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# INVESTMED

## INTELLECTUAL PROPERTY RIGHTS GUIDEBOOK

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**SABA INTELLECTUAL PROPERTY** - is a leading Intellectual Property (IP) firm committed to safeguarding clients' Intellectual Property Rights (IPR) across the Middle East, Africa, and their neighboring regions. Saba Intellectual Property was founded in 1926 at a time when the field of Intellectual Property Law in the Middle East was still in its infancy.

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Anais is also passionate about social enterprises and believes they're critical to the advancement of a more sustainable and balanced world.

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Yeganeh Forouheshfar an economist and a researcher at The Euro-Mediterranean Economists Association, she holds a PhD in economics from Université Paris-Dauphine. Her research interests are entrepreneurship, digitalization, economic modelling, social protection and demographic transition. She is also a research affiliate at DIAL and a member of EMNES research network. Yeganeh has published in peer review journals and contributed to scientific publications.

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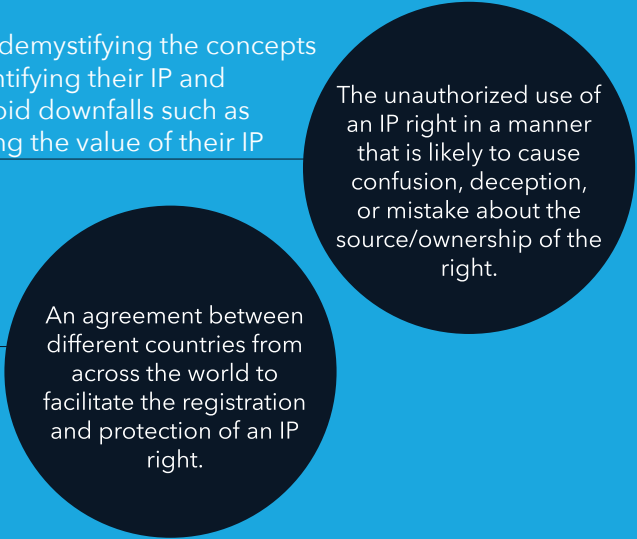
## THE PROJECT: INVESTMED

It is within this context that INVESTMED, an EU ENI CBC Med funded project, aims to support the development of new, sustainable entrepreneurship and business initiatives (in the green, blue and creative sectors) for young people and women in Tunisia, Egypt and Lebanon.

Within INVESTMED's framework and different activities, IPR comes as a tool to support these initiatives and entrepreneurs as well as public bodies through knowledge and capacity development. Thus, the guidebook on IPR has been developed for entrepreneurs and public bodies to provide basic and familiar ways to raise awareness and to address misconceptions around IPR.

For entrepreneurs, the guidebook aims at demystifying the concepts related to IP, guiding entrepreneurs in identifying their IP and strategizing their protection in order to avoid downfalls such as bankruptcy or **infringement** and maintaining the value of their IP through the respective IPR.

For public bodies, the guidebook serves as a reference point to have an overview on the different national laws as well as **international treaties and conventions**, which facilitate the process of registration.



An agreement between different countries from across the world to facilitate the registration and protection of an IP right.

The unauthorized use of an IP right in a manner that is likely to cause confusion, deception, or mistake about the source/ownership of the right.

# CHAPTER 1

# INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

## INTRODUCTION

Intellectual Property Rights (IPR) are exclusive rights given to people and/or enterprises for the use of their works and creations. Safeguarding an innovation serves to provide a legal protection which can contribute to the enterprise's growth. IP (Intellectual Property) [registration](#) also guarantees the creator's economic advantage that stems from the protection.

The registration of an IP could serve many purposes. For instance, it is often used to ensure a product's authenticity and high quality, which translates into consumers' satisfaction and safety. IP also serves as a foundation for global change and impact. These IP-driven innovations that changed the world's status quo range from but are not limited to the discovery of vaccines that have saved the lives of billions of people, to the development of environment- friendly technologies and products used to address and alleviate the burdens of climate change.

The procedures for registering IPR are governed by the rules and regulations of national and regional IP offices.

