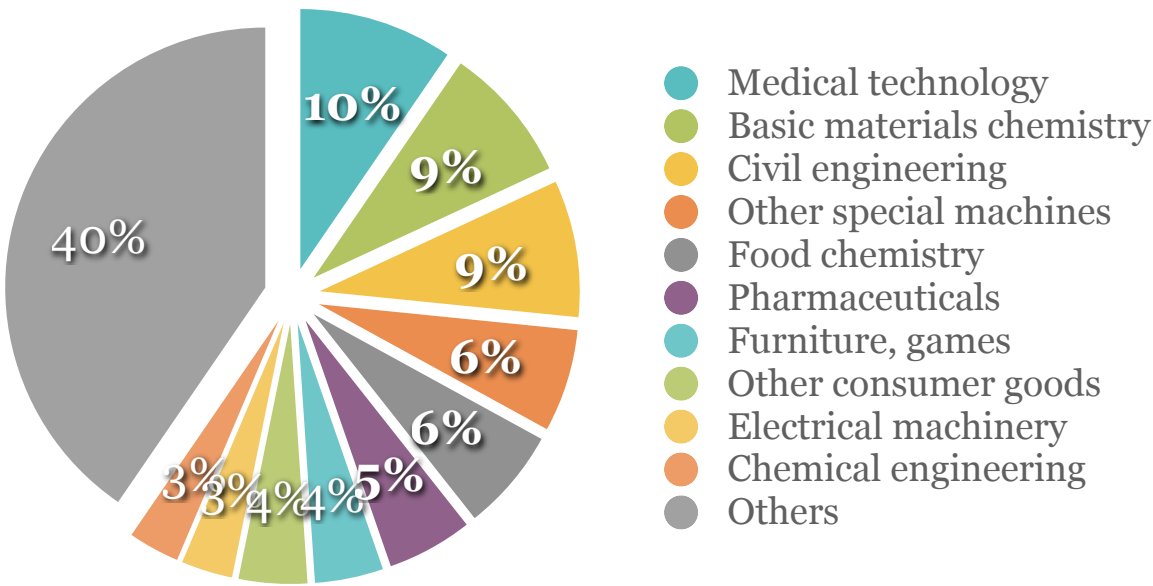
Colombia was also required to update its domestic IP protection. Perhaps most significantly was the extended protection granted to copyrights. The length of copyright protection was extended by 20 years. Furthermore, more stringent penalties were established for copyright infringement both in civil and criminal law.^{ci}

The country has placed importance on international cooperation with other IP offices, and to this end cooperation agreements have been signed with the Chilean PTO, for collaboration on educational platforms on IP (based on the experience of the INAPI classroom), and the Spanish PTO, to strengthen the technological system of IP by easing the access to leading experts in trademark and patent issues.^{cii} Colombia is one of the more active countries in Latin America regarding legal reform and strong intellectual property protection. Colombia is the most active country in referring cases to the ATJ, with Colombian cases making up about two thirds of ATJ preliminary rulings on IP.^{ciii} Furthermore, by becoming the first South American country to join the Madrid System, Colombia has shown its progressive leadership towards compliance with international standards of IP protection in Latin America.

GRAPH 31 Colombia Patent Applications



GRAPH 32 Colombia Patent Applications by Top Fields of Technology



Demand for IP protection in Colombia has grown strongly. Between 1995 and 2010, Colombian patent applications grew by 51.7%. Colombia’s most pronounced period of patent growth was between 2001 and 2006, when demand for patents in the country grew by over 300%. Colombia followed world trends to see a marked drop in applications between 2008 and 2009, with patent applications dropping by 13.63%. However, Colombia rebounded strongly the following year, growing by 11.5% between 2009 and 2010.

A sharp drop is found on patent applications between 2001 and 2003. There are two probable reasons for this: First, 2001 was the year when the Patent Cooperation Treaty came into force in Colombia, leading to a drop in patent applications -mostly from foreign applicants- who prefer to wait for the implementation of the treaty to file their applications. Second, as stated before, socio-political environment weights heavily on Patent Applications trends, because the main applicants are always foreign corporations and they are very sensible to the analysis of political consulting firms when deciding on what countries invest and protect their creations. During the first years of the 2000 decade Colombia had relative political instability and was at the end of a failed Peace Process between the Colombian government and rebel armed forces. This may have affected investment choices from some foreign firms.

Since 2003 Colombia has become a very stable country, with a growing economy that surpassed Argentina’s in 2012, placing it as the third largest in Latin America^{civ}, and increasingly integrated with the world economy. This has been reflected in booming patent applications and continued re-structuring of the domestic PTO.

Historically, the largest fields of technology for patents in Colombia have been medical technology, chemicals, engineering, pharmaceuticals, and consumer goods.

Colombia		
TOP 5 APPLICANTS 2001-2010		Industry
THE PROCTER AND GAMBLE COMPANY	747	Consumer Goods & Pharmaceuticals
NOVARTIS AG	188	Pharmaceuticals
BASF AKTIENGESELLSCHAFT	185	Chemicals
SMITHKLINE BEECHAM CORPORATION	172	Pharmaceuticals
ELI LILLY AND COMPANY	163	Pharmaceuticals

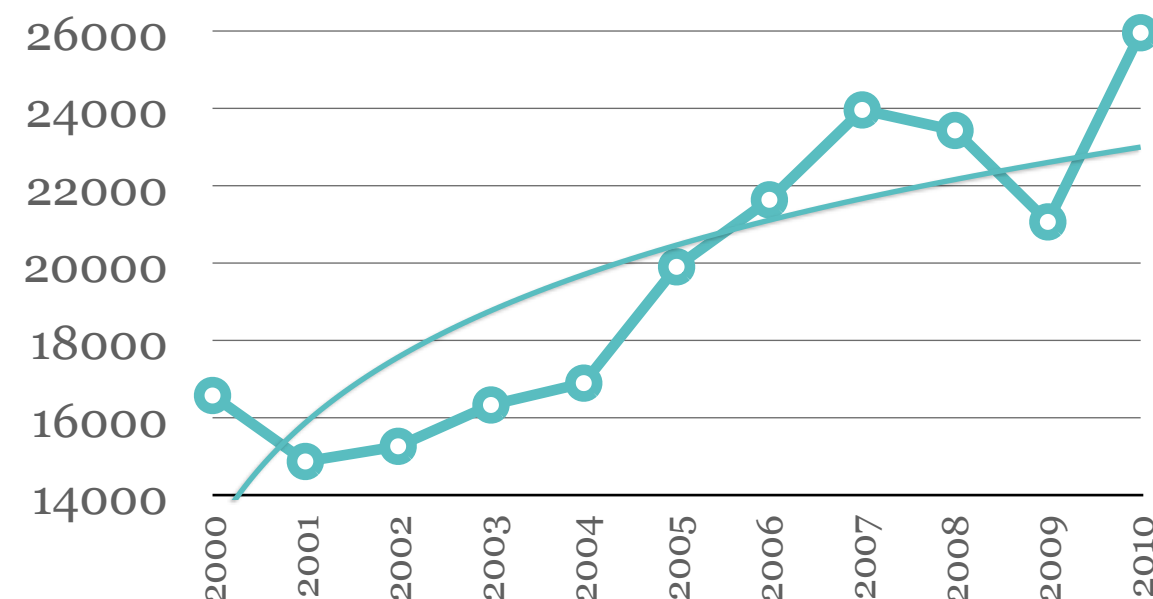
The recent data indicates that these trends have largely held up, except that the importance of manufacturing and engineering appears to have been supplanted by the growing importance of pharmaceuticals. Of the top five patent applications between 2001 and 2010, three of the top five patenting firms were pharmaceuticals manufacturers. However, the biggest applicant in the country during that time was by far Procter & Gamble, indicative of Colombia's growing middle class and disposable income. Chemicals also remain an important industry.

2010		Industry
COLGATE - PALMOLIVE COMPANY	12	Consumer Products
SYNTHES GMBH	11	Medical Devices
NOVARTIS AG	10	Pharmaceuticals
SANOFI-AVENTIS	8	Pharmaceuticals
PHILIP MORRIS PRODUCTS S.A.	8	Tobacco

Isolating the patent firm data for 2010, the importance of pharmaceuticals is still pronounced, with two drug manufacturers in the top five. Additionally, the growing healthcare market in Colombia has also placed a large manufacturer of medical devices in the top five. Colgate-Palmolive and Philip Morris, producers of consumer products and tobacco products respectively, join the healthcare-related companies to complete Colombia's largest applicants for 2010.

Trademarks in Colombia grew very solidly over the first decade of the 2000s. Demand for trademarks in Colombia grew by 56.47% between 2000 and 2010 at an average rate of 5.13% per year, faster than the world average for the same period. Between 2007 and 2009, Colombian trademark applications fell for the first time since 2001, dropping by 12.1% during those two years. However, Colombia rebounded extremely strongly, with trademark applications growing by 23.18% between 2009 and 2010 to reach its highest total ever of nearly 26,000 applications. Colombia has the largest demand for trademarks in the Andean Community.

GRAPH 33 Colombia Trademark Applications



In Colombia, the largest classes of trademarks largely correspond to the major patent trends, with the largest class of trademarks filed in 2010 belonging to pharmaceutical and other medical related marks. Almost half of the applications in this class belonged to foreign applicants. The next largest classes were business advertising, apparel, chemicals, and education related marks. These classes were all dominated by domestic applicants, except chemicals, which had slightly fewer foreign applicants than domestic applicants.

GRAPH 34 Colombia Trademark Applications by top Classes



To see classes check Appendix 1

Ecuador

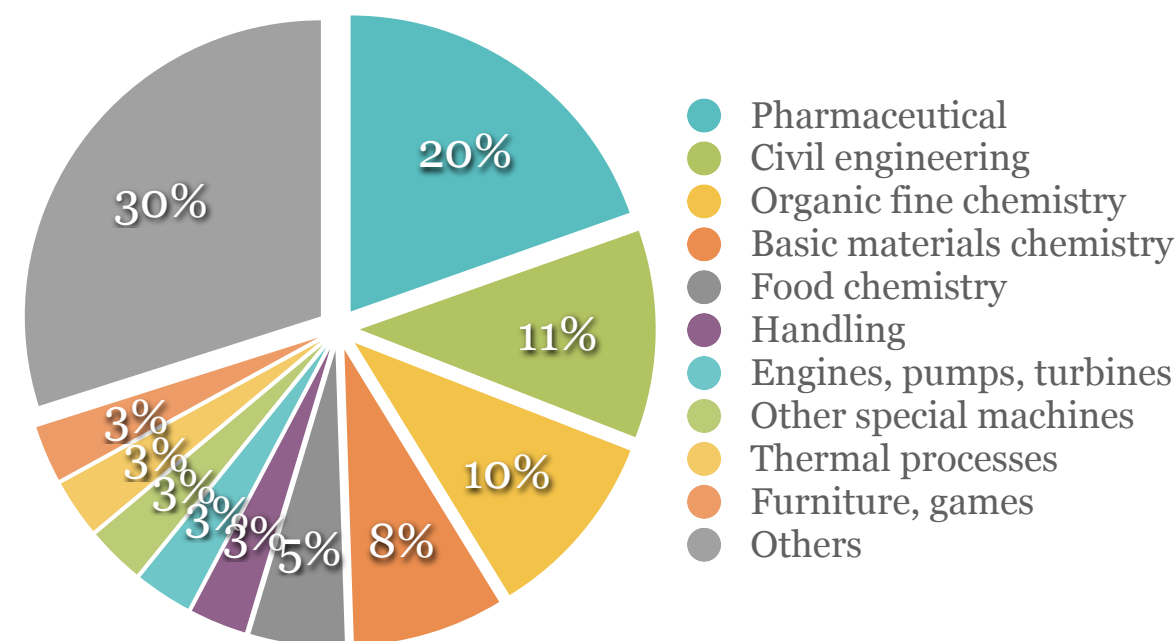
Ecuador has seen fairly consistent growth in demand for intellectual property protection. With regards to patents, this growth has mostly been fueled by the emergence of pharmaceuticals as an important industry in the region. Between 1995 and 2010, patent applications in Ecuador grew by nearly 150%. This growth has been erratic, but for a country that had just over 100 patent applications in 2002 and a maximum of nearly 850 applications in 2008, achieving growth of almost 650% for that period, the growth of Ecuador's patent sector has been pronounced.

GRAPH 35 Ecuador Patent Applications Total



Historically, the largest field of patenting in Ecuador has been pharmaceuticals, consisting of almost 20% of all patent applications between 1985 and 2010. Other strong industries have been engineering and chemistry.

GRAPH 36 Ecuador Patent Applications by Top Fields of Technology



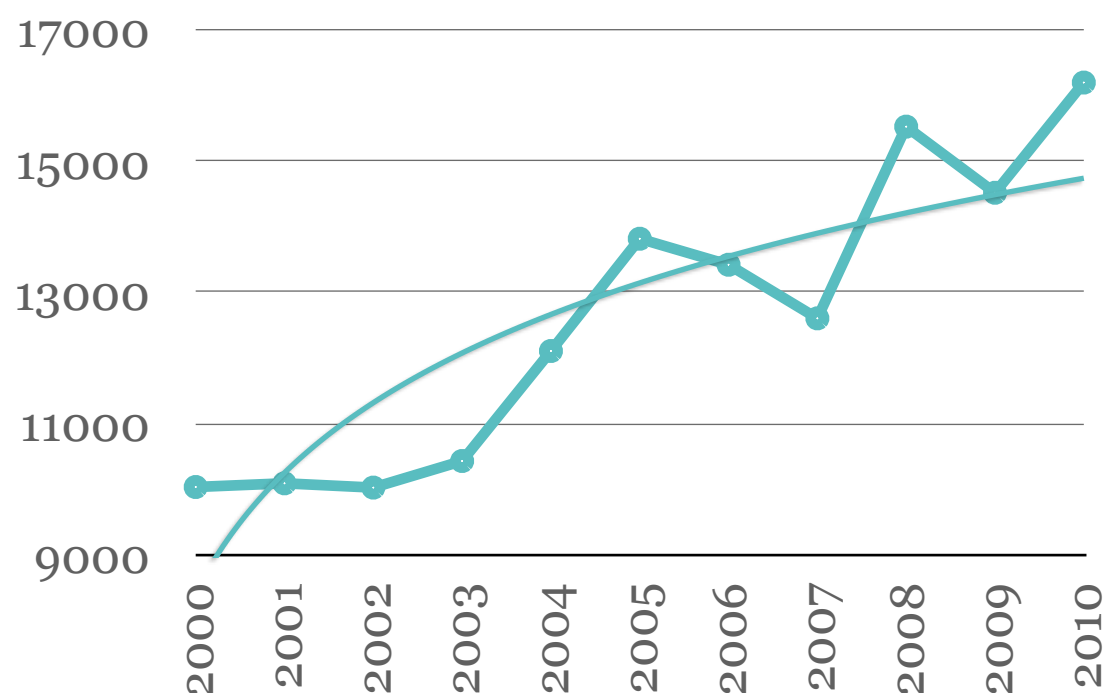
When looking at the firm level data, the importance of pharmaceuticals to Ecuador is even more pronounced. Of the top five patent applicants in 2009, all five of them were pharmaceutical manufacturers.

Ecuador	
TOP 5 APPLICANTS 2009	Industry
ASTRAZENECA AB	21Pharmaceuticals
NOVARTIS A.G.	20Pharmaceuticals
SANOFI - AVENTIS	17Pharmaceuticals
F. HOFFMANN LA ROCHE A.G.	9Pharmaceuticals
BOEHRINGER INGELHEIM INTERNATIONAL GMBH	9Pharmaceuticals

The demand for trademarks in Ecuador has grown more steadily but less extremely than for patents. Between 2000 and 2010, trademark applications in Ecuador grew by 61.35% at an average of 5.58% per year. This growth outpaces world averages but is largely on par with the other Andean countries of Colombia and Peru.

Following the country's patent trends, largest single class of trademark applications in 2010 was pharmaceuticals, and apparel, chemicals, and advertising are also strong classes.

