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Legal protection and licensing in Intellectual Property

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Introduction:.....3

Advantages of Legal Protection under Intellectual Property rights..4

Legal Protection in Copyright:.....5

Legal Protection in Patent:.....8

Legal Protection in Trademark and Trade Secret :.....11

Licensing and registration in Intellectual Property:.....14

Licensing Rights and Registration in Saudi Arabia:.....17

Conclusion:.....19

References:20

Introduction:

Intellectual property rights are considered to be under Property rights. The description that reflect on most of Property Law regulations is that “The owner of the property is permitted to use the owned property and has the right to exclude others from using it. However, the term “Intellectual property” has specified for types of property that result from the creations of the human work.

Intellectual property includes tangible creations of the human intellect. It is the creation of mind. Such as, literary and artistic works; designs; and inventions. It is any product created by human intellect that the law protects from unauthorized use by other individuals.

It is stated in Article 27 of the Universal Declaration of Human rights (Universal Declaration of Human Rights., 10 December 1949) that Intellectual property allows creators and owners of copyrighted works, patents, and trademarks to benefit from their own work or investment in a creation.¹

The privileges given to the owner of the endeavor is due to the protection rights and regulations of Intellectual Property.

The laws and regulations offer individuals and businesses property rights protection granted to innovators which makes the information of the intellectual goods they created become legally owned by them for a limited duration of time. Hence, the progress and well-being of humanity keep on evolving new areas of technology and culture.

¹ The Universal Declaration of Human rights-10th December 1949 <https://www.un.org/en/universal-declaration-human-rights/>

Therefore, these economic incentives are expected to contribute innovation to the technological progress of countries throughout the world. Intellectual property must keep developing day after day in order to keep up with today's revolution.

The advantages of legal protection in Intellectual Property:

Creativity is clearly one of the most remarkable human traits. Without this unique trait, there would be no books, no poetry, and no internet. Creativity is the capability of conceiving something original or unusual. Innovation is the implementation of something contemporary and new.²

Intellectual property legal protection promotes innovation and creativity. It grants benefits to the holder of Intellectual property protection their moral and financial rights as a result of the effort. Handing the owners protection rights for their work will give it value. It innovates them with ideas that makes their work distinctive, which will help them stand out from others. According Article I, Section 8, Clause 8 [The Congress shall have power] *“To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”*³ The effective protection given to the individual's original work minimizes their fear of worrying about their hard work getting stolen. Businesses and human creations have made the economic growth in the world tremendously increase throughout the years, because creators get their fair beneficial shares. Without the protection rights that is given to the owner of the

² Destination-innovation.com, WHAT IS THE DIFFERENCE BETWEEN CREATIVITY AND INNOVATION? 2020

- ³ Website Title: **Legal Information Institute** Article Title: **Intellectual Property Clause** Date Published: **June 13, 2015**

Intellectual Property, the lack of interest in the humanity to produce will decrease due to no submission of work.

Over all, developing legislations should be more precise toward public ownership, yet more liberating toward the private domain to promote innovation among individuals. According to article 17 in commercial and trade laws in KSA “*Ownership, capital and labor are the fundamentals of the Kingdom's economic and social life. They are private rights that serve a social function in conformity with Islamic Shari'ah*”.⁴

Intellectual property is considered private rights that protect individuals from others whom are willing to take the product or process that the individual created and claim it their own.

Intellectual property is usually dealt with under the following main headings: (Copyright, Patent, Trademark, and Trade secret).⁵ (DL-101 General Course on Intellectual Property.) This research will cover the protection rights of each criteria.

The Legal Protection in Copy Right:

As with all fields in Intellectual Property, copyright covers the protection of the work of the human intellect. The domain of copyright is the protection of literary and artistic works.⁶

These includes, literary, music and works of the fine art; Such as, sculptures, paintings, and even technology-based works for example, database.

⁴ Book Title : Saudi Arabia Commercial and Trade Laws - Basic Laws Affecting Business, Page number: 41 , Article Number : 17

⁵ World Intellectual Property organization pdf, General Course on Intellectual property course, Page 4.

⁶ World Intellectual Property organization pdf, General Course on Intellectual property course, Page 9

It is stated in Article 2 of the oldest international convention governing Copyright (The Berne Convention- 1886)

“The expression ‘literary and artistic works shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science”⁷.

It is stated in The World Intellectual Property Organization, there are four main related rights “Agreements & Treaties” that are associated with copyright protection:

1. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.
2. TRIPS Agreement.
3. WIPO Performances and Phonograms Treaty (WPPT).
4. Brussels Convention Relating to the Distribution of Programme.

⁷ Appendix 1, Berne Convention for the protection of literary and artistic works of September 6 1886, Article 2

According to the World Intellectual property organization, there are two types of rights under copyright:

Firstly, Economic Rights which allows the owner to derive financial awards for the use of their work by others; And secondly, Moral Rights, which protect the non-economic interests of the author.

It is stated that the duration of protection granted to the copyright owner depends on several factors, including whether it has been published or not.

The period of copyright for the author of a work differ from one country to the other. For example, In Saudi Arabia, copyright protection lasts for the life of the author plus an additional 50 years following his death, yet if the copyrighted work is created by joint authors than it shall be computed from the date of the death of the last surviving author. On the other hand, In the United States several amendments have been changed regarding the statutory copyright protection. The United States are currently following The Copyright Act of 1976 which states that, *“From the moment of its creation and gives it a term lasting for the author’s life plus an additional 70 years. For a “joint work prepared by two or more authors who did not work for hire,” the term lasts for 70 years after the last surviving author’s death.”*⁸ . Copyright duration differs in every country because it has to match the jurisdictions that the country follows.

Overall, almost every artistic piece, novel, computer program, and many other examples are protected under the Copyright Laws. The rights granted under national laws to the owner of copyright are exclusive rights.

⁸ Copyright pdf of The official United States Copyright office. Website: <https://www.copyright.gov/circs/circ15a.pdf>

This merit gives the author's work finesse and quality that will grant the owner of copyright the power of showing the world the product he/she produced and write his/her name on it.

Legal Protection in Patent:

According to The World Intellectual Property Organization, “*a patent is an exclusive right granted for an invention, which is a product or a process. It is a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.*”⁹

A patent protects inventions, it is intended for advances and breakthroughs in technology. The owner of the protected invention by patent gets exclusive rights to the inventor for a limited period of time; therefore, the inventions can only be exploited with the authorization of the owner. The aim of a patent system is to encourage technological and economic development by providing protection for technological advances. The theory is that patent protection will offer a remuneration not only for the creation of the invention, but also for the expansion of the invention itself. However, it must be salable and feasible and that this sort of inducement would endorse inspiration and creativity in today's generation.

Patents are accessible for any inventions, whether processes or products. Machines and chemical compounds can be patented, and processes of developing can also be patented. Furthermore, any product that gets renewed with new features can be patented.

⁹World Intellectual Property organization, Patents-What is a patent, <https://www.wipo.int/patents/en/>

Yet, on the other hand, things that already exist in nature such as genetics cannot be patented.

According to the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), there are certain characteristics and conditions for an invention to be patentable:¹⁰

- It must be a new or novel; meaning that it never has been made before, or used before. “The invention must show an element of novelty; that is, some new characteristic which is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called “prior art¹¹”.
- It must involve an incentive step; it must represent a sufficient advance to be considered worth patenting.
- It must be capable of industrial application; it has to be susceptible of use in some way.

Patents are territorial rights. The exclusive rights of patent are only applicable in the territory or country in which the patent has been filed in conformity with the regulations of that country.

No patent enfolds every country in the whole biosphere, or even a great number of countries in the world. In order for a patent to be protected in every country on earth the owner be granted a patent in every country in the world. Therefore, the owner must apply and pay filing fees and maintenance fees for registration to each country he\she wishes for patent protection.