IPR has many properties and advantages on both microeconomic and macroeconomic levels. On a macro scale, the role of IP is thought to be essential for the economy as it supports markets' growth in terms of wealth, innovation and socio-environmental impact. In fact, countries that cultivate their entrepreneurial ecosystem and enhance their IP legal framework, usually strive in terms of social and economic development. It is no coincidence then, that the United States - the world's greatest economic power- is also the leading country for having the most prosperous IPR environment. Another example would be that of the increase of the Japanese competitiveness, mainly driven by the rise of IPR registrations. Between 1995 and 2005, the Japanese GDP has increased from less than 100,000 billion Yen to more than 500,000 billion Yen as a response to the evolution of certain sectors, mainly the Information Technology (IT) and pharmaceutical industries. The growth of such businesses can then be linked to IPR since it boosts innovation.

However, the positive correlation between IPR and economic development has often been contested. While some believe that IPR has a constructive impact on economic development, others assume that economic development is contingent upon several variables whose impact dominates that of IPR. Another aspect of IPR that is often challenged is the global right to access innovations. This is where the human rights debate between open source and intellectual property rights is embedded.

Although the relationship between the level of registration and a country's overall economic development is still under scrutiny, some numbers might back up the rather positive complementarity. For instance, between 2010 and 2019, the US has witnessed a rise in its GDP from 433,140 USD to 521,145 USD with an 88,005 increase in patent registration in 9 years. The link between GDP and IPR can lead us back to the power of IPR in incentivizing and promoting innovation.

Entrepreneurship is important as it furthers a country's economic expansion by supporting markets' unrestraint both in terms of wealth and innovation, and while the positive correlation between economic development and IPR is still unclear, the complementarity of the latter with entrepreneurship remains uncontested. That said, even if no direct relationship exists between IPR and economic development, both variables remain associated through the importance of entrepreneurship nonetheless.

IPR plays an important role in an enterprise's evolution. On one hand, entrepreneurship fosters creation and innovation, which translates into new products and/or services. On the other hand, IPR are necessary as they allow entrepreneurs to protect their creation and innovation as well as transform them into marketable competitive advantages. In fact, when entrepreneurs identify their IP, protect it, use it and enforce it properly, they can generate more value and attract investors in order to scale.

Having sufficient knowledge and know-how on Intellectual Property is thus crucial for entrepreneurs, particularly when it comes to adapting IPR protection to one's business strategy and registering it in a timely manner. Many actors such as business support organizations (BSOs), IP experts and lawyers can assist in identifying the most suitable IP element and timing to move forward with the protection.

In the Middle East and North Africa region, entrepreneurship is on the rise with 38% of people believing it as being a good career choice. In this regard, many initiatives have been implemented to promote the entrepreneurial ecosystem. Abu Dhabi for example has invested more than 200 million dollars in start-ups in 2020. However, despite all the efforts administered throughout the region, the social, political and economic context of most countries do not provide a sustainable ecosystem for such enterprises. For instance, the overall region has experienced a high rate of business discontinuance at 6.2%.

While many countries of the MENA region have mobilized to sustain the entrepreneurial ecosystem, the extent of the efforts varies across each jurisdiction.

In Tunisia, there is a clear emergence of start-ups. The local government has also mobilized to support entrepreneurs, start-ups, and investors by the implementation of the Start-up Act which offers advantages on financial, IP and other various matters. However, such improvements haven't been translated into increased IPR registrations in the last 10 years. While more than 500 PCT applications were filed in 2010, the number has fallen to less than 300 PCT applications in 2018. The causes of such variances might be due to the lack of awareness of entrepreneurs, the absence of support from BSOs and government, or the unfamiliarity of the public authorities on matters related to IPR.

In Egypt, entrepreneurship has gained high popularity, on one hand because of its appealing nature, and on the other, because of the lack of job opportunities on the market. This has caused the government to allocate in-kind donations to the entrepreneurship ecosystem and pushed for the immersion of startup-focused law firms. While entrepreneurship has gained public attention, IPR hasn't grown simultaneously. In 2010, more than 1600 PCT applications and approximately 3,336 Industrial Design registrations were issued. In 2018, the numbers fell to less than 1200 applications, and the registrations to 1,668 respectively.

Finally, in Lebanon, despite the current economic crisis, start-ups and MSMEs are still working hard to develop their businesses, create new job opportunities and inject money into the Lebanese market. These entrepreneurs have been backed up by different BSOs in the country that have been actively mobilizing to mitigate the effects of the local inflation by trying to turn Lebanon into a more self-sustaining producing country. However, because of fraught monitoring and evaluation processes, little to no data exists regarding the IPR application system. When data is actually available, it is usually insignificant.

Although all three countries have been witnessing a rise and development of the entrepreneurial ecosystem, many obstacles still exist. The main obstacles include, for example, the outdated legal frameworks (while some countries might be working to update them) and poor IP offices in terms of equipment, capacity and knowledge as well as the misconceptions that entrepreneurs have on IP matters. For instance, one of the many misconceptions around IP is presuming that it is limited to patents, trademarks, copyrights and industrial designs. IP is much more than that; it includes any and all elements that add value to an idea/start-up/company.

All of the reasons mentioned earlier highlight the importance of awareness-raising on matters pertaining to IPR for entrepreneurs and for public bodies. While the former need to develop their business, which will in turn contribute to the country's economic growth, the latter can support businesses to do so.

Country of protection

an international Patent law treaty, concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states.

## HUMAN RIGHTS AND INTELLECTUAL PROPERTY

Organizations often have to find a balance between sharing data and generating revenues. An organization needs to innovate to retain a strategic advantage, but in order for that innovation to be compatible with human rights, it should be accessible to the public. The relationship between Intellectual Property Rights, Open Source and Human rights is embedded in finding a balance between allowing access to all scientific knowledge and arts to the public and presenting authors and innovators with the moral and economic benefits that stem from their works.

Societies all around the world have benefited from the work of women inventors, designers and artists. However, data show that fewer women than men use the Intellectual Property system. For instance, in 2020, 16.5% of patent registrations were safeguarded by women. According to [WIPO](#), at the current pace, the world will acquire gender equality in IPR in 2058. In terms of human rights, that gender gap is significant, especially that empowering women to contribute to innovation and creativity benefits society as a whole.

A United Nations specialized agency established in 1967 dedicated to the promotion of innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective international IP system.

IPR that are granted have several important economic, social and cultural effects that may either consolidate or limit the exercise of human rights. The positive correlation between IPR and Human Rights (HR) can be highlighted through the International Covenant on Economic, Social and Cultural Rights. Under the Human Rights convention, creators have the right to protect their moral and economic interests resulting from their innovation, which can be done by safeguarding an IPR.

Unfortunately, the complementarity of HR and IPR is limited since the latter can be considered as exclusive, mainly serving the author/innovator at the expense of knowledge sharing, restraining the innovation's added value for society as a whole. According to Article 27 of the Universal Declaration of Human Rights, everyone has the right to enjoy and have access to any kind of scientific advancement or to artistic or literary works. It is there that the difference between IPR and [Open Source](#) in relation to HR arises.

A source that is made freely available to the public and may be redistributed and modified.

For an IP Right to be complementary to a Human Right, one must also take the nature of the innovation into consideration. A Human Rights approach requires that the invention be consistent with HR norms and be beneficial for members of society in the broadest way possible. For IPR to be in line with HR, they have to protect the rights of the author while making sure access to innovation is fairly distributed and allows the participation of all. As such, granting access to experts in emerging countries, marginalized societies, and other disadvantages segments of the population would allow sharing the discoveries with a larger public. This would promote inclusivity from a human rights' perspective but would also present a new alternative point of view to the invention and accelerate its development.

Open Source comes from the belief that collaboration and information sharing reinforce function and improve the innovation at hand. Open access to data at an affordable rate is key to the advancement of science. In recognition of the importance of access to data for research and educational excellence, the scientific community provides strong support for the principle of "full and open exchange of scientific data." This principle, as interpreted within the scientific community, has two requirements. The first is that publicly-generated data be available without charge or for no more than the cost of reproduction and dissemination. The second is that data produced or distributed by non-public sources be accessible for research and education purposes on fair and reasonable terms.

Open Source allows people to have access to it, permitting them to sell or give the output away. The value of Open Source is that it enables collaborations with anyone who wants to be involved. Used correctly, it will provide an acceleration to solution development that will otherwise be unattainable. Opensource acts as an accelerator since it provides the richest and broadest of resource pools to contribute to the product. However, Open Sourcing doesn't guarantee success; in fact, it could give away a company's position in the market.

An organization needs to create an IP and Open source position, with very close attention to detail so that it is managed carefully. The innovation and enterprise would then be protected by the IP and be open to the development of the innovation/creation through Open Source by including different stakeholders, each of which can have a specific added value.



## VISION OF THE GUIDEBOOK

In order to simplify the concepts of IPR, the guidebook was developed while taking the registration process into consideration. In this sense, each step below pertains to a section of the guidebook as follows:



### STEP 1

#### IP ELEMENTS

The first step is understanding the different IP elements, their scope and their protection in order to set an IPR approach according to one's business strategy. This section contains case studies based on a "lesson-learned" approach developed through interviews with entrepreneurs.



### STEP 2

#### INTERNATIONAL IPR TREATIES AND CONVENTIONS

The second step provides information on the different international IPR treaties and conventions that serve entrepreneurs when registering an IP. When ratified by a state, such treaties and conventions could make the IPR process easier and lead to less infringements.



### STEP 3

#### NATIONAL IPR FRAMEWORKS FOR TUNISIA, LEBANON AND EGYPT

Since not all countries have implemented the same IPR legal frameworks, this step provides an understanding of the Lebanese, Tunisian and Egyptian national IPR frameworks, which serve to identify one's rights as well as one's limits deriving from each IP element in the jurisdiction itself.



### STEP 4

#### FAQ SECTION

The section covers popular inquiries with regard to each IP component and which could benefit anyone wanting to better understand the concept and scope of IP.

#### DISCLAIMER

IT IS WORTH NOTING THAT THE SUPPORT OF IP EXPERTS IS VERY IMPORTANT AND IS REQUIRED FOR ENTREPRENEURS TO RECEIVE THE FULL BENEFITS OF SAFEGUARDING AN IP WHILE MINIMIZING THE RISKS OF INFRINGEMENTS AND SO ON.

#### DISCLAIMER

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## CHAPTER 2

# IDENTIFYING YOUR INTELLECTUAL PROPERTY

This section will support entrepreneurs in understanding Intellectual Property Rights, and in identifying and strategizing their Intellectual Property according to their innovation, creation, or product. *Case studies* based on interviews conducted with Egyptian, Tunisian and Lebanese entrepreneurs are available in order for entrepreneurs to relate to practical experiences. Finally, the section will provide a brief overview of the *overlap between different Intellectual Property Components* within one innovation, creation, or product.

This section will include an overview of the following Intellectual Property Elements:



PATENT



INDUSTRIAL DESIGN  
AND MODELS



TRADEMARK



GEOGRAPHICAL  
INDICATION



TRADE SECRETS



COPYRIGHTS

## INTELLECTUAL PROPERTY ELEMENTS



### PATENT

#### DEFINITION

"A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of achieving a specific work 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."\*

\*Frequently Asked Questions: Patents. Frequently asked questions: Patents. (n.d.). Retrieved September 22, 2021.

#### PATENTABLE INVENTIONS

"Patents may be granted for inventions in any field of technology." An invention can be a new industrial product, chemical compound, or it can be a new process or means leading to such a product or to its application or even a new way to use existing ones. A single product may involve several inventions and be protected by several patents or a combination of patents and other IPR such as Industrial Design if the invention also includes a novel ornamental aspect.

#### PRIOR ART

*Reading and drafting a patent takes time and requires professional support and assistance. That is because the language used is very technical. On one hand, knowing how to properly read a patent is important to avoid infringing on other people's work (to ensure that individuals are aware of what inventions exist in order to innovate and create new value). On the other hand, knowing how to properly draft a patent is as important since this will determine the scope of the patent and the exclusive rights related thereof.*

An invention is considered new if it is not regarded as prior art. This means that if a patent is qualified as prior art, it loses its novelty criteria.

#### CRITERIA FOR PATENTABILITY

An invention is patentable if it meets the following criteria:

- 1 It must show an element of novelty
- 2 It must imply an inventive step
- 3 It must be capable of industrial application
- 4 It must be patentable in accordance with the law.

An invention implies an inventive step if it cannot be obviously deduced by a person having ordinary skill in the relevant technical field.

#### EXAMPLE

One of the oldest cases of patent invalidation dates back to 1964 when Mr Karl Kroyer lifted a sunken ship in Kuwait 's harbor by filling the ship with 27 million plastic balls. He then filed a patent with regards to this method of raising a sunken ship by filling it with buoyant bodies fed through a tube. The patent was granted in the UK but rejected in the Netherlands because of a Donald Duck comic published by Carl Barks in 1949 that shows Donald and nephews raising a ship by filling it with ping pong balls shoved through a tube.

Asking yourself the following questions can help in identifying if your invention qualifies for a patent application:

- Is your invention novel in a sense that it is unique and has never been seen and disclosed to the public? (Prior art helps in determining this)
- Is your invention useful, meaning it presents an inventive solution?
- Can it be used in a specific industry or is it a unique work that is used in a personal space (and not with the general public)?

## PATENT APPLICATION FILING AND FORMALITIES

A patent application must be filed in order to issue a patent and exercise the rights resulting therefrom.

With respect to the protection at the national or regional level, a patent application shall be filed before the national or regional patent office.

As to the protection requested in several countries or territories, any resident or national of any Contracting State to the Patent Cooperation Treaty (PCT) may file a single international patent application in order to protect their invention in some or all Contracting States thereto.

Countries members to certain treaty / agreement.

Is the IP office that handles and governs IP matters for a number of jurisdictions.

The international application shall be submitted with the required attachments and general information on the invention specific to each country or region, including:

- ✓ The name of the invention
- ✓ Data on the technical field of the invention
- ✓ Abstract of the invention
- ✓ Background information on the invention
- ✓ A detailed description of the invention.
- ✓ Visual representations of the inventions may be attached to the said description such as drawings or geometric shapes to better describe the invention.
- ✓ The patent application must clearly and briefly include the claims of the applicant for the patent.

## TERMS OF PROTECTION

The protection granted to the invention as per a patent lasts 20 years in general starting from the date of filing the patent application.

The validity period of an IP right.

In some countries, the national law may sustain a longer term of protection extending to +20 years. Otherwise, an additional protection certificate may be issued in other specific events.

An individual or other legal entity that files an application for a Trademark. The applicant can be an individual or a corporation (company).

## RIGHTS AND ADVANTAGES RELEVANT TO PATENTS

A patent confers upon the patent holder the right of ownership of the invention patented. This translates in preventing others from making, using, or selling your invention and therefore having exclusivity on exploiting it commercially by making, using, selling and licensing the said invention (whereas unregistered patents can be used by anyone on a non-exclusive basis).

This leads to the following advantages:

### FINANCIAL RETURNS:

By allowing the patent holder to make profits from exploiting their invention.



### OWNERSHIP RECOGNITION:

By acknowledging the creativity of the creator and their contribution to the facilitation of the life of the public.



### MINIMIZING RISKS:

By preventing patent infringements and limiting unfair competition.



On a holistic level, the patent system helps in spreading information useful to the public, promoting creative activities, guaranteeing welfare, and improving the quality of life of mankind.

## LIMITATIONS ON RIGHTS GRANTED UNDER A PATENT

A patent can be invalidated if it appears that a similar patent was granted before it on the basis of prior art.

A patent may be revoked by any party having standing, by filing a lawsuit, if the patent is not new, does not involve an inventive step, or is not capable of industrial application.

Furthermore, annuities must be paid in order to maintain and renew the patent and benefit from its legal effects. Failure to pay the annuity within the deadline specified can lead to the revocation of the said patent; noting that annuities increase progressively each year.



## CASE STUDY: PATENT

### DESCRIPTION OF START-UP

This start-up is developing a chemical-free weeding robot, "Ultron", operated by Artificial Intelligence. Ultron aims at eliminating chemicals used in agriculture and permaculture together and increase the quality and yield of the crops on one hand and relieve the farmers from the financial and operating burden of weeding on the other.

The team has developed their first MVP but they are still in the process of developing their innovation and the software on which the robot operates.

### WHAT IS THEIR INNOVATION/IP?

The newly established enterprise is an autonomous robot that is operated by an artificial intelligence. This means that it is a software invention implemented in a robot (hardware), which makes it patentable under a Utility Patent. The software itself can be protected separately as a copyright but the software applied on an invention is protected under a Patent. Of course, in order to be granted a patent for any invention, one's innovation has to be novel and not disclosed.

### CHALLENGE ENCOUNTERