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# THE PATENT FILE

## Race to Rio

PAIL Solicitors' **Peter Adediran** discusses how a new British attaché will help boost IP exploitation in Brazil

**As well as being one of the world's largest democracies, Brazil has substantially modernised its legal structure over the last 20 years. Its Federal Constitution organises the country as a permanent union of 26 states, municipalities plus one federal district. The 26 states and municipalities have autonomy limited only by the Federal Constitution.**

Brazil's hosting of the 2014 Fédération Internationale de Football Association (FIFA) world cup and the Olympics in 2016, presents UK businesses with a great opportunity to showcase their products and services. UK companies of all sizes and sectors can use their skills and expertise to support Brazil as they face the challenges of the 2014 FIFA world cup and Olympics stage in 2016.

Some of the recent British success stories include: Aecom UK that has won an international competition to design the Rio 2016 Olympic Park master plan. Also, Vipre Subsea based in Bristol, has secured a major contract for the supply of underwater

components for use in a deep-water development in the Santos basin, offshore Brazil.

Further, the appointment of Shiela Alves as IP attaché to Brazil, to continue the momentum of bilateral trade between the UK and Brazil, is a very important one. According to parliamentary under-secretary for business, innovation and skills Baroness Wilcox, Ms Alves has worked in the public and private sectors with her previous roles including – managing IP and technology transfer projects, and providing support to foreign investors on IP. By appointing, and basing her in Brasilia, it will provide a new physical British representation, as part of a wider initiative to sell British products and services in Brazil, and bring substantial investment into the UK.

As IP attaché, Ms Alves needs to be an effective asset in further strengthening UK relations with intellectual property protection and enforcement agencies in Brazil, such as the established National Institute of Industrial Property (INPI) and to address any new or potential IP issues raised by UK, and Brazilian companies.

Ms Alves' job will be made easier by the robust intellectual property protection infrastructure in place in Brazil. Brazil has a vested interest in intellectual property protection as it is a world leader in environmental conservation and is home to several world class commodities companies. It is also home to the third largest commercial aircraft manufacturer and the fourth-largest aircraft manufacturer in the world – Embraer SA.

Intellectual property protection in Brazil is provided by the Brazilian 1988 Federal Constitution and includes the following key legislation:- (i) decree 75.572 validating the Paris Convention 1975; (ii) decree 1.355 validating the International Agreements on Trade Related Aspects on Intellectual Property Rights (TRIPS) 1994; (iii) Industrial Property Law 1996; (iv) the Counterfeit Law 2003; and (v)

Law 9,615/98 – Sports Law, also known as Lei Pelé – Pelé Law. Brazil is also a contracting party of the Berne Convention for the Protection of Literary and Artistic Works since 1922. The current controversial Brazilian copyright law n. 9.610/98 is in the process of reform (over the years there have been several draft copyright reform bills).

Brazil has implemented several special legislations for FIFA 2014 World Cup and for Rio 2016. On 5 June 2012, it enacted Law No. 12,663/2012, titled General Law on the World Cup and the Federations Cup; which is in force until 31 December 2014. The law covers a range of issues, including intellectual property rights and in particular, trademark protection. Several laws have also been implemented in the different states and municipalities relating to the Olympic Games including the Rio de Janeiro: Federal Olympic Act – Law 12.035 /2009; State Olympic Act – State Decree 41.839/2009; and Municipal Olympic Act – Municipal Decree 30.379/2009.

With all these positives, it is easy to forget that Brazil is classified as an 'emerging' market by the World Bank, one of the so called 'BRICS' countries (Brazil, Russia, India, China and South Africa). The term 'emerging' is characterised by fast economic growth, increased foreign investment and international political clout. But, it also suggests greater probability of policy failure, weaker institutions, and more social inequality than in the so called 'advanced' economies of the UK, Germany and the US.

The job of the IP attaché will be to work with the Brazilians, within the context of intellectual property protection, to allay any perception of Brazil being a difficult country in which to do business. The position also requires promoting trade on behalf of the UK at the heart of Brazilian commerce. Ms Alves will require all of her charm, skills and experience for what is a very responsible and challenging role.

### Action

- The Brazilian legal system is based on the civil law system not on the UK common law system.
- Note that there are very well developed sports, filming, labour, e-business, data protection and taxation laws in Brazil.
- Be aware of Brazilian laws that might affect a clause in a contract.

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