GRAPH 37 Ecuador Trademark Applications



GRAPH 38 Ecuador Trademark Applications by Top Classes



To see classes check Appendix 1

Peru

Peru recently updated its IP laws as a result of negotiations resulting from the country's free trade agreement with the United States. As a result, the Peruvian PTO, INDECOPI, has been busy administering the implementation of these legislative changes under the Commercial Promotion Agreement between Peru and the US. During negotiations for the US-Peru free trade agreement, the Peruvian government asserted that the country would make reasonable efforts to adhere to the Madrid Protocol.^{cv}

Included among these reforms is Legislative decree 1075. This law includes complementary regulation to the decision 486 of the Andean Community, implementing TRIPs and updating procedures. The new law also fulfills many of the requirements of the Trademark Law Treaty, to which Peru is bound by its agreement with the US. To this effect, Peru (and Colombia) has eliminated many requirements for trademark procedures. For example, INDECOPI is allowing the online filing of trademark registration applications, they no longer require the consular legalization or apostille of POAs -with some exceptions-, and they no longer require certificates of incorporation and other documents. Similarly, the INDECOPI has also allowed multi-class registration of trademarks, has reduced the times in which information requirements must be met, and has created a single format for most trademark procedures.^{cvi}

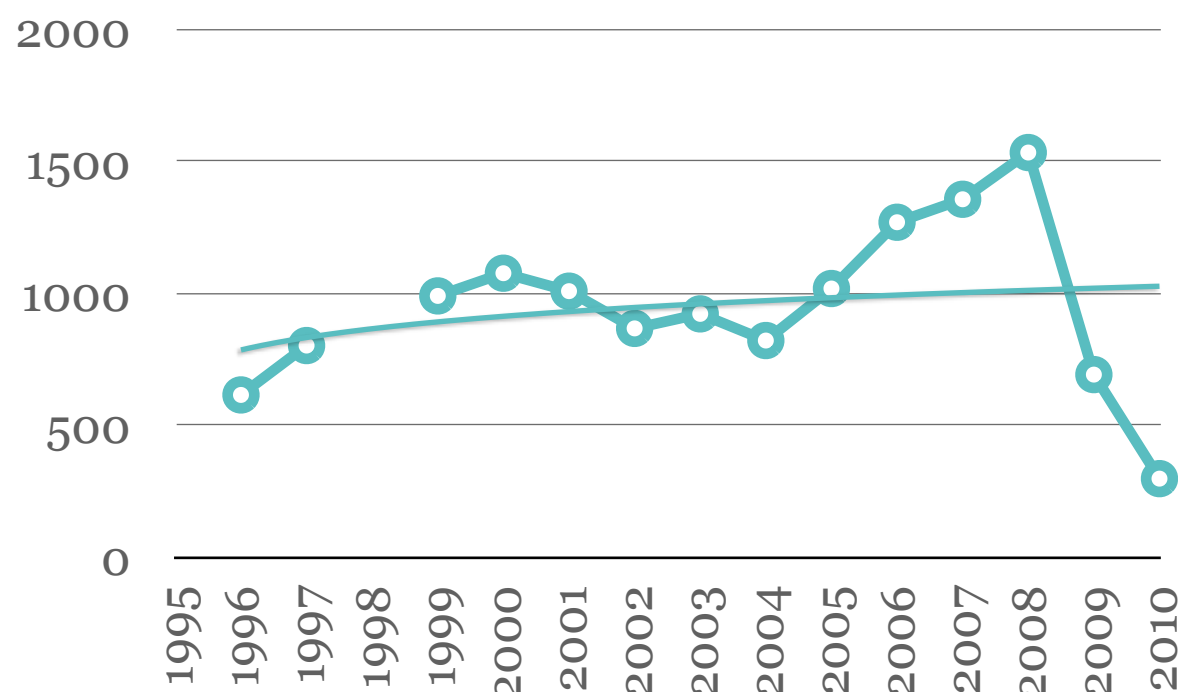
According to INDECOPI's most recent annual report from 2009, trademark registration applications have had an increase of 15.6% compared to 2006. From 20,243 applications in 2006, the demand for trademarks had risen to 23,312 by 2009. Additionally, the report indicates that trademark registrations granted had increase of 21.19% between 2006 and 2009, indicating that the office had significantly improved its efficiency.

Recognizing the need for more efficient operations due to the growing demand for IP protection in the country, INDECOPI has made an agreement with the Brazilian National Institute for IP improve the training for their patent examiners. According to INDECOPI, From 2006 to 2009 the institutions efficiency indicators have gone from 86% of efficiency goals met in 2006 to 97% in 2009. Furthermore, in 2008 the number of applications reviewed was 33% greater than the previous year. Additionally, INDECOPI is working with the South Korean PTO in order to develop a digital platform for patents at a cost of over \$1million USD.

The institution has also focused its efforts on the spread of knowledge. More than 2000 people, mostly from universities and corporations, were instructed in patent law, industrial designs and plant-varieties.^{cvi}

Peru has implemented some interesting IP reforms. For instance, INDECOPI has launched a new program, called Speedy Patent, with the goal of processing domestic patent applications in half the time. Furthermore, Peru has considered the adoption of the Beingolea Act. The act is a proposed bill regarding online criminal law providing extended copyright protection, and the bill is expected to be discussed by the Peruvian Congress in late August 2012. The controversial bill has received strong opposition from NGOs, experts on human rights and IP.^{cviii}

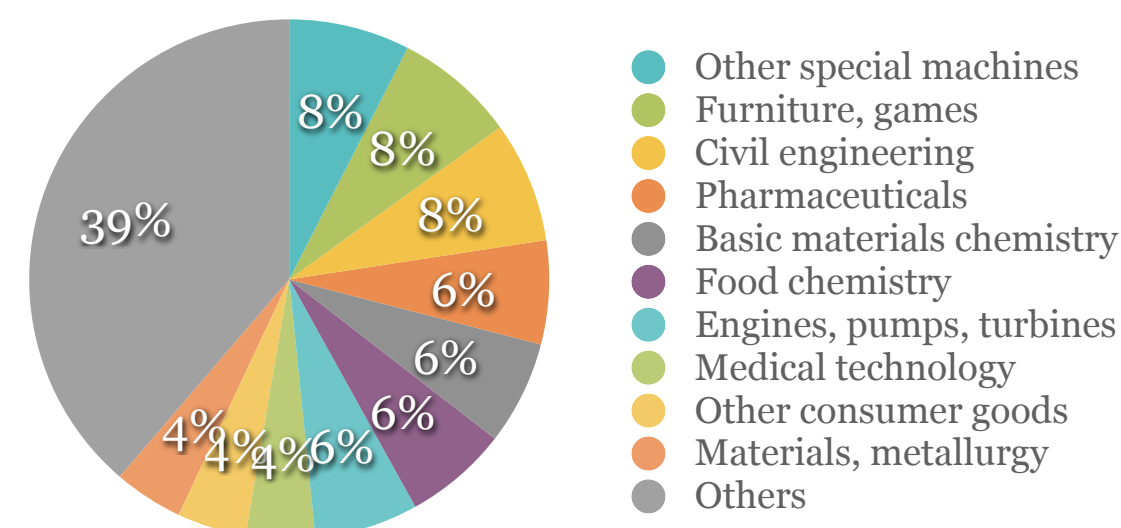
GRAPH 39 Peru Patent Applications



The data on Peruvian patent applications has been erratic. This data suggests either inconsistent demand or incomplete data reporting. The data indicates that patent applications dropped by over 51% from 1996 to 2010. This is inconsistent with growth trends both in the Latin American region as a whole and within the Andean Community. Therefore, there is reason to question the reliability of the patent application data. In 2008, Peru had over 1,500 patent applications, and in 2010 the country reported 300 applications, a drop of over 80%. Non-official press releases from well-known newspapers in Peru report over 1,500 patent applications for 2011^{cix}, and cite the INDECOPI as the source for this information, adding that the PTO expects a 12% increase in the number of applications for 2012.

Historically, the largest fields of patent technology in Peru have been machinery, furniture & games, engineering, pharmaceuticals, chemistry, engines, and medical technology.

GRAPH 40 Peru Patent Applications by Top Fields of Technology



Consistent with regional trends, the pharmaceutical sector's importance to Peruvian patents has grown. The recent firm level data indicates the strength of the pharmaceutical industry in Peru. From 2001 to 2010, the largest patent applicants were all pharmaceuticals or medical technology manufacturing firms.

Peru	
TOP 5 APPLICANTS 2001-2010	Industry
NOVARTIS AG	215Pharmaceuticals
WYETH	187Pharmaceuticals
F. HOFFMANN-LA ROCHE AG	166Pharmaceuticals
SCHERING CORPORATION	120Pharmaceuticals
BOEHRINGER INGELHEIM INTERNATIONAL	101Pharmaceuticals

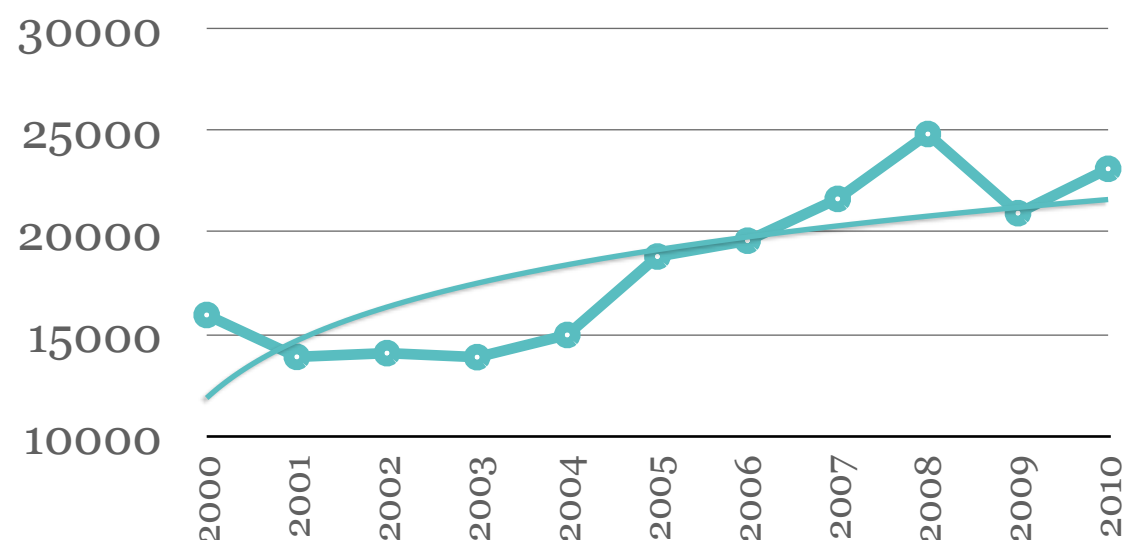
In 2009, besides major pharmaceutical companies, Honda emerged as the second largest patent applicant.

2009	Industry
NOVARTIS AG	10Pharmaceuticals
HONDA MOTOR CO., LTD.	10Engines & Manufacturing
GLAXO GROUP LIMITED	10Pharmaceuticals
ASTRAZENECA AB	10Pharmaceuticals
BAYER SCHERING PHARMA AKTIENGESELLSCHAFT	8Pharmaceuticals

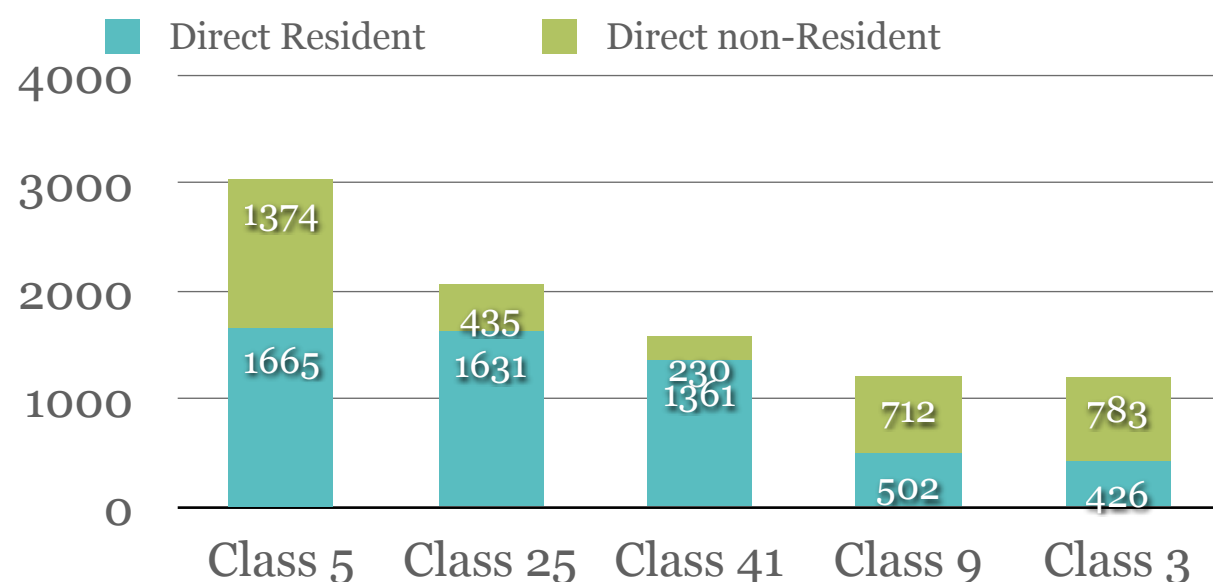
Trademark applications grew consistently between 2000 and 2010. During that period, trademark applications in Peru grew by 44.91%, at an average of over 4% per year. Peru's trademark applications grew faster than the world average of 3.72% for that same period. Peru's demand for trademarks is the second biggest market in the Andean Community.

In 2010, the largest class of trademark applications was by far pharmaceutical marks, with about half of which coming from foreign applicants. Data clearly indicates the growing importance of pharmaceuticals to the Peru IP industries.

GRAPH 41 Peru Trademark Applications



GRAPH 42 Peru Trademark Applications by Top Classes

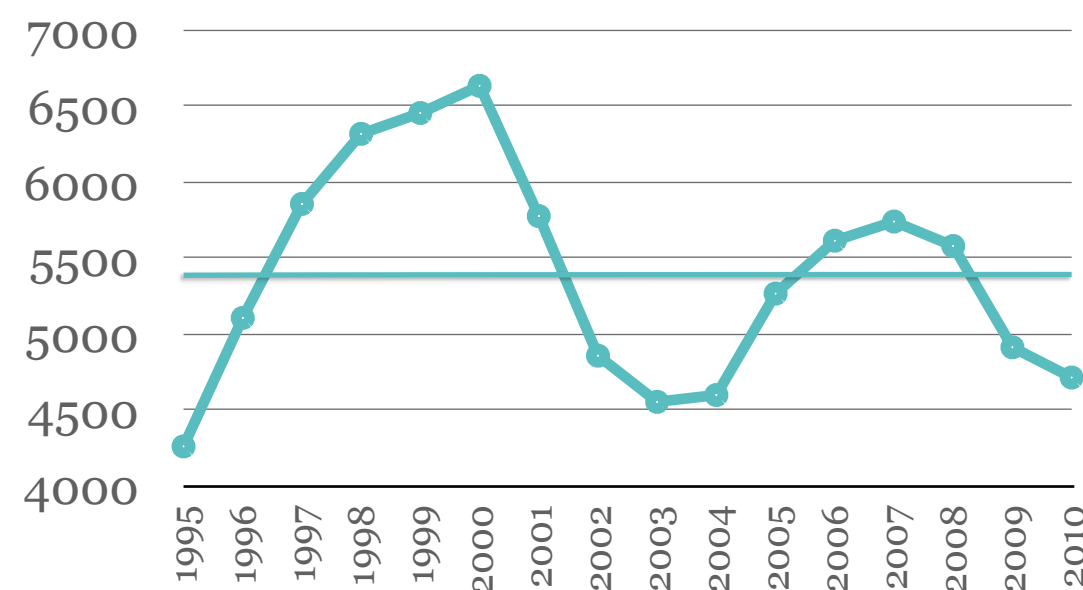


To see classes check Appendix 1

Argentina

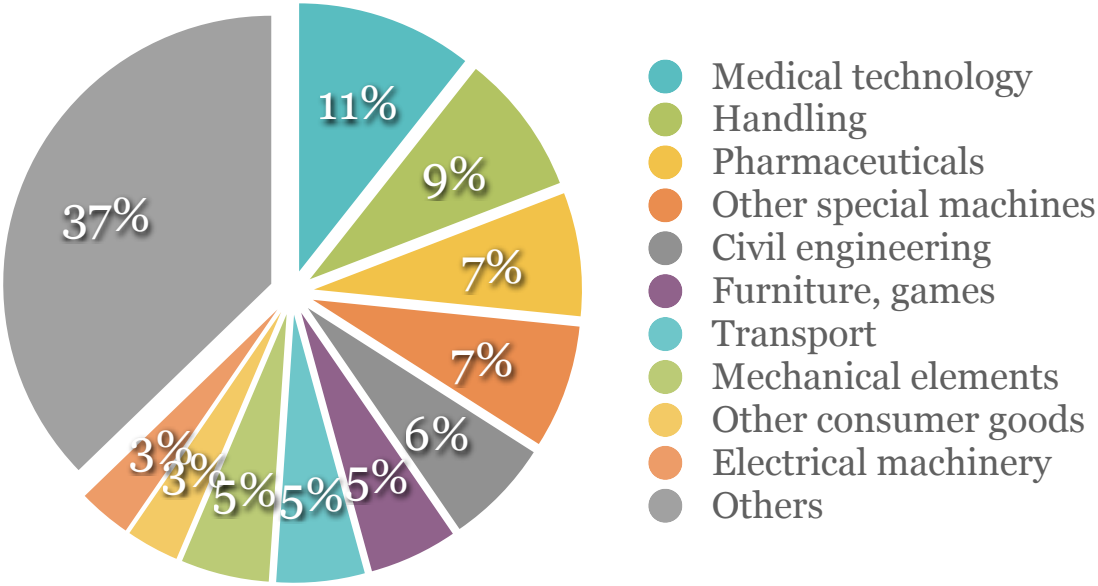
Argentina's market has shown strong yet erratic growth for both patents and trademarks.

GRAPH 43 Argentina Patent Applications



As the figure above indicates, Argentina experienced two periods of strong patent growth followed by sharp declines. In the early 2000's Argentina went through a strong economic crisis, that led the government to default on its debts and left serious economic problems that still have repercussions for the national economy. For the period between 1995 and 2010, patent applications in Argentina grew by a modest 10.62%. However, from 2003 through 2007, the country's patent applications grew by 26.03% at an average of 5.21% per year for that period. Following this period of strong growth, the country witnessed a small drop off in patent applications in 2008, followed by a large dip in applications of -11.93% between 2008 and 2009 that is undoubtedly attributable to the world's economic downturn and to the increasingly protectionist policies of the Argentinian government. The following year, the decline in patent applications slowed to -4.04%, signaling that the country has started to recover from the collapse in 2008-2009.

GRAPH 44 Argentina Patent Applications by Top Fields of Technology



Following the region's major trends, the largest patent applications in Argentina have historically been in the fields of pharmaceuticals, medical technology, and manufacturing technologies.