¹⁰ World Intellectual Property organization pdf, General Course on Intellectual property course, Page 90

¹¹ Website Title: Patents, Website link: https://www.wipo.int/patents/en/faq_patents.html#info

It is stated in The World Intellectual Property Organization, “there are international conventions and agreements between countries that supports the protection of patent in Intellectual property:

- Paris Convention for the Protection of Industrial Property (1883)
- Patent Cooperation Treaty (PCT)
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)”¹²

The duration for patent protection is 20 years starting from the date on which the application is filed. The owner gets the privilege to have the invention and the right to have it to him/herself for 20 years in exchange for full disclosure to the public. By getting protection for a fixed term guarantees that the inventor gets rewarded. After the duration expires, the invention becomes available to the public. If the inventor does not have patent for his/her invention, competitors may have the advantage to make the same product by using the invention without the need to take permission from the inventor. Larger enterprises may take the advantage to produce the product more cheaply and be have a more favorable market price. There is also a chance for someone else who have developed the same invention to file for patent first. The first person to file for parent will have the right to the patent. Thus, they could limit the other person’s activities on the continuation of prior use, or ask the company to pay licensing fee.

¹² 12 World Intellectual Property organization pdf, General Course on Intellectual property course, Page 102

According to The World Intellectual Property Organization:

“A patent is granted by a national patent office or by a regional office that carries out the task for a number of countries. Currently, the following regional patent offices are in operation:

- The Patent Cooperation Treaty (PCT)
- African Intellectual Property Organization (OAPI)
- African Regional Intellectual Property Organization (ARIPO)
- Eurasian Patent Organization (EAPO)
- European Patent Office (EPO)
- Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC Patent Office)¹³

There is yet no universal international system for the grant of patents.

Legal Protection in Trademark and Trade Secret:

○ Trademark:

Trademarks are one area of intellectual property and their purpose is to protect the name of the product rather than the invention or idea behind the product. According to the World Intellectual Property Organization, the definition of Trademark is

*“A sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors”.*¹⁴

¹³ Website Title: Patents, Website link: https://www.wipo.int/patents/en/faq_patents.html#info

¹⁴ World Intellectual Property organization pdf, General Course on Intellectual property course, page 64

Trademark can be visible signs that may consist of words, slogans, designs, name, letters, numerals, signs, etc.

Trademark can also be non-visible signs, such as fragrances or sounds or color shades etc. The possibilities are almost limitless. An example of a visible sign trademark that consists of words is (Apple) and an example of a non-visible sign trademark is the smell of (Chanel No.5) perfume.

A trademark holder will insure an exclusive right to the use of the registered trademark. This indicates that the trademark can be exclusively used the owner by law. Trademark protection is obtained through registration, at a national level, the owner of the trademark must file an application with the national trademark office and pay the obligatory fees. Meanwhile, at the international level, Registration for trademark provides legal certainty for the right holder.

According to the World Intellectual Property Organization, “*trademarks should be distinctive and should neither be generic nor merely descriptive of the goods or services they represent.*”¹⁵

Legislative texts that protects Trademark are:

- Paris Convention
- Trademark Law Treaty (TLT)
- TRIPS Agreement

¹⁵ World Intellectual Property organization pdf, General Course on Intellectual property course, Page 64.

The registration of trademark can vary, but it's usually 10 years. International Registration of marks follow the Madrid Agreement and the Madrid protocol 2008.

Unlike patents, trademarks can be renewed on payment of addition fees.

Trademark rights are considered to be private rights and the protection of trademark is imposed through legislation and court orders.

○ Trade Secrets:

Like all the Intellectual property rights stated above, Trade Secrets are intellectual property rights on confidential information which may be licensed or sold.

To qualify as a trade secret the information must be:

- 1) To be known only to a limited group of individuals.
- 2) Commercially valuable.
- 3) Subject to reasonable steps taken by the holder of information to keep it secret.

An example of trade secret is: The Coco-Cola formula and The KFC recipe.

The unauthorized disclosure of such secret information by others is regarded as an unfair practice and a violation of the trade secret protection.

Trade secret include both technical information such as (designs and drawings of computer programs, pharmaceutical test data) and commercial information such as (list of clients, advertising strategies, consumer profiles).

The legal protection of trade secrets forms a part of the general concept of protection of confidential information and unfair competition. Unfair practices regarding secret information include: breach of contract and breach of confidence.

According to the World Intellectual Property Organization, trade secrets are protected without registration, and require no procedural formalities for their protection. Trade secrets can be protected for unlimited period of time, but a substantial element of secrecy must exist unless it is discovered or disclosed to the public.¹⁶

Licensing and registration in Intellectual Property:

Intellectual property can be even more valuable than tangible property.

Whether developing a new product or formulating a new business idea, protection is necessary for those seeking exclusive rights. Registration for intellectual property differs from one country to the other. Each country follows regulations that may comply to an international treaty or may not.

For instance, each type of intellectual property follows a certain way for registration in order to get the license. Duration after gaining the license differ on the type of intellectual property owned and the country's laws.

The holder of the intellectual property cannot be granted protection unless if it is registered in the county the holder desires to get protection in. To conclude, the holder of intellectual property must register in every country separately.

¹⁶ WORLD INTELLECTUAL PROPERTY ORGANIZATION, Trade secrets basics, https://www.wipo.int/tradesecrets/en/tradesecrets_faqs.html

It is stated in The European IPR helpdesk (2015) *“In some countries certain types of licences, such as exclusive patent licences, must be registered in a national registry, usually at the Intellectual Property Office. If registration is not performed by the parties, the agreement does not have legal effect or the licensee may lose some rights.”*¹⁷

As stated earlier in this research, the holder of intellectual property has the option of either excluding others from using the registered product or give permission for others to use it.

Under an intellectual property licensing agreement, the holder of the intellectual property retain ownership of either copyright, patent, or trademark, yet has the choice to give another party permission to use some or all of the intellectual property rights for a particular amount of time for a fee or royalty.

The following three types of licenses are the most common among other different types of intellectual property licenses:

- **Exclusive License:** The holder shall not grant others licenses of the product, and the holder shall not use the product too.
- **Non-Exclusive License:** The holder shall agree to give the licensee certain rights, yet still have the power to grant other licenses and rights concerned to third parties.
- **Sole License:** The holder shall not grant others licenses of the product, however, has the right to use the product him/herself.

¹⁷ European Union (2015) <https://www.iprhelphdesk.eu/sites/default/files/newsdocuments/Fact-Sheet-Commercialising-IP-Licence-Agreements.pdf>

The procedure of registration nationally or internationally depends on the following intellectual property type:

Copyright: Registering the copyright with the local's copyright office that is a party to the Berne Convention for the protection of literary and artistic works. with a completed application form, a filing fee for online forms, and copies of the work. Therefore, a single registration in one country will grand presumption of ownership in all member's countries to the convention.¹⁸

Patent: Patens should be registered with the patent office where protection is sought: national, such as (EPO) in Europe or international (PCT). Completing an application form and attaching a full description of the invention and the identification of the inventor.

Trademark: Once the application of trademark is registered with the office of origin, the holder of the trademark shall file an international application under the Madrid System. The application must be submitted to the office of its origin, which will clarify it and then have it submitted to "WIPO" which will examine the international application and checks for formalities, after that payment of the fees is required.

After "WIPO" has recorded the trademark, it will notify all the offices of the members that have been designated in the international application.¹⁹

¹⁸ Copyright Registration, iGERENT <https://igerent.com/copyright-registration>

¹⁹ How to Monitor your international application from application to registration- the international registration process. https://www.wipo.int/madrid/en/how_to/monitor/process.html

Licensing Rights and Regulations in Saudi Arabia:

Saudi Arabia has one of the largest economies in the world. The Saudi economic value of innovation has expanded throughout the years due to the importance of intellectual property protection. Authority for Intellectual property (SAIP) aims to support, promote, and protect intellectual property in the Kingdom. The Authority has developed the registration application with certain requirements to the holders of intellectual property that are interested in protecting their product.

Registration for Copyright:

1. The Work or any of its contents shall not be contrary to Islamic Law (Shariah), Kingdom laws or the public decency.
2. Completion of the data and attachments required for the Registration.
3. Registration application is limited to one work, taking into consideration the nature of the Work.
4. The Work shall not be from the excluded Works of the protection by the Law.
5. The Work is in its final form, and is not a draft or a preparatory work.
6. The payment of the financial equivalent in accordance with these Regulations.
7. Any additional discipline, conditions and requirements, issued by a decision of the CEO of the Authority.²⁰

The approval of the registration for copyright works was adopted through the approval of the Board of Directors of the Saudi Authority for Intellectual Property pursuant to the missions and assigned to it, and according to its organization issued by the Council of Ministers Resolution No. 496, dated 9/14/1439 A.H., which

²⁰ Saudi Authority for Intellectual Property (<https://www.saip.gov.sa/en/services/#copyrights>)

stipulates, in its third article, that the authority shall organize the domains of intellectual property in the Kingdom.²¹

The Saudi Authority for Intellectual Property has prepared for those who wants to submit their copyright work through registration on the Authority's electronic portal: *Saip.gov.sa*. This is done by clicking on the "Services" window, then "Copyright" icon, filling in the required data, attaching the work required to register and related documents, in accordance with the conditions; and finally, paying the fees concerned with the completion of the registration and examination procedures.²²

Registration for Patent:

The Royal Decree No. M/38 dated 10.06.1409 A.H.²³ provides for the protection of patents in the Kingdom of Saudi Arabia. The Directorate of Patents at the King Abdul-Aziz City of Science and Technology is considered as the "Patent Office" and has the authority to grant patents in the country.

Patent is generally granted for 20 years from the date the patent application is filed. Registration for patent is on the KACST.edu.sa website. After filing the required data and attaching the work, it will be examined with respect to the compliance of the formalities used by the applicant. If executed successfully, the application receives a filing number and a filing date is secured. Payment concerned for the registration is required. Naming the inventor is compulsory, and the rights to a patent belong solely to the inventor. The granting of license does not prevent the

²¹ Saudi Authority for Intellectual Property (<https://www.saip.gov.sa/en/ال-الملكية-الفكرية-تطلق-خدمة-التسجيل>)

²² Saudi Authority for Intellectual Property (<https://www.saip.gov.sa/en/ال-الملكية-الفكرية-تطلق-خدمة-التسجيل>)

²³ THE PATENTS LAW, issued by the royal decree No.M/38 Dated 10/06/1409 AH

patentee from using the patent or from granting a license on the same patent to someone else, unless it is restricted in the original license agreement.

Registration for Trademark:

In Saudi Arabia, trademark ownership is established by registration with the Saudi Authority for Intellectual Property website (SAIP).

According to Saudi trademark law, the fame of a trademark is determined by different factors, including:

- recognition of the mark in the eyes of the relevant consumers;
- length of period of use or registration, in the case of a registered mark;
- the number of international registrations; and
- the commercial impact that the mark has produced on the market.

However, Saudi Trademark law recognises prior use rights in opposition and cancellation proceedings.²⁴

Conclusion:

Finally, if the Intellectual property is used correctly, it can also help cultural creativity to thrive, drive technological innovation to improve health and nutrition and yield other social benefits as well, and educate a population or workforce. In other words help development in its broadest sense. Intellectual property increases the creativity and innovation which will result in cultivating the economic value throughout the world.

²⁴ THE LAW OF TRADEMARKS, Royal Decree No,M/21 August 2002

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