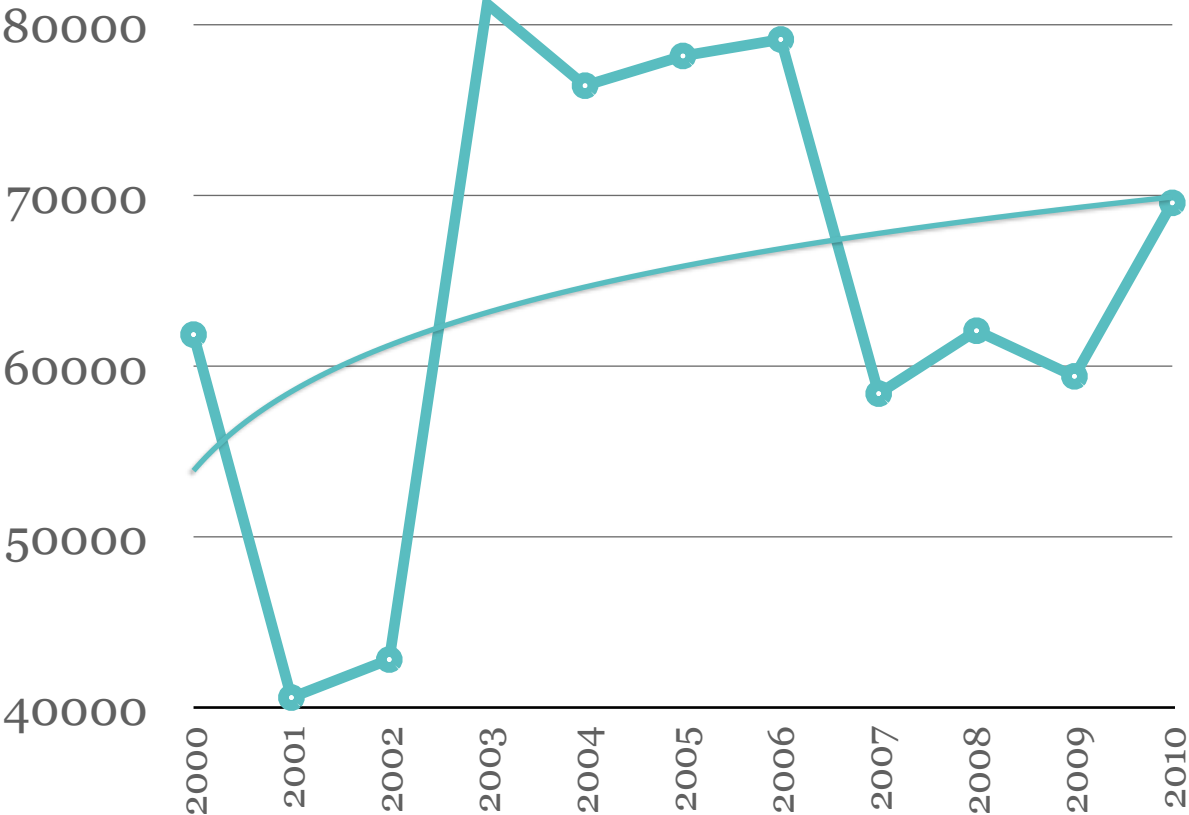
Argentina

TOP 5 APPLICANTS 2002-2012		Industry
THE PROCTER & GAMBLE COMPANY	1476	Consumer Goods & Pharmaceuticals
UNILEVER N.V.	1407	Consumer Goods
BASF AKTIENGESELLSCHAFT	896	Chemicals
ASTRAZENECA AB	801	Pharmaceuticals
KIMBERLY-CLARK WORLDWIDE	756	Personal Care Products & Paper Goods

2011	Industry
BASF SE	124Chemicals & Plastics
UNILEVER N.V.	87Consumer Goods
BOEHRINGER INGELHEIM INTERNATIONAL GMBH	60Pharmaceuticals
SANOFI - AVENTIS	54Pharmaceuticals
SUMITOMO CHEMICAL COMPANY, LIMITED	53Chemicals

Looking at the top patent applicants by firm from 2002 to 2012, a similar picture emerges. The top firms are well-known multinational consumer goods, pharmaceuticals, and chemical manufacturing corporations. Isolating the top firms from the year 2011, these trends hold fast, as the five largest patent applicants are operating in the same industries of chemicals, consumer goods, and pharmaceuticals.

GRAPH 45 Argentina Trademark Applications

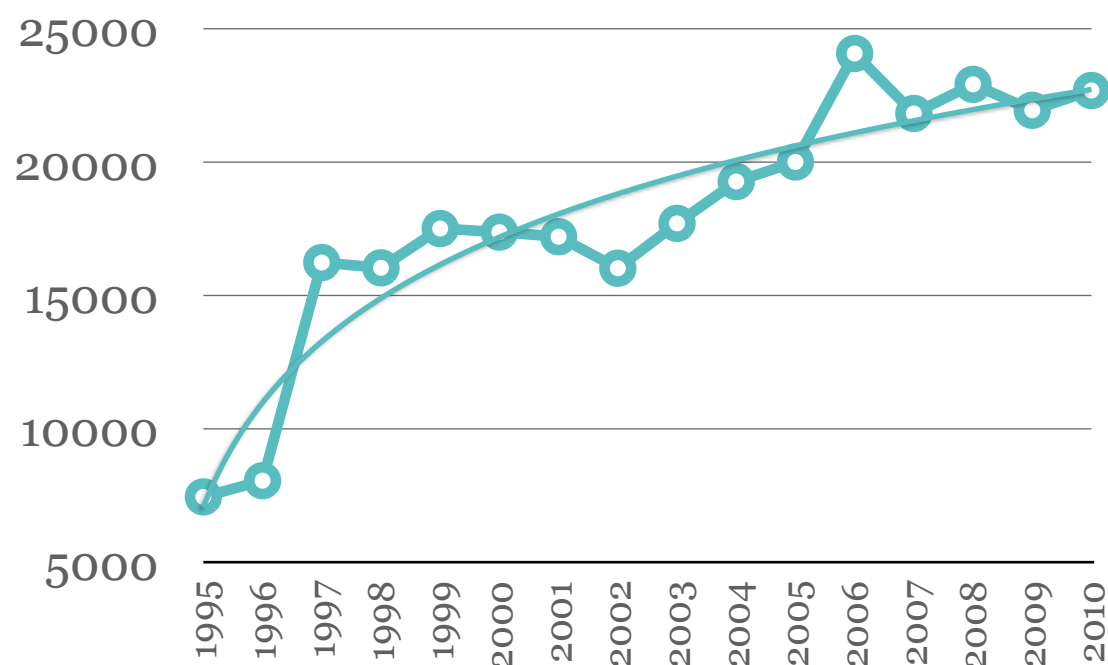


Argentina's trademark applications grew by 12.48% from 2000 through 2010. However, as the graph above indicates, this growth has been erratic and unpredictable. In a similar fashion to the trends witnessed in patent applications, the country experienced a marked decline from 2000 to 2001 that is most likely attributable to the tech bubble burst and to economic crisis and default in Argentina.

Brazil

Brazil is undoubtedly South America's heavyweight, and Brazil's economy represents the seventh biggest in the world based on its GDP.^{cx}

GRAPH 46 Brazil Patent Applications

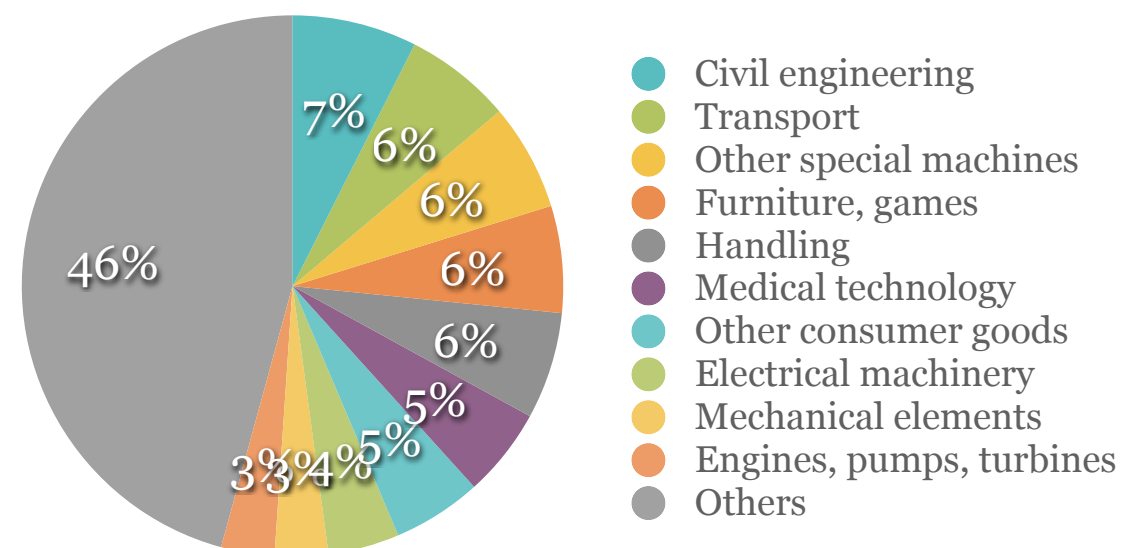


Brazil has spearheaded South America's growth in patent applications by becoming a leader in pharmaceuticals and other high tech industries such as aviation. The country has significantly invested in ICT and Brazil has become a magnet for the region's research and development. GE and IMB both have R&D centers in Brazil.^{cx}

Between 1995 and 2010, Brazil's patent applications grew by 204.59%, at an average of 12.79% per year. Brazil's well rounded economy has seen patent growth in a variety of areas.

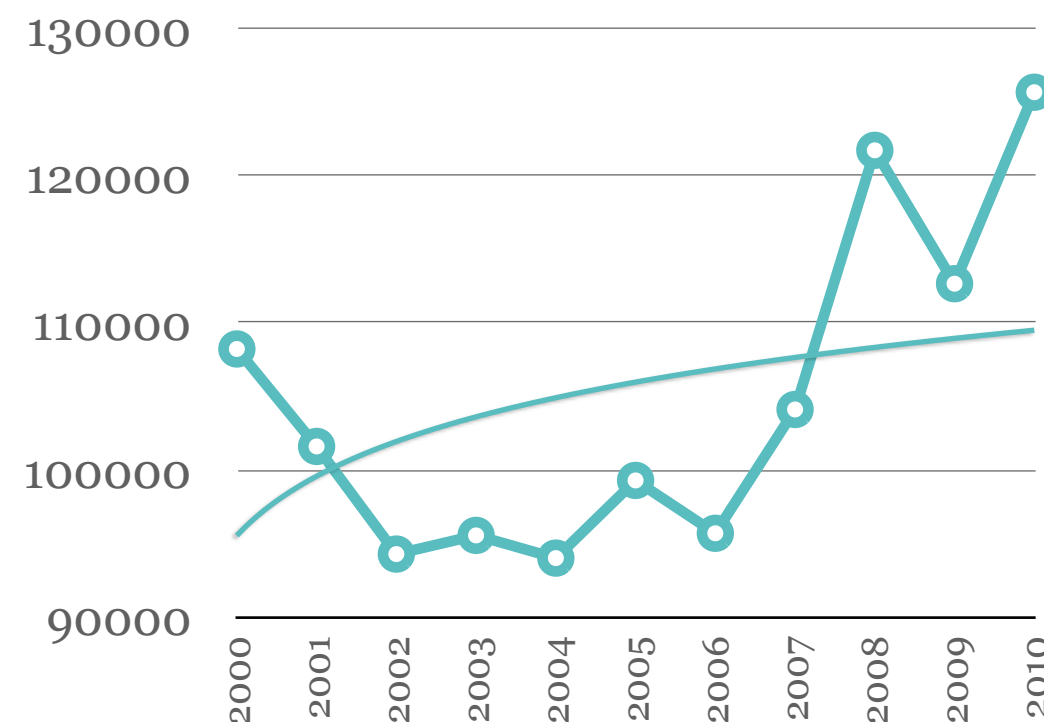
Despite the world economic downturn, between 2008 and 2009 Brazil grew by 4.6% in PCT patent applications, while its patent applications overall witnessed a slight decline.^{cxii} Brazil's growth in PCT applications bucked the international average, which fell by 4.5% in 2009.^{cxiii} INPI attributes this growth to its own awareness activities within the country and demand for Brazilian patents internationally.^{cxiv}

GRAPH 47 Brazil Patent Applications by Top Fields of Technology



Despite marked drops following the tech bubble burst, Brazil's trademark applications have seen strong and steady growth. From the period between 2000 and 2010, trademark applications in Brazil grew by 16.1%.

GRAPH 48 Brazil Trademark Applications



Brazil’s domestic patent office, the National Institute of Industrial Property (INPI), has undergone a series of reforms in the past several years to help the institution deal with the challenges of the 21st Century.^{cxv} As can be seen from the data, Brazil’s IP industries have witnessed explosive growth. By 2005, INPI was unable to process patent or trademark applications in a reasonable amount of time, and INPI experienced extremely large application backlogs that led to long pendency times. Other factors that worsened the problem were INPI’s outdated computer system, inefficient administration, and insufficient staffing.^{cxvi}

Since that time, INPI has doubled its staff while tripling its capacity to process applications.^{cxvii} In addition, with the help of funding from the Inter-American Development Bank, INPI has updated its computer infrastructure, which has allowed improved coordination internally as well as with other Latin American and international offices. Specifically, INPI adopted an electronic filing system, the Industrial Property Automated System, adopted from the EPO, with plans to make electronic patent applications available sometime in 2012.

Additionally, INPI has an electronic trademark filing system. Brazil has reduced the average pendency time for trademark applications to 1.87 years in 2010.^{cxviii} Importantly, Brazil has expressed its desire to join the Madrid System of international trademark registration in the coming years.^{cxix}

INPI’s stated goal is to rise to the level of excellence commensurate with large PTO’s worldwide. In order to do so the institution has undergone a series of training programs designed to improve the knowledge of their personnel. Additionally, INPI has made a concerted effort to educate the public by offering various training programs to universities and the like. INPI has also taken on the new role of “defending IP” and fighting piracy in Brazil.

Importantly, Brazil possesses a specific court to adjudicate IP issues.^{cxx} The country has a specialized and competent IP bar.

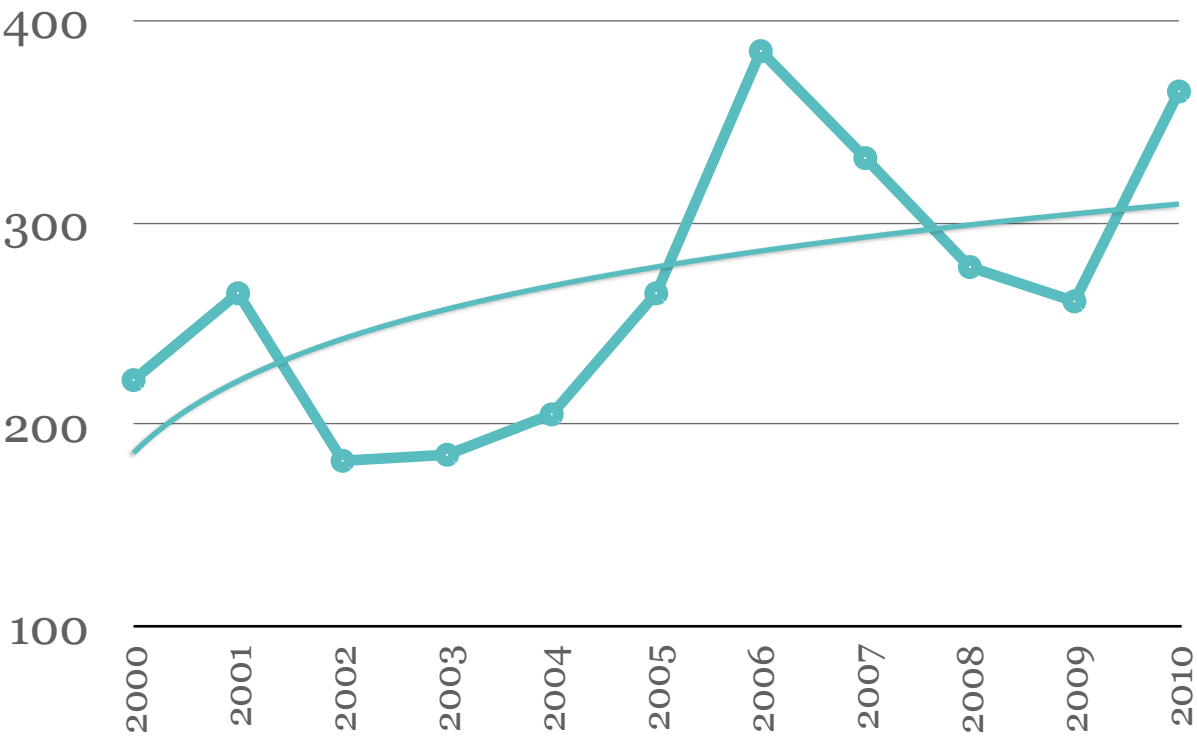
Paraguay

Paraguay is not one of the stronger nations in the region for IP protection. Paraguay currently has a Memorandum of Understanding on Intellectual Property Rights with the United States, under which Paraguay has committed itself to strengthening the country’s IPR protection.^{cxxi}

Analysts have noted that the Paraguayan market still faces a huge problem with physical piracy. Additionally, it has been noted that corruption and an unreliable judiciary create barriers to criminal enforcement of IPR laws.^{cxxii} Paraguay remains a source of counterfeited products that enter into neighboring countries such as Brazil.^{cxxiii}

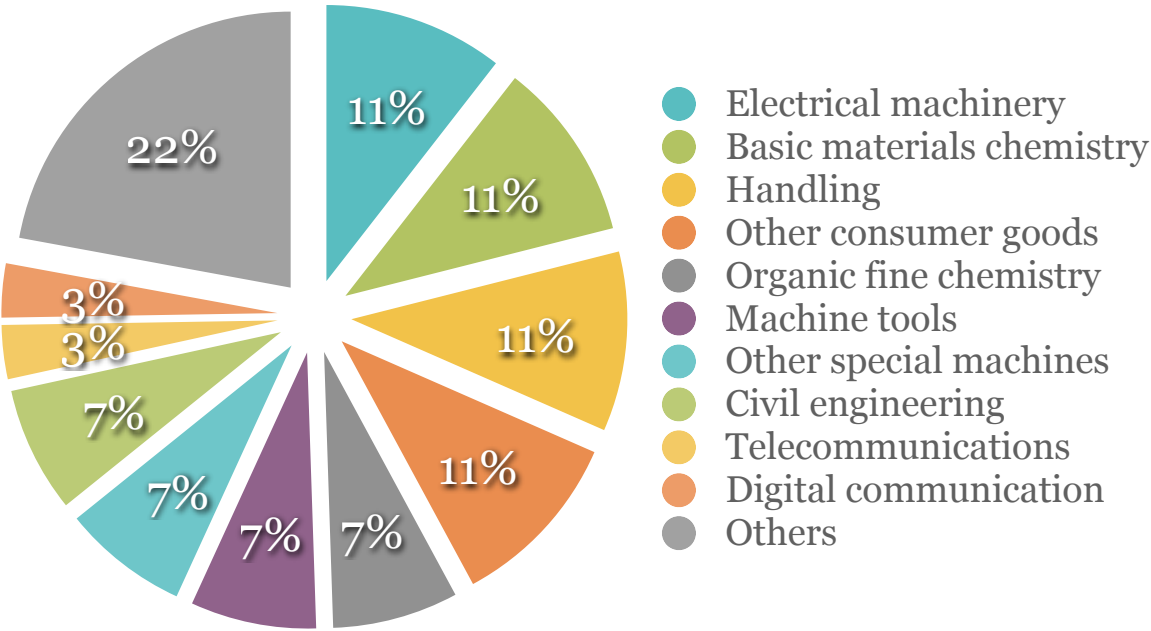
Unfortunately, Paraguay recently underwent some negative changes when the government withdrew support for its domestic special anti-piracy unit known as UTE in 2009. Fortunately, UTE was restructured in 2011, and hopefully the unit can again become an effective law enforcement institution.^{cxxiv}

GRAPH 49 Paraguay Patent Applications



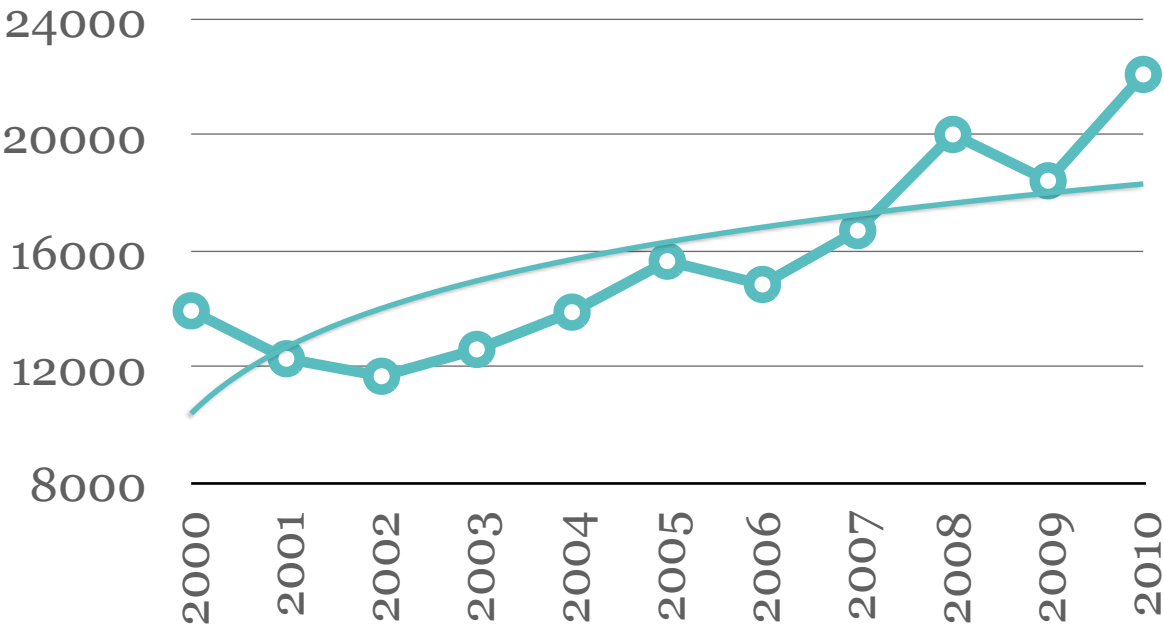
While admittedly there is little demand for patent protection in Paraguay, the country has still performed admirably in terms of overall patent application growth. The country's patent applications grew by 64.41% between 2000 (the first year with available data) and 2010, at an average of 5.86% growth per year. In 2010 Paraguay reported 365 patent applications.

GRAPH 50 Paraguay Patent Applications by Top Fields of Techonlogy



In terms of the largest fields of technology for patent filings in Paraguay, the country's largely developing economy has focused on manufacturing elements, chemicals, engineering, and consumer goods. Digital communications and telecommunications have also emerged as top patenting fields as the nation attempts to modernize its infrastructure.

GRAPH 51 Paraguay Trademark Applications

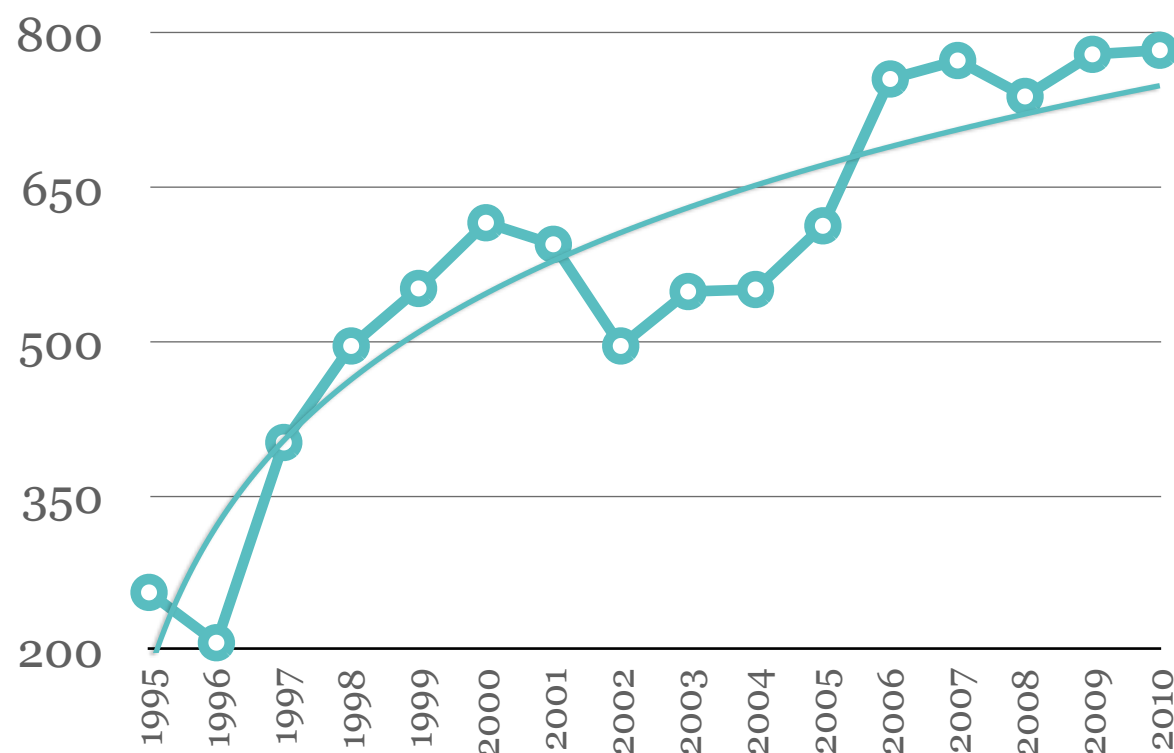


Paraguay has much more trademark activity, with over 22,000 trademark applications in 2010. From 2000 to 2010, trademark applications in Paraguay grew by 58.4% at an average of 5.3% per year. From 2008 to 2009, Paraguay experienced a sharp drop in trademark applications, falling by 7.97% due to the world-wide economic crisis. However, the country rebounded strongly, with trademark applications growing by 19.89% between 2009 and 2010 to achieve its largest number of applications ever reported for the country.

Uruguay

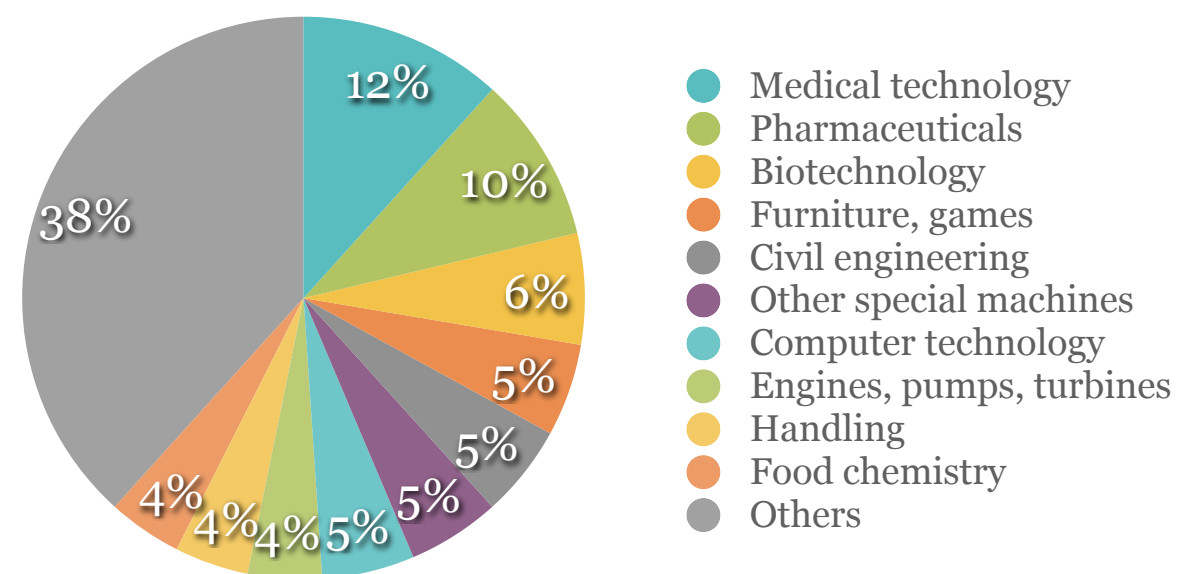
Uruguay, a member of Mercosur, has seen significant growth in its patent applications, but has seen the opposite trends regarding trademark applications. The reason for this discrepancy is unknown. The sharp dip in trademark applications defies regional and worldwide trends, and may be a result of incomplete data reporting. The country is not a member of the PCT or Madrid System, but Uruguay is compliant with TRIPs.^{xxxv}

GRAPH 52 Uruguay Patent Applications



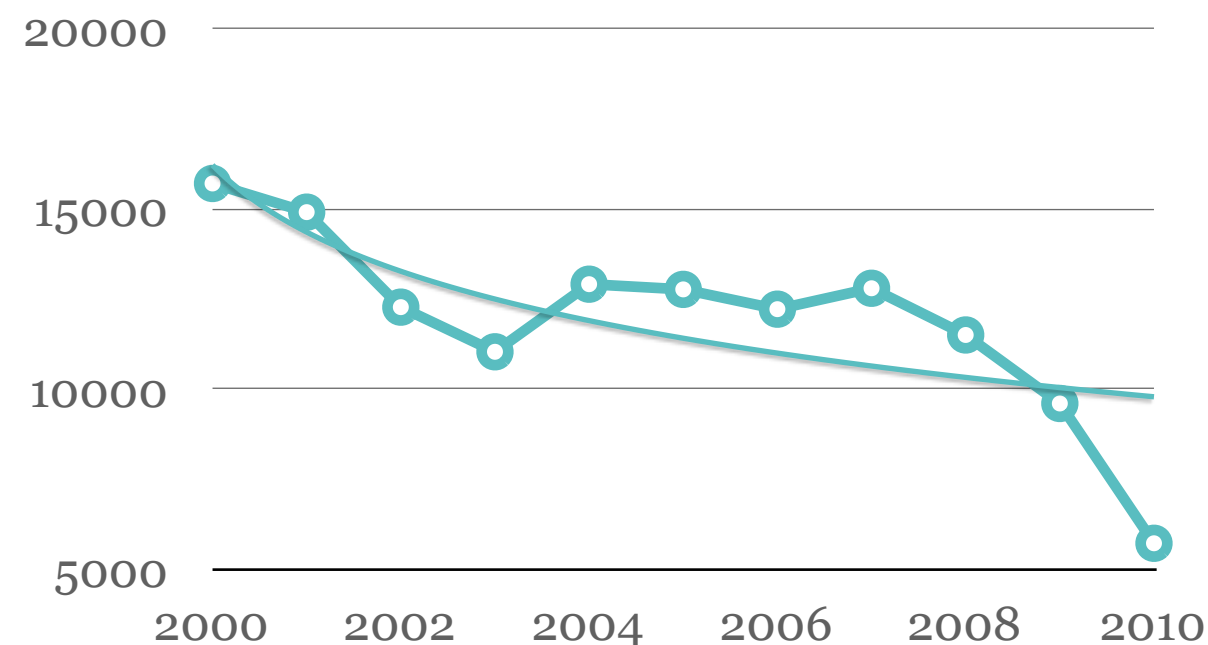
The data indicates that patent protection is becoming more important in Uruguay. Between 1995 and 2010, patent applications in Uruguay grew by 206.25% at an average of 12.89% per year. From 256 applications in 1995, the country reported 784 applications in 2010, its largest number of applications to date. Impressively, the country defied the world trends by showing positive patent application growth of 5.55% between 2008 and 2009.

GRAPH 53 Uruguay Patent Applications by Top Fields of Technology



Consistent with regional trends, Uruguay's main fields of patenting activity are medical technology, pharmaceuticals, and biotechnology. Other strong fields of patenting are engineering and machinery followed by communication technology and other manufacturing sectors.

GRAPH 54 Uruguay Trademark Applications



As the graph shows, the Uruguay's data shows negative trademark trends for the first decade of the 2000s, dropping 63.5% from a high of over 15,000 in 2000 to below 6,000 in 2010. The largest classes of trademark filings correspond strongly with the country's patent trends, showing pharmaceuticals as the number on class of trademarks followed by business advertising, chemicals, and education.

GRAPH 55 Uruguay Trademark Applications by Top Classes



To see classes check Appendix 1

Venezuela

The B&R team in Venezuela helped in the research of this country section. Special thanks to attorneys Barbarita Guzman and Reinaldo Badillo.

Venezuela has long been recognized as both the region's problem child and as a very interesting market. IP trends for the country are mostly positive in Trademark matters and negative for Patents, but a strong economy has kept the country's IP system afloat during a time of controversial reforms. The recent accession of Venezuela to the Mercosur system is an encouraging news, since it will open the country to some of the largest regional markets.

Venezuela left the Andean Community in 2006 to join Mercosur shortly after. The reasons for this change are more political than economic.

It is hard to actually gauge the country's IP performance, because Venezuela has not reported any data to WIPO since 2001. One can only rely of the information provided by the domestic PTO, the SAPI -Servicio Autónomo para la Propiedad Industrial-, but official statistics from Venezuelan authorities have a reputation of being highly unreliable^{cxxvi}. However, the information on patent and trademark applications here presented has been assessed as reliable by our attorneys in Venezuela, and seems to be consistent with expected trends and changes in IP regulations; this is why we use the SAPI's information in this section of the report.

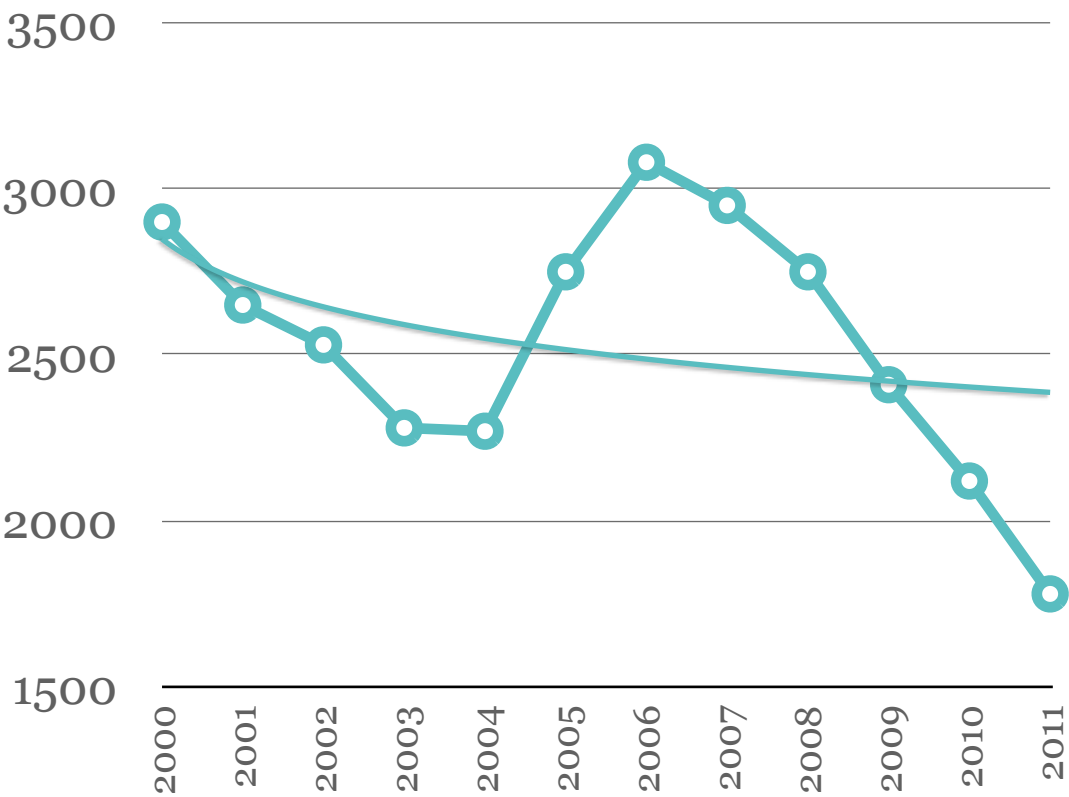
The current Venezuelan government may be characterized as having a hostile position towards IP, but the problem seems to be focused on Patent Law rather than Trademarks and Copyrights. Increasingly isolationist and protectionist reforms have been implemented under president Hugo Chavez; the nation's laws most likely have not seen positive IPR reform. The IP market, however, seems to keep up going with unexpected strength, mostly due to the fact that the Venezuelan market is highly attractive due to a combination of high purchasing power in consumers and a booming economy.

Venezuela was a member of the Andean Community since 1992, with the same regional IP regulation as the other Andean countries. However, the government decided to leave the community in 2006 by denunciation of the treaty. Since the exit from the Andean Community, the Venezuelan Intellectual Property has been regulated by a 1955 law that had been replaced by the Andean Parliament's Decisions. This 1955 law came back into force and has caused many problems for both the SAPI and its users, mainly because an almost 60 years-old IP law doesn't regulates issues such as service marks, circuits designs, pharmaceutical patents, doesn't uses the Nice Classification and ignores many other areas of IP.

On patent law, the 1955 law shortened patent protection from the usual 20 years to a time-frame of 5 to 10 years; pharmaceutical patents were forbidden, and only chemical processes can be patented; and all technical information on registered patents has been made available for inventors to work upon them^{cxvii}, which has been considered by many IP attorneys as a *de facto* repeal of the protection given by the patent system.

The effects of these changes in Patent Law have been reflected in the drop on Patent Applications from 2006 to 2011.

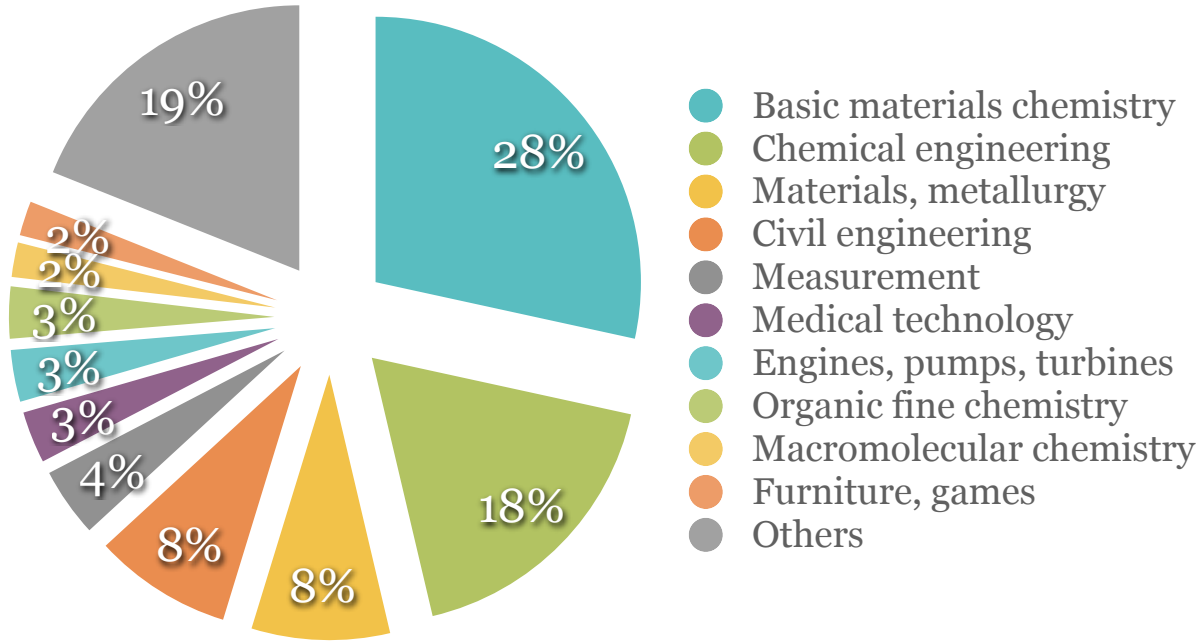
GRAPH 56 Venezuela Patent Applications



Venezuelan Patent applications have seen two drops: the first, on the years before the country’s exit from the Andean Community, when patent applications dropped to below 2.300 applications in 2004; immediately after raising to above 3.000 applications on the same year that they left the Community and the 1955 law was unsuspended. The second drop, since 2006 in a trend that’s still visible, patent applications have dropped to nearly 1.500 in 2011.

This is consistent with reports from Venezuelan newspapers and Intellectual Property Firms. They state that no patents have been granted in Venezuela in the last five years, and applications are expected to have decreased in more than 50%^{cxviii}. Privately-funded R&D is also said to be near standstill. Venezuelan law firms, our attorneys among them, expect the government to create a new law for Intellectual Property, and consider the Venezuelan government to be in open violation of other IP Treaties to which the country still belongs. Indeed, even with the exit from the Andean Community, Venezuela is still party to several important treaties (the Berne Convention, the Paris Convention and the TRIPS agreement among them) but most of these treaties are not being enforced and the 1955 IP law is in open contradiction of many of them

GRAPH 57 Venezuela Patent Applications by Top Fields of Technology



Pharmaceuticals, unsurprisingly, are not on the top fields of technology for Patent Applications, since their patents have been expressly prohibited in Venezuela. The country shows strength in the Chemical Industry, which may be related to the strength of the oil and oil-related industries and engineering, which may be related to strong public investment in infrastructure.

With the recent accession to the Mercosur agreement, IP regulation will probably improve -admittedly, the SAPI has recognized the need for new regulation-, and new markets will be opened for Venezuela. Accession of the country to the Madrid Protocol or the PCT are still not being assessed, but hopefully the country's economic strenght will keep the patent system afloat while new regulation is achieved.

Trademark Law is a completely different deal for Venezuela. Trademark applications don't seem to be affected by the exit from the Andean Community.

GRAPH 58 Venezuela Trademark Applications



Trademark applications actually show positive trends since 2010, and they peaked from 2005 to 2007; these are the years right before and after the exit from the Andean Community. Trademark Law is considered to be in good health even with the 1955 IP law. Some of the changes to trademarks since 2006 are: Trade-marks Applications must include both a national class system and the Nice International Classification; Service Marks are not Specifically Protected, but their registration seems to be still granted; Trademarks are protected for 15 years instead of the usual 10 years; and there is no grace period for renewals. Renewal applications must be filed within 6 months prior to expiration^{xxxix}.

None of these changes are truly problematic for trademark owners, although they can create problems for IP Law Firms and uncertainty in the management of trademark portfolios remains.

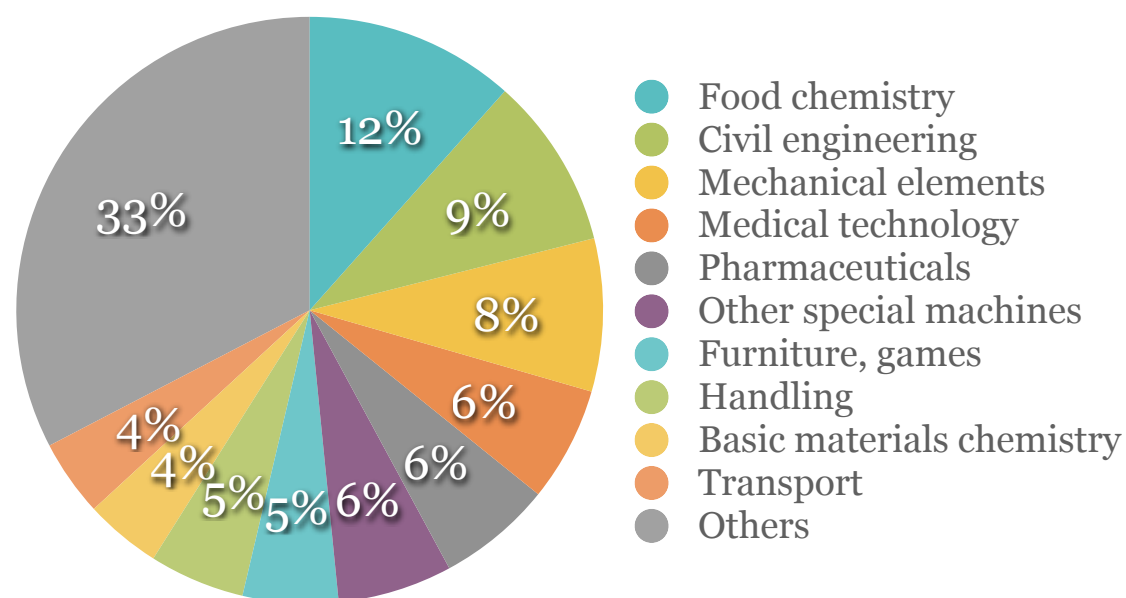
In conclusion, the Venezuelan government is not following a smart trend in their IP regulation and management of IP assets. The government seems to disregard completely the importance of Intellectual Property and a strong patent system, damaging the country's incentives for innovation and creative activity.

However, Venezuela remains an important and attractive market in Latin America, with good purchasing power and many unexploited markets. We hope the government's stand on IP will evolve into smarter strategies and improved IP protection somewhere in the future.

Costa Rica

Costa Rica is a signatory of the CAFTA-DR free trade agreement with the United States. As a result, the country's IP is consistent with TRIPs international standards, and Costa Rica has adopted all of the major international IP treaties except for the Madrid System. Researchers have noted that Costa Rica has some of the most effective IP enforcement in the region, with one of the lowest piracy rates in Latin America.^{xxxx} Furthermore, the Costa Rican government has implemented programs to educate the public and raise awareness about the importance of intellectual property protection.^{xxxxi} The USPTO has worked with Costa Rica to train its officials, and US Immigration and Customs Enforcement works with the Costa Rican government to investigate the production and distribution of counterfeit and pirated products.^{xxxiii}

GRAPH 59 Costa Rica Patent Applications by Top Fields of Technology



Costa Rica has limited data on patent applications, but the country reported 1,220 patent applications in 2010. This is the first year for which this data is available.

Historically, Costa Rica's top fields of patenting have been food chemistry, engineering and mechanical technologies, followed by medical technology and pharmaceuticals. The recent firm level data indicates that patent activity in the country has shifted away from mechanical elements to a focus on pharmaceuticals, while chemicals have remained an important industry.

Costa Rica

TOP 5 APPLICANTS 2001-2010	Industry
WYETH	242Pharmaceuticals
BASF SE	124Chemicals & Plastics
BAYER SCHERING PHARMA AKTIENGESELLSCHAFT	108Pharmaceuticals
NOVARTIS AG	105Pharmaceuticals
BASF AKTIENGESELLSCHAFT	86Chemicals

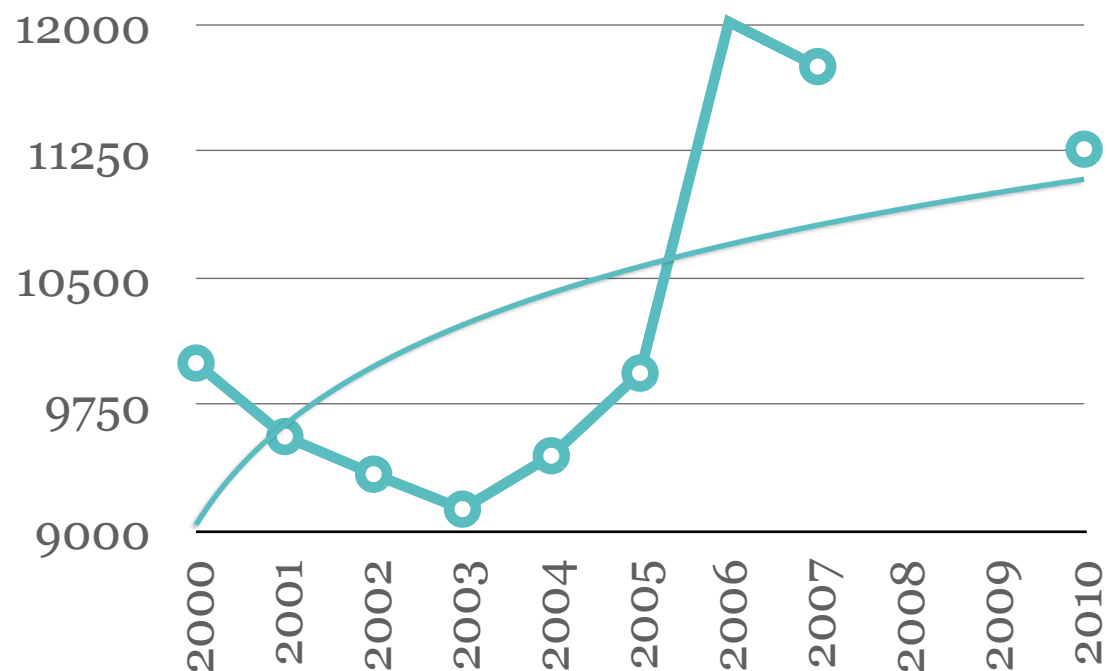
The top five patent applications by firm from 2001 to 2010 were all in the pharmaceutical or chemical industries, and isolating the top firms from 2010 shows that these trends continue, with pharmaceutical and chemical firms dominating patent applications for that year.

2010	Industry
ASTRAZENECA AB	52Pharmaceuticals
NOVARTIS AG	46Pharmaceuticals
BASF SE	44Chemicals & Plastics
BAYER SCHERING PHARMA AKTIENGESELLSCHAFT	23Pharmaceuticals
BAYER CROPSOURCE AG	20Chemicals

Trademarks in Costa Rica have grown a modest 12.66% between 2000 and 2010. The country did not report trademark data in 2008 or 2009. Based on the available data, it is safe to say that these years continued the drop off that started with the country's slide by 2.2% from its maximum of 12,018 applications in 2006 to 11,754 applications in 2007. By 2010, the country's applications had again dropped by 4.16% since 2007 to 11,265 applications. This data indicates that the country is still rebounding from the worldwide recession that began in 2008.

The top classes of trademark applications somewhat coincides with the top patent industries in Costa Rica, with pharmaceuticals dominating trademark applications in the year 2010. Not surprisingly, these pharmaceutical trademark applications were largely from foreign rather than domestic applicants. The second most active class of trademarks is the class that includes coffee, tea, and cocoa, indicating the importance of these commodities to Costa Rica's economy. The third most active class in 2010 involved chemical manufacturing, which reinforces the importance of chemical manufacturing to Costa Rica's economy that was seen with the country's patent applications.

GRAPH 60 Costa Rica Trademark Applications



GRAPH 61 Costa Rica Trademark Applications by Top Classes



To see classes check Appendix 1

Dominican Republic, El Salvador, and Guatemala

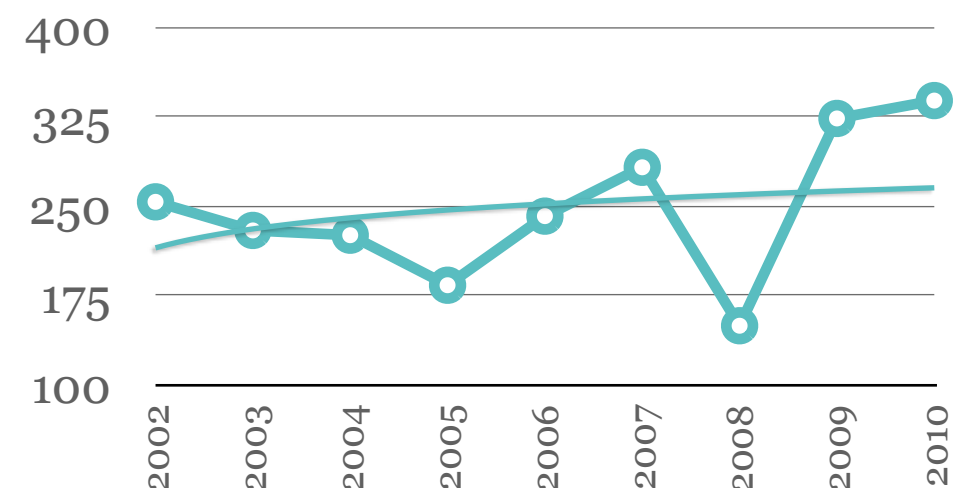
The B&R team in Guatemala helped in the research of this country section. Special thanks to attorney Karina Calderón.

The Central American countries of El Salvador and Guatemala along with the Caribbean nation the Dominican Republic have seen many of the same legal trends resulting from their common adherence to the CAFRA-DR free trade agreement with the United States. Therefore, they will be included in the same section.

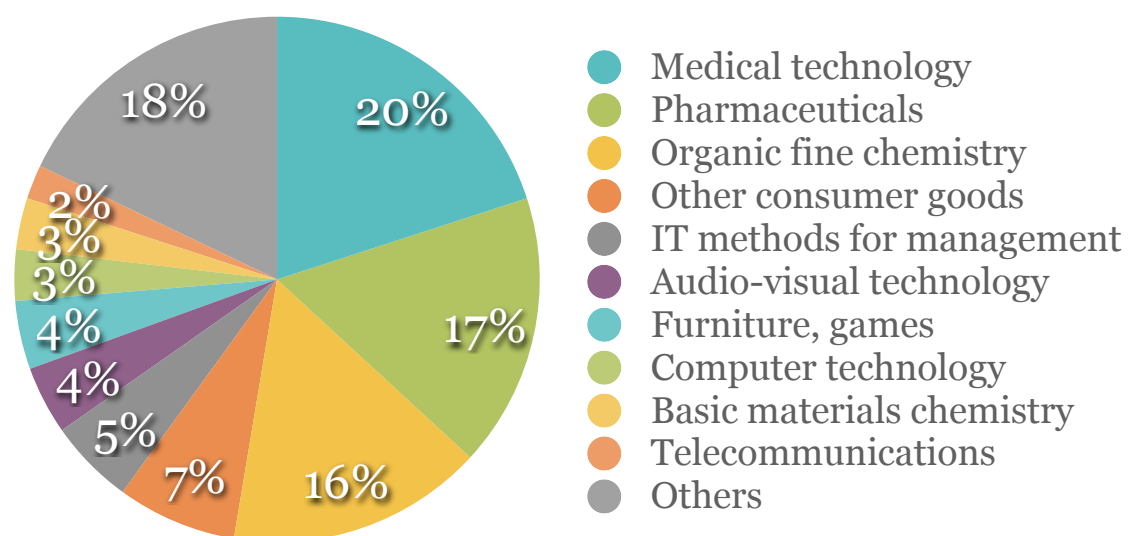
As a result of reforms instituted with the implementation of the CAFTA-DR agreement with the United States, these countries are largely in line with international legal standards for IP protection. The three countries are currently party to the PCT but not to the Madrid System. Although they are nominally compliant and presumably possess a high degree of protection for most intellectual property rights, the reality is that piracy remains problematic in these countries, and for the most part these nations lack strong cultures of IP protection.

Nevertheless, demand for IP protection is growing in the region. The data shows that demand for patents has started to take root, specifically in the Dominican Republic and Guatemala. The demand for patents is taking root in the Dominican Republic. The patent applications in the country grew by 33.46% at an average of 3.72% per year from 254 applications in 2003 to 339 applications in 2010. Clearly the demand for patents in the country is in its infancy, but the data shows that applications are growing nonetheless. Over half of the Dominican Republic's patent applications have been from the fields of medical technology, pharmaceuticals, and organic fine chemistry.

GRAPH 62 Dominican Republic Patent Applications

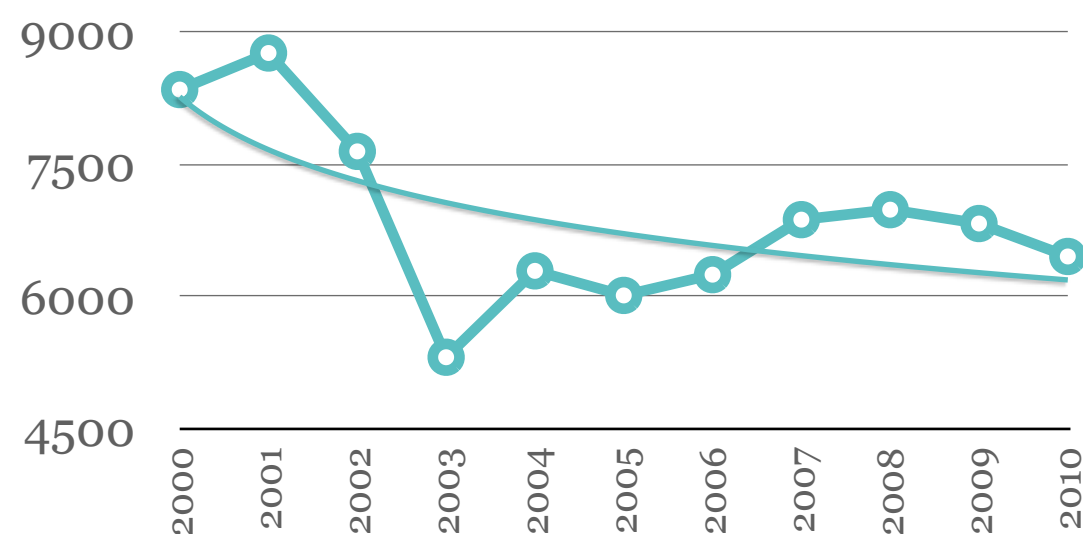


GRAPH 63 Dominican Republic Patent Applications by Top Fields of Technology



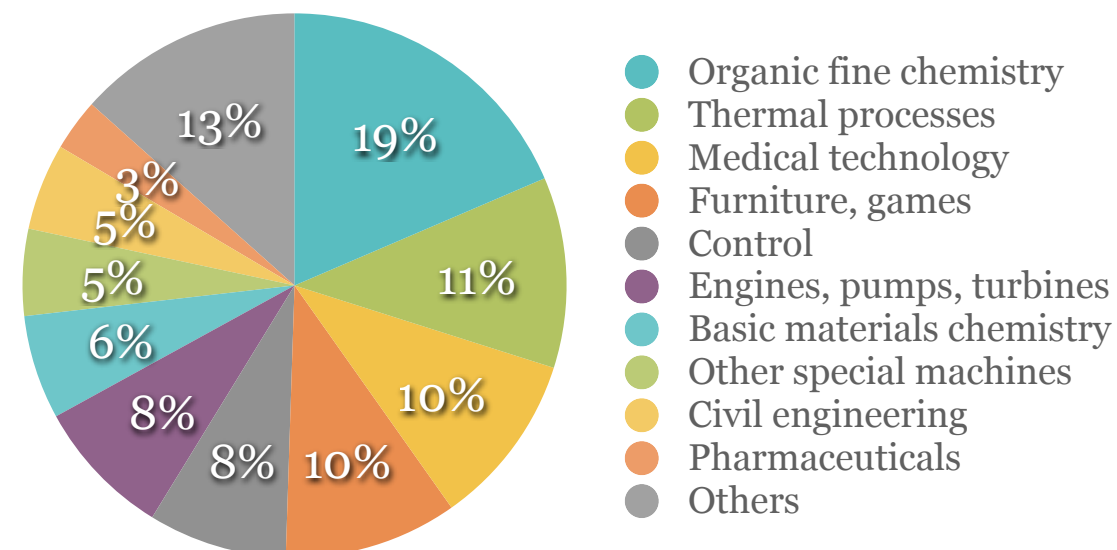
Unusually for a region that has largely seen IP growth, the demand for trademarks in the Dominican Republic appears to be falling. Between 2000 and 2010 trademark applications in the country fell by 22.65 percent from 8,343 to 6,453 applications. However, since 2003, trademark applications have grown by 21.48%.

GRAPH 64 Dominican Republic Trademark Applications



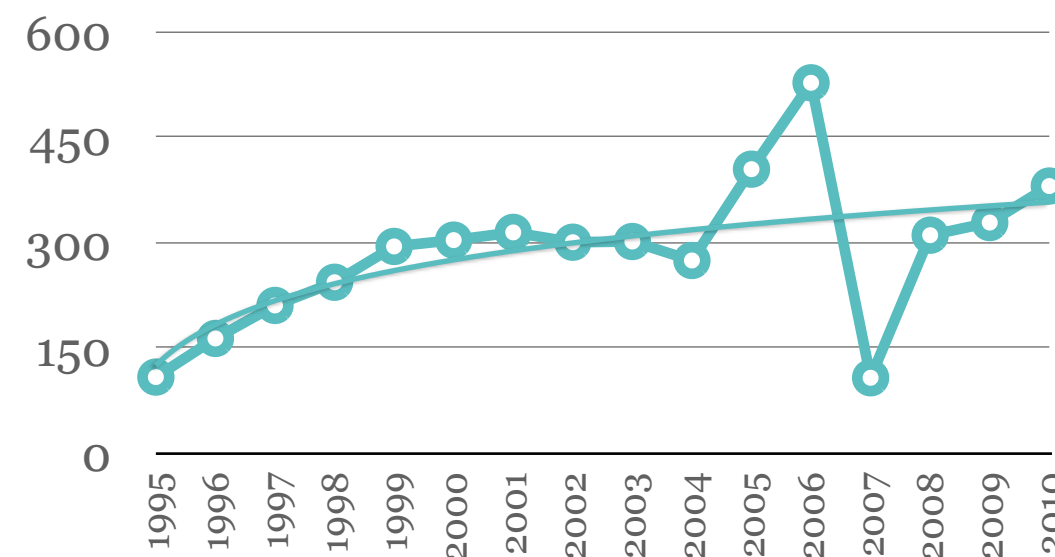
El Salvador has not reported patent data since 1995, when it reported 67 patent applications.

GRAPH 65 El Salvador Patent Application by Top Fields of Technology

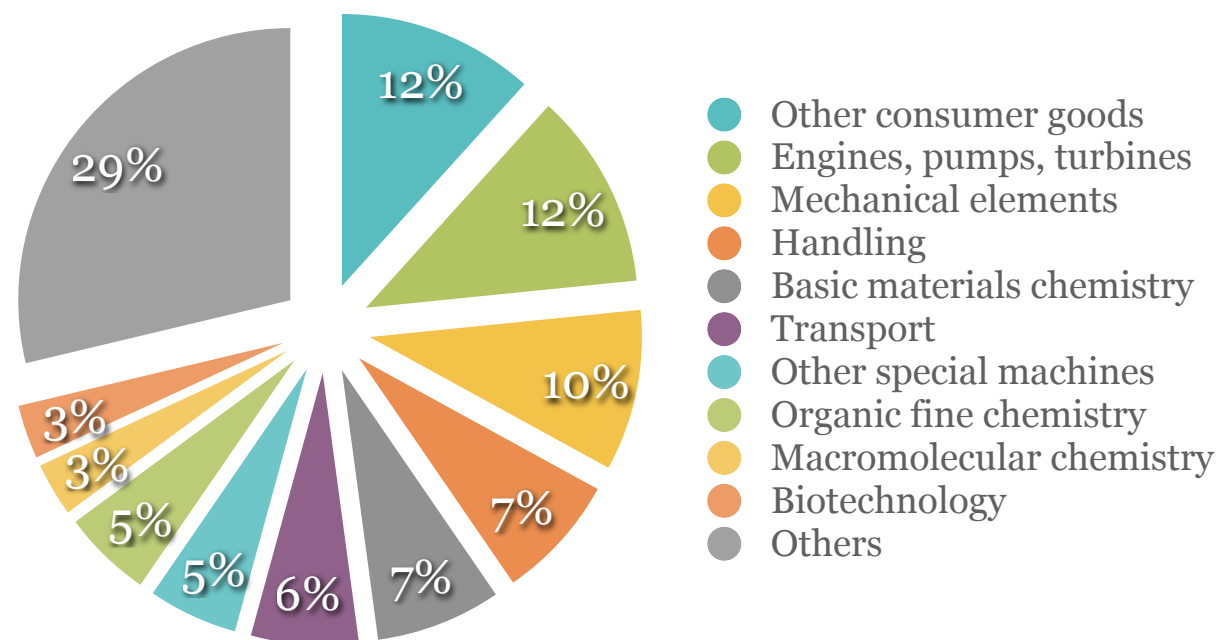


Guatemala's trademark applications have grown markedly. Patent applications in Guatemala have grown almost 250% from a modest 109 applications in 1996 to 381 applications in 2010. The Guatemalan patent market is small, but is showing strong signs of growth. The largest fields of patenting in the country are consumer goods, engines, mechanical technologies, and chemicals.

GRAPH 66 Guatemala Patent Applications

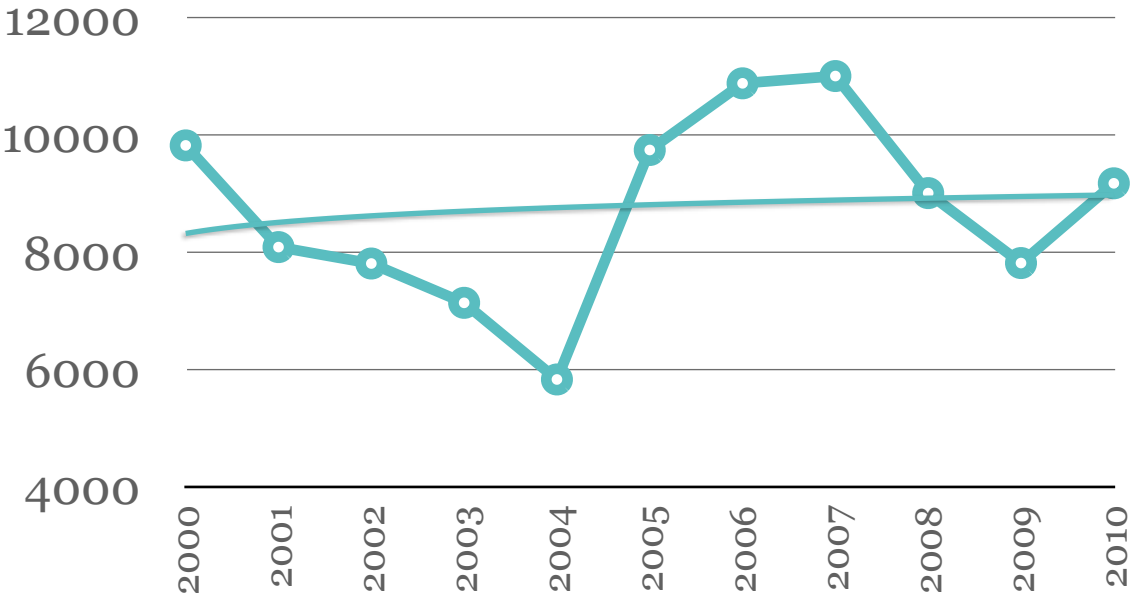


GRAPH 67 Guatemala Patent Application by Top Fields of Technology



The demand for trademarks in Guatemala fluctuated between a low of fewer than 6,000 to a high of over 11,000 applications over the first decade of the 2000s. The market has not seen consistent growth, but averaged 8,755 applications over this period. Between 2000 and 2010, applications actually dropped 6.57%. However, in 2010 the country received 9,175 applications, higher than the average.

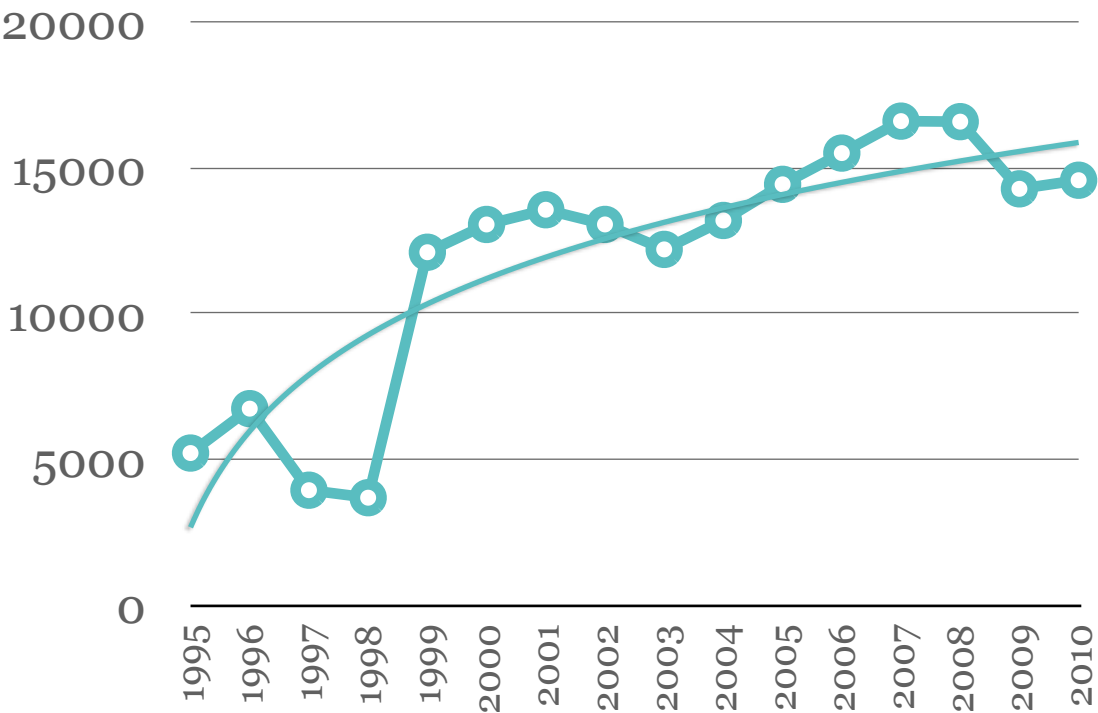
GRAPH 68 Guatemala Trademark Applications



Mexico

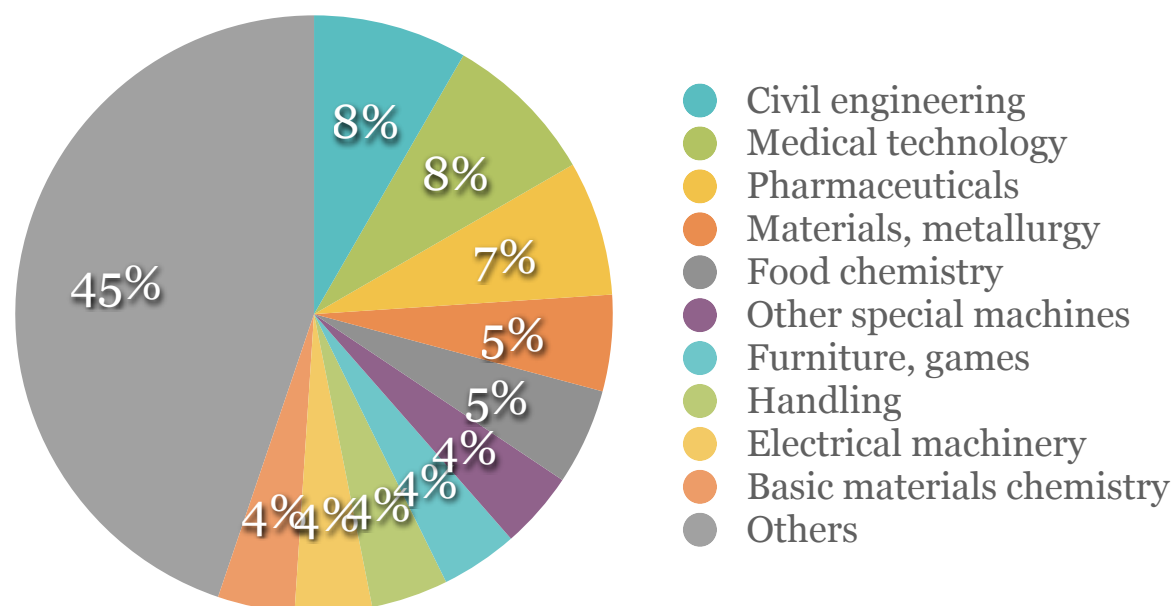
Other than Brazil, Mexico is Latin America's other economic heavyweight. The Mexican Institute of Industrial Property (IMPI) administers the country's IP. Besides processing applications, IMPI's activities have focused on combatting piracy, improving operational capacity, and education.

GRAPH 69 Mexico Patent Applications



Like many of the region's growing economies, Mexico has seen a surge in patent applications. From 1995 to 2010, Mexico's patent applications grew by a total of 178.49% at an average of 11.16% per year. The largest areas of patenting in Mexico have been civil engineering, medical technology, pharmaceuticals, and metallurgy.

GRAPH 70 Mexico Patent Applications by Top Fields of Technology



Mexico

TOP 5 APPLICANTS 2001-2010	Industry
THE PROCTER&GAMBLE COMPANY	4185 Consumer Goods & Pharmaceuticals
KIMBERLY-CLARK WORLDWIDE, INCORPORATED	1547 Personal Care Products & Paper Goods
THE PROCTER&GAMBLE COMPANY.*	1495 Consumer Goods & Pharmaceuticals
QUALCOMM INCORPORATED.*	1263 Telecommunications
BASF AKTIENGESELLSCHAFT	1073 Chemicals

Mexico's well-rounded economy has seen robust patent growth, but we still see many of the same trends that have been constant throughout the region. Procter & Gamble and Kimberly-Clarke, two of the top five applicants in Mexico from 2001 to 2010, are large consumer goods conglomerates that have had a flurry of patent activity, indicating the high level of disposable income in Mexico compared to other Latin American nations. Another large patent applicant was Qualcomm, a large telecommunications firm, indicating that Mexico has received investment in its telecommunications infrastructure. Then, of course, we have the usual smattering of chemicals and pharmaceutical corporations.

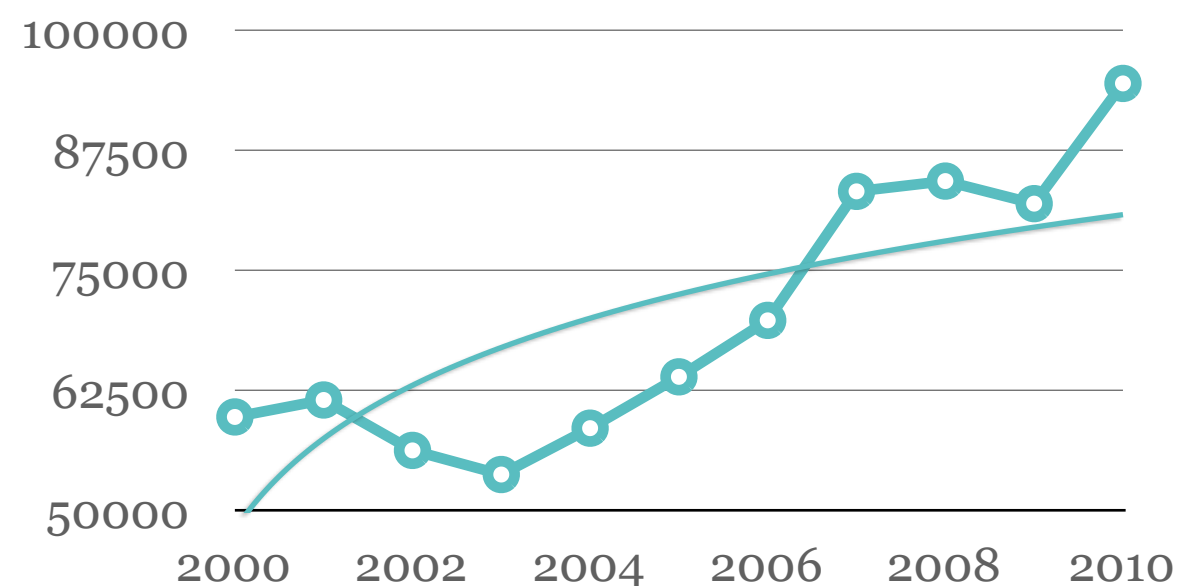
Mexican telecom industries and the innovation they provide are important to the region as a whole. The two biggest telecommunications companies in Latin America are from Mexico. America Movil is the biggest telecom company in the region, followed by Grupo Salinas and Grupo Elektra.

2010	Industry
QUALCOMM INCORPORATED.*	299 Telecommunications
THE PROCTER&GAMBLE COMPANY.*	216 Consumer Goods & Pharmaceuticals
NOVARTIS AG.*	145 Pharmaceuticals
BASF SE	143 Chemicals & Plastics
F. HOFFMANN-LA ROCHE AG.*	141 Pharmaceuticals

If one isolates the data from 2010, the story is revealed that telecommunications and pharmaceuticals are now the most important patenting sectors for Mexico, with chemicals and consumer goods remaining important industries as well.

Interestingly, in 2010 there were 951 patent applications submitted by Mexicans, more than twice the amount of domestic applications submitted in 2000. This figure shows the growth of Mexico's domestic innovation system, and the total number of patent applications submitted by Mexicans has steadily increased since 2006^{xxxxiii}.

GRAPH 71 Mexico Trademark Applications



Mexico has had solid trademark growth as a result of a robust domestic application base. Between 2000 and 2010, trademark applications in Mexico grew by 58.16% at an average of 5.29% per year. As a result of Mexico's growing economy, the country's trademark applications have outpaced world averages. Due to the worldwide economic downturn, Mexican trademark applications dropped by 2.79% from 2008 to 2009, but the economy and applications rebounded fiercely and grew by 15.28% between 2009 and 2010. In 2010, the top classifications for trademark applications were advertising for business, education, and pharmaceuticals.

GRAPH 72 Mexico Trademark Applications by Top Classes



To see classes check Appendix 1

IMPI currently has an online trademark research database. Additionally, IMPI has announced that it is currently developing a new service that will allow for the online registration of trademarks.^{cxix}

In addition, IMPI has undertaken an initiative to identify and purge abandoned trademarks from its database, which should significantly improve IMPI's efficiency in trademark searches. Furthermore, the procedures for registering new trademark applications have been streamlined and simplified, allowing for submissions with a single application form^{cxv}.

Furthermore, a number of initiatives were undertaken to improve IMPI's administrative efficiency. These initiatives include file digitization and adherence to strict response times^{cxvi}.

Piracy remains to be a large problem in Mexico, and Mexican authorities confiscated approximately \$50 million USD in counterfeit and pirated goods in 2010. In an effort to strengthen the country's intellectual property system and generate awareness among Mexican citizens, IMPI participated in more than one thousand promotional activities in 2009^{cxvii}. Additionally, Mexico is developing permanent educational campaigns to develop a culture that respects creativity and demands accountability for piracy. In terms of personnel training, IMPI offered regular training courses for Customs Officials. In a joint project with the Customs Office, 337 officers received training in eleven workshops throughout Mexico^{cxviii}.

In 2010, IMPI implemented various programs aimed to improve the organization's coordination, capacity, and efficiency. IMPI improved its website, instituted a performance evaluation program, and adhered to the Patent Prosecution Highway, which reduces the examination time of certain patent applications. Additionally, IMPI now offers to the public free online use of its trademark database. IMPI also updated its IT infrastructure in a project prepared in collaboration with the USPTO^{cxix}.

In terms of international activity, in 2010 Mexico continued negotiations with Brazil and Central America regarding the implementation of a free trade agreement with those countries, and these developments could have large consequences for intra-regional trade in Latin America^{cxl}.

Chile

Chile has experienced pronounced growth in both patent and trademark applications in recent years. In 2009, Chile launched the National Industrial Property Institute (INAPI) as a successor to the Ministry of Economy's Department of Industrial Property.^{cxli} Since its inception, INAPI's focus has been to obtain the institutional capacity to deal with Chile's strong growth by investing in information technology, staffing, and training.

Importantly, INAPI is looking to the future. The institution has drafted a bill with the intention of implementing a new and updated industrial property law to replace Chile's Industrial Property Act of 1991. INAPI's goal is to make the law more efficient and more attuned to the needs of innovators and businesses.

INAPI's recent efforts have resulted in a more efficient and streamlined institution. With the collaboration of WIPO, INAPI is in the process of implementing a new Industrial Property Automated System.^{cxlii} This new computer system will allow for the processing of online applications. In addition, INAPI recently instituted a new website with better structure and updated content with complete information on industrial property. Furthermore, INAPI is in the process of digitizing its records as part of its overall telecommunications improvement program.

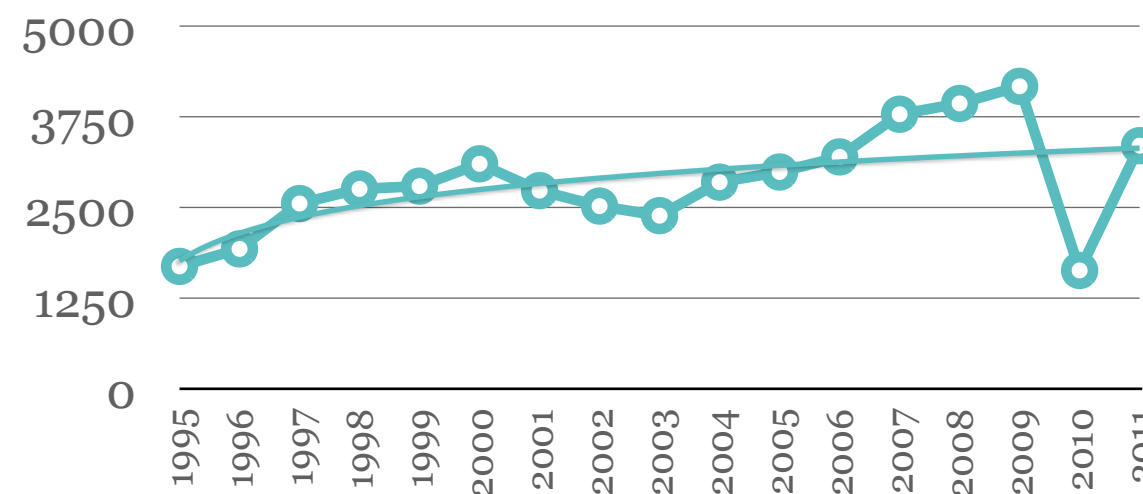
INAPI has exerted significant efforts to generate awareness of the institution itself and IP in general to foster a pro-IP culture in Chile. According to the young institution, the efforts to disseminate IP information directly resulted in an 11 percent increase in user inquiries during the year 2011.

In 2011, Chile acceded to the PCT.^{cxlv} Chile witnessed 260% growth in patent applications in 2011 as a direct consequence of PCT membership.^{cxlvi} In 2011, 80% of Chile's new patent applications were through the PCT.^{cxlv}

WIPO's data is only complete through 2010, showing a more modest picture of Chile's patent growth. WIPO's data shows Chile's patent applications in 2009 and 2010 dropping well below the country's averages to levels it had not seen since 1995. This discrepancy indicates inaccurate data reporting. The yearly reports of the Chilean PTO, the INAPI, for 2009, 2010 and 2011 show a much larger amount of patent applications for 2009, followed by a big fall in applications

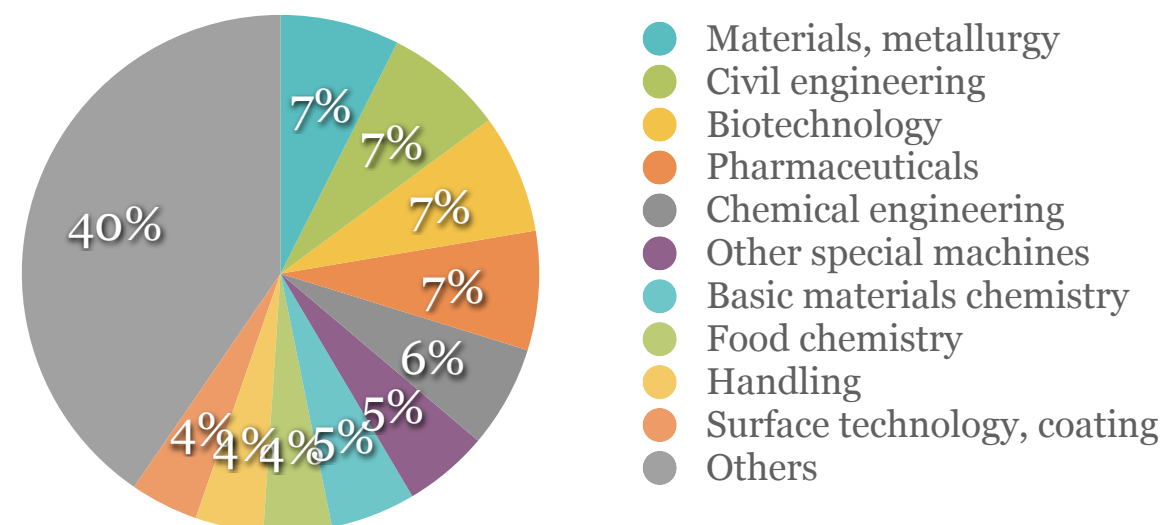
in 2010 and strong growth in 2011; according to the INAPI, such drop in 2010's patent applications is a direct consequence of the entrance into force of the PCT, which reduced the number of patent applications in the months before the Chilean government started implementing the treaty. Looking at Chile's performance from 1995 through 2008, patent applications grew by 131.65% for an average of 8.23% per year.

GRAPH 73 Chile Patent Applications



INAPI is becoming more efficient, as indicated by an -11.6% drop in pending patent applications from 2009 to 2010, the second consecutive year of improvement.

GRAPH 74 Chile Patent Application by Top Fields of Technology



Chile’s economy features strong mining and manufacturing industries. Significant portions of patent applications in the country are for metallurgy, pharmaceuticals, biotechnology, and other chemical technology.

The firm level data indicates the strength of Chile’s domestic pharmaceuticals market. However, the data for the largest patent applicants by firm are limited to 2005 and 2008. Of the top five applicants for those years, three are pharmaceuticals companies including multinational giants F. Hoffmann-LaRouche, Novartis, and Wyeth. With Bayer Cropscience AG as the third biggest applicant, the firm level data also points to the importance of the domestic agriculture industry to Chile, which relies on patenting in the chemical and biotech industries. Unilever rounds out the top five.

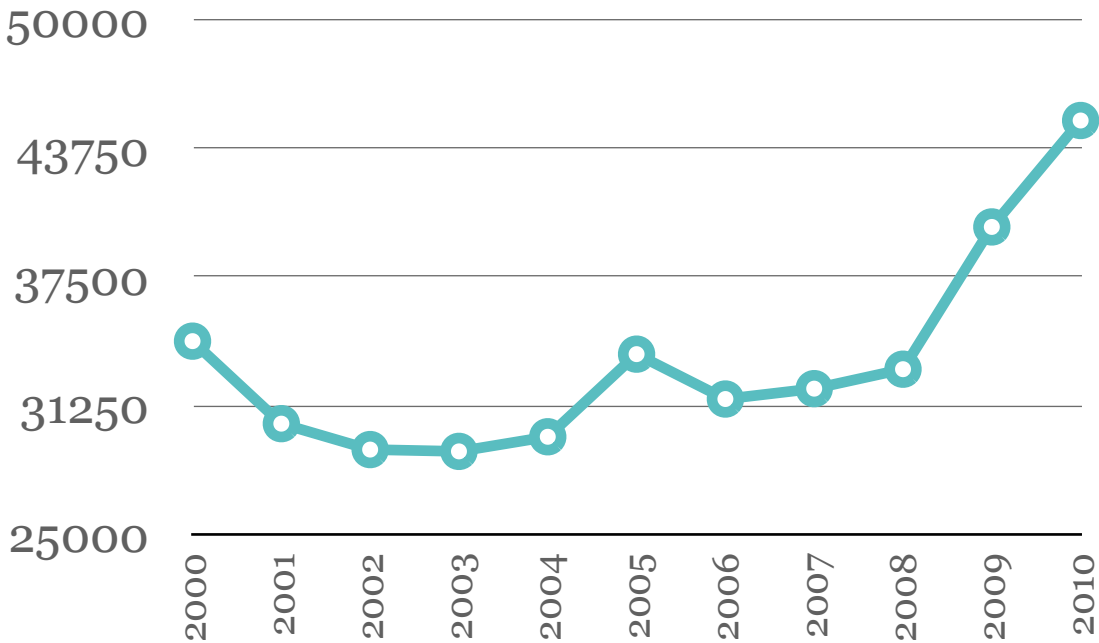
Chile	
TOP 5 APPLICANTS 2005 & 2008	Industry
F. HOFFMANN-LA ROCHE AG.	96Pharmaceuticals
NOVARTIS AG	81Pharmaceuticals
BAYER CROPSCIENCE AG	76Chemicals and Biotech
WYETH	75Pharmaceuticals
UNILEVER N.V.	71Consumer Goods

Isolating the data for 2008, the importance of pharmaceuticals is even more pronounced, with AstraZeneca joining F. Hoffmann-LaRouche, Novartis, Wyeth, and Bayer Cropscience in the top five.

2008	Industry
NOVARTIS AG	74Pharmaceuticals
F. HOFFMANN-LA ROCHE AG.	71Pharmaceuticals
BAYER CROPSCIENCE AG	62Chemicals and Biotech
WYETH	60Pharmaceuticals
ASTRAZENECA AB	59Pharmaceuticals

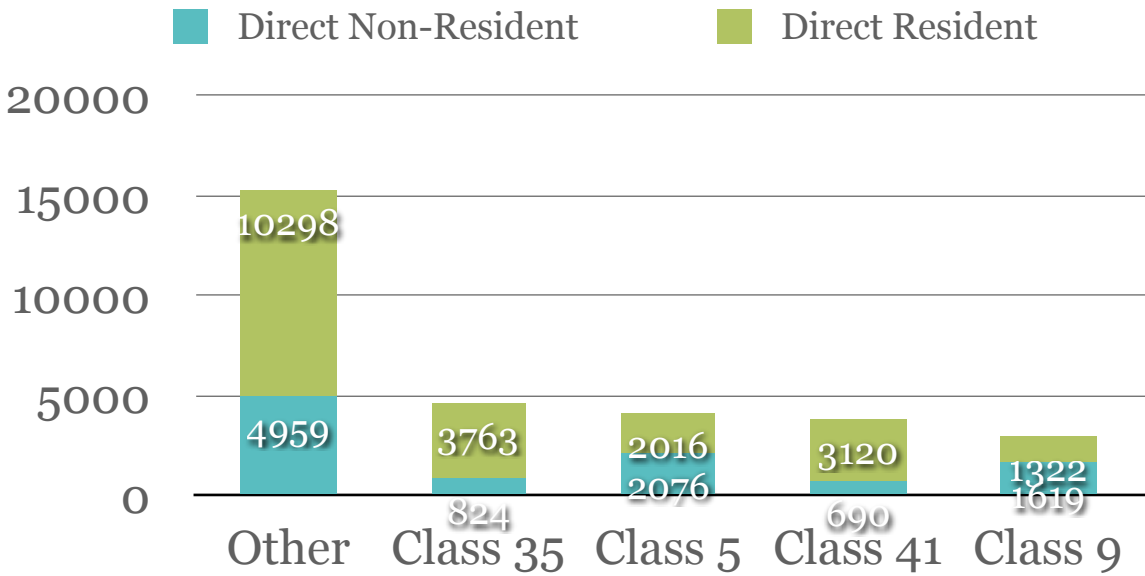
From 2000 to 2010, trademark applications in Chile grew by 31.16%, more than double the regional average. In 2010, the three largest classes of trademark applications were in business advertising, pharmaceuticals, and education. According to INAPI’s most recent annual report, Chile’s trademark applications showed significant growth of 10.1% from 2009 to 2010.

GRAPH 75 Chile Trademark Applications



Chile’s court system possesses courts with exclusive jurisdiction to hear industrial property cases.^{exlvi} INAPI acts as an administrative court for cases involving oppositions, registrations, cancellations, and the like. Appeals from INAPI are heard by the Industrial Property Appeals Court, created by the Industrial Property Act of 1991, giving it exclusive jurisdiction for trademark and patent oppositions and other IP claims (with the exception of copyright^{exlvii}).

GRAPH 76 Chile Trademark Applications by Top Classes



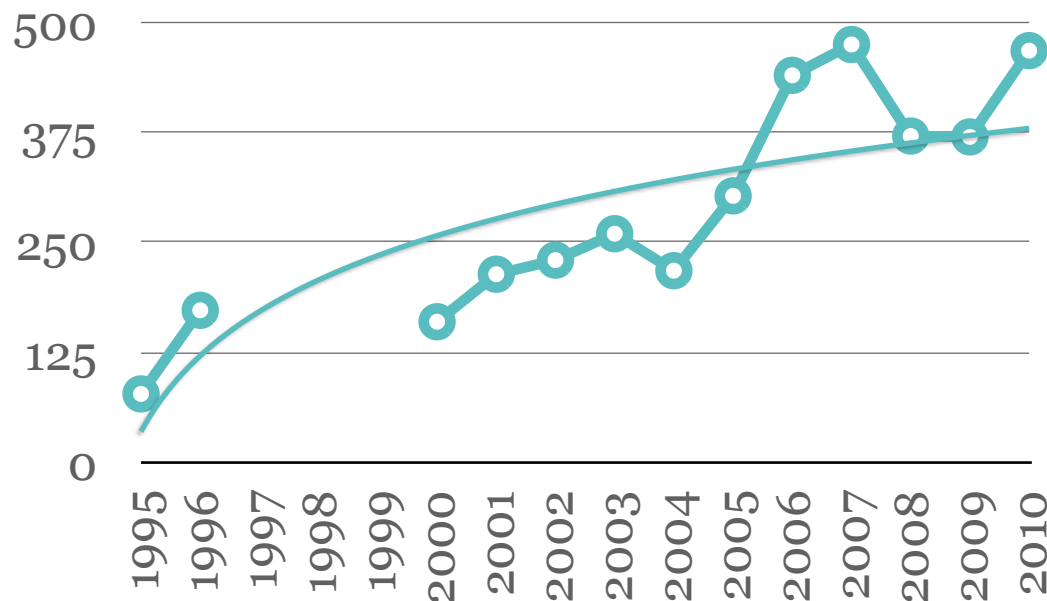
To see classes check Appendix 1

Panama

The B&R team in Panama helped in the research of this country section. Special thanks to attorney Rebeca Herrera Dutari.

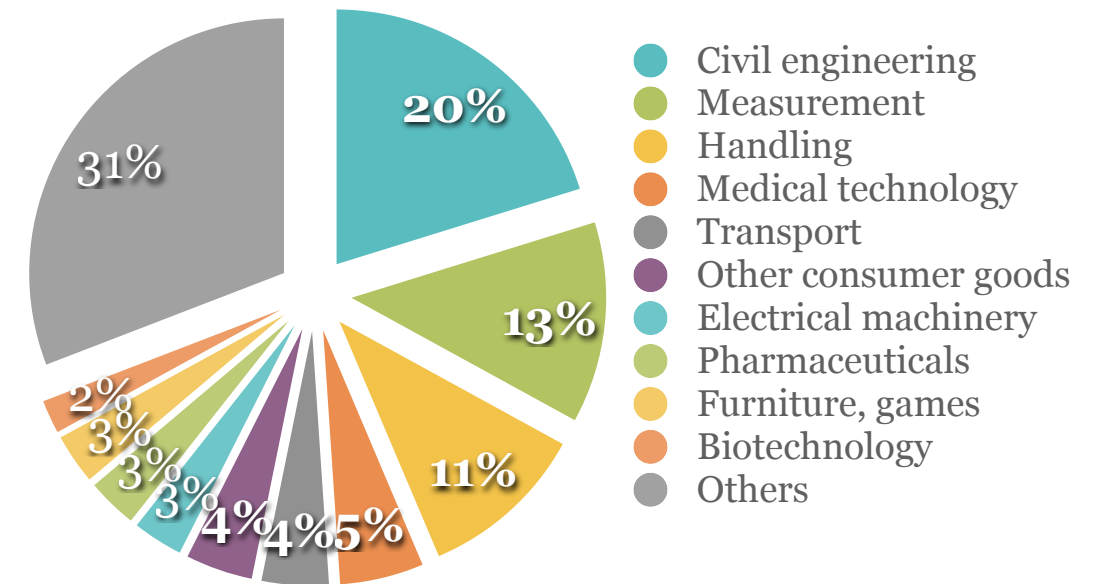
Although part of Central America, Panama deserves separate attention. Panama is not part of the CAFTA-DR agreement, having its own free trade agreement with the United States. Indeed, it is worth noting Panama's deep ties to the United States as a trading partner, dating back to the birth of the Panama Canal. This relationship is noteworthy because out of all the Latin American countries Panama is one of the few that has more foreign trademark applications than resident applications.

GRAPH 77 Panama Patent Applications



Benefitting from strong economic growth in recent decades, the demand for IP protection in Panama has seen pronounced growth since the mid-1990s. Specifically, the demand for patents in Panama has exploded, with applications growing by 500% between 1995 and 2010 at an average of 31.25% per year.

GRAPH 78 Panama Patent Applications by Top Fields of Technology



Unsurprisingly for a country whose economy is dominated by the Canal, the most active fields of technology for patent applications in Panama are related to this endeavor. Historically, patent applications in Panama have been dominated by engineering, handling, transportation, and measurement technologies. Rounding out the top fields are the regional favorites of pharmaceuticals, biotech, and medical technology along with machinery and energy related technologies.

Between 2002 and 2010, the top five patent applicants largely reflect the importance of large pharmaceutical companies to the Panamanian patent market. During this period, the drivers of patent growth in Panama have been foreign multinational pharmaceutical corporations. For that period, Pfizer dominated Panama's patent applications, and all of the top five applicants were pharmaceutical manufacturers.

Panama	
TOP 5 APPLICANTS 2002-2010	Industry
PFIZER	429Pharmaceuticals
WYETH	115Pharmaceuticals
F. HOFFMANN-LA ROCHE AG.	65Pharmaceuticals & Diagnostics
WARNER-LAMBERT COMPANY	51Pharmaceuticals
JANSSEN PHARMACEUTICA N.V.	51Pharmaceuticals

While the actual number of patents may not be that high, the data indicates that the pharmaceutical industry has become an extremely important in Panama. In 2009, the last year for which complete data is available, all of the top five applicants are pharmaceutical companies.

2009	Industry
WYETH,	18Pharmaceuticals
JANSSEN PHARMACEUTICA N.V.	8Pharmaceuticals
SANOFI-AVENTIS,	6Pharmaceuticals
BAYER SCHERING PHARMA AKTIENGESELLSCHAFT	5Pharmaceuticals
BAYER HEALTHCARE AG	5Pharmaceuticals

The demand for trademarks experienced solid growth, growing by 26.91% at an average of 2.45% percent per year between 2000 and 2010. Trademark applications dropped by over 20% from 2008 to 2009, but rebounded strongly and grew by over 12.5% from 2009 to 2010. The demand for trademarks has increased fairly consistently, but the data indicates that Panama’s demand for trademarks is fairly vulnerable to fluctuations in the world economy.

The five largest classes of trademarks filed in Panama in 2010 were pharmaceuticals, apparel, chemicals, business advertising, and scientific, nautical, and surveying marks.

GRAPH 79 Panama Trademark Applications



GRAPH 80 Panama Trademark Applications by Top Fields



To see classes check Appendix 1

Panama is currently undergoing legal reforms that will bring its IP legislation in line with international standards. Panama is one of the few Latin American countries that have not adopted the PCT or the TLT.^{cxlviii} Additionally, Panama has not adopted the Madrid System.

In an effort to conform to international standards, the Panamanian government and the domestic patent and trademark office, DIGERPI, acceded to three important international treaties, which will enter into force on September the 7th, 2012. On that day, the PCT, TLT and the Budapest Treaty (on patent procedures and microorganisms) will enter into force in Panama.^{cxlix} These treaties require DIGERPI and the Congress to update their IP legislation and to ease procedures while adjusting to international and regional standards.

DIGERPI has started a pilot program for filing electronic applications in all procedures called Pilot Program for the Information System on Intellectual Property (SIDPIL). The platform is for use by attorneys, and it allows users to search their database for prior art and to file applications electronically. The DIGERPI is currently in the process of digitizing its archives,^{cli} and all employees have received extensive training on how to use new technologies to help them adapt to the modernization process.^{clii} According to the press releases and efficiency reports, 90% of procedures have been automatized,^{cliii} and a new initiative called “Development

and Promotion of IP” has been funded by the Inter-American Development Bank.^{cliii} It aims at fostering investment, technology transfer, commercialization of new products, educating the public about IP, and increasing R&D.^{cliv} It also aims at preparing a long term national IP policy strategy.

The DIGERPI’s investment in technology has paid off in the form of more efficient procedures.^{clv} Trademark registry procedures have gone from a year to approximately 6 months, while patents are granted approximately 3 years from the application date.

Panama has been very active in negotiating new trade agreements. FTAs are being negotiated with Chile, Central American countries, Taiwan, and Singapore.^{clvi}

Panama’s Colon Free Zone and the IP Courts.

Since 1997 the jurisdiction on IP matters has been taken from the Ministry of Commerce and Industry and given to special judicial courts with exclusive jurisdiction to handle IP issues (ie, oppositions, cancellations, infringement of trademarks and copyrights, etc), instead of having administrative procedures. Since the creation of this specialized jurisdiction, IP procedures are taking far less time, and owners of IP assets can get a better protection of their rights in Panama. On the other hand, having judicial procedures have also increased professional fees and sometimes official fees for owners of IP assets.

The creation of specialized prosecutors for IP-related cases makes Panama a very special case on protection and enforcement of IPRs. The country’s enforcement of IPRs includes criminal enforcement and criminal penalties such as prison, and even further, the Attorney General’s Office and the Customs Bureau are officially empowered to initiate investigations on IP matters. Opinions on this issue are divided, with some experts considering this a step forward in strengthening IP enforcement and others are concerned about moving forward policies for criminalising IP infringement, instead of just imposing monetary and commercial penalties, and potentially raising human rights issues.

A special case that is worth mentioning is Panama’s customs and administrative authorities from the Colon Free Zone. The Colon Free Zone is the largest free-trade zone in the Americas, and its purpose is to re-export merchandise to South America and the Caribbean making it a commercial area of huge importance, but also a stronghold for counterfeit goods and widespread infringement of IPRs.

Within this customs-free zone, authorities have their own Trademark Registry, and they are empowered by law to inspect and seize counterfeit goods; in some cases, authorities may proceed even without an infringement claim when there’s suspicion of the existence of counterfeited goods. The Customs Bureau

and the Free Zone Administration also keep records of the Panamanian PTO IP Registrations for companies wishing to protect their IP through barrier measures. With the registry’s information, authorities can control and even seize merchandise more effectively at the Colon Free Zone and Customs.

All of these measures are a response to the complexities involved in enforcing IP rights on a zone with strong cross border/international trade, such as Panamá and its Colon Free Zone. It is especially important for Panamanian authorities to be able to respond as quickly and effectively as possible to the infringement on IPRs. This is why preliminary injunctions play an important role in enforcing IP rights. Once the case gets to the courts, cases are decided upon by judges with expertise on IP matters.

APPENDIX 1 -

THE NICE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES

NICE CLASSIFICATION - 10TH EDITION - GOODS

1 Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry...	2 Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood...
3 Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.	4 Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.
5 Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use...	6 Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks...
7 Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles)...	8 Hand tools and implements (hand-operated); cutlery; side arms; razors.
9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments	10 Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
11 Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.	12 Vehicles; apparatus for locomotion by land, air or water.

13 Firearms; ammunition and projectiles; explosives; fireworks.	14 Precious metals and their alloys and goods in precious metals or coated therewith,...
15 Musical instruments.	16 Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery...
17 Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes...	18 Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags...
19 Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.	20 Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl...
21 Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool...	22 Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
23 Yarns and threads, for textile use.	24 Textiles and textile goods, not included in other classes; bed covers; table covers.
25 Clothing, footwear, headgear.	26 Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.
27 Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).	28 Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
29 Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats.	30 Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery; ices; sugar, honey, treacle; yeast, baking-powder...
31 Grains and agricultural, horticultural and forestry products not included in other classes; live animals; fresh fruits and vegetables; seeds; natural plants and flowers; foodstuffs for animals; malt.	32 Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.
33 Alcoholic beverages (except beers).	34 Tobacco; smokers' articles; matches.

NICE CLASSIFICATION - 10TH EDITION - SERVICES

35 Advertising; business management; business administration; office functions.

36 Insurance; financial affairs; monetary affairs; real estate affairs.

37 Building construction; repair; installation services.

38 Telecommunications.

39 Transport; packaging and storage of goods; travel arrangement.

40 Treatment of materials.

41 Education; providing of training; entertainment; sporting and cultural activities.

42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

43 Services for providing food and drink; temporary accommodation.

44 Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45 Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

Conclusions

What's our take on Latin American IP?



Conclusions - Our take on Latin America IP

It is now appropriate to summarize the findings of this report. These pages have attempted to present a snapshot of the current intellectual property market in Latin America.

In doing so, it was first necessary to present a coherent picture of the socio-economic and legal trends that have forged the development of intellectual property in Latin America. Most of the region's countries' domestic IP regimes have undergone a transformation over the past several decades in which these nations have steadily strengthened these laws. This report argued that a combination of heightened international standards, Latin American countries' desires to participate in the emerging system of international trade, and domestic demand for increased IP protection has pushed the region to increase its IP protection.

This assessment holds true for many Latin American countries. However, the report presented the case of the Andean Community of Nations to illustrate the positive trends in Latin America and the current strength of IPR in these countries. Within the Andean Community, intellectual property rights present particularly effective legal protection, especially compared to some less successful reforms in the region. Stronger laws and the growth of a specialized IP bar in many Latin American countries has paid dividends in terms of growing industry and investment from abroad.

A review of the relevant data reinforces this report's assessment of the growing importance of IP protection in Latin America. Specifically, the demand for patent protection in Latin America is outpacing the world averages by a large margin. This is largely driven by foreign patent applications. This increased foreign interest in the Latin American patent market is one indicator of increased foreign confidence in the region's stronger IP regime. Trademarks have also seen strong growth as well. However, since trademark demand in the region is historically driven by domestic rather than foreign applications, trademark demand has not seen the same explosive growth as patents.

In Latin America, some of the fastest growing patenting sectors are pharmaceuticals and information and communication technology. The region is catching up in terms of investment in knowledge and communication, the drivers of innovation-based economic activity. Latin American countries such as Brazil and Mexico have seen big dividends from the development of these sectors in the forms of booming GDP, increased R&D, and large-scale foreign investment over the last decade.

Lastly, the report presented short assessments of several nations' legal development and current activity in the regions IP market. While the success of each

it is not an exaggeration to express the view that the Latin American region has transformed itself into an important intellectual property market

region's intellectual property markets varies depending on the nation's state of economic development. However, several trends can be discerned. Over the last ten years, most Latin American countries have seen strong growth in demand for the regions' IP. However, this fast increase in demand for IP protection presented new problems. For example, the domestic patent and trademark offices of several Latin American nations could not cope with this new demand at first. Therefore, many of these administrative offices had to invest significant resources to increasing their processing staff and their technological capacities (for example, by creating systems for online applications, digitizing files to facilitate research of prior registration, and updating websites).

In sum, it is not an exaggeration to express the view that the Latin American region has transformed itself into an important intellectual property market—a sea change from the isolationist policies of merely a few decades ago that once made foreign investors wary of the region. Business and legal conditions are stable and strong, while perhaps not ideal (the region still faces large problems with piracy, and some nations such as Venezuela appear to be going the other way). Nevertheless, our firm expects that these positive legal and economic trends will continue as the region becomes more developed in the coming decade.

As leaders in the field of Latin American intellectual property law, B&R Latin America IP invites interested parties to contact the firm with any questions or comments regarding this report. In addition, we invite you to think of our firm when considering with whom to protect your Latin American IP.

BEYOND THIS REPORT

Beyond this Report

Sources, recommended reading & where to get further information.

This report is just the beginning, B&R Latin America will keep on reporting and researching on the ever-changing landscape of Latin American Intellectual Property. In this chapter we not only provide the sources for this report, but we tell you where to go to keep updated and get the information to give the best management of your IP portfolios.



How to keep up-to-date?



This report is just the beginning.

B&R Latin America IP will keep on researching and updating its clients and its network on IP issues. Our research department is a very active one, and has several channels to spread IP information to anyone interested, aware that Latin American Intellectual Property is an ever-changing field of practice.

Our Blog and Newsletter are not meant for self-promotion. They are true information channels to spread knowledge on IP issues.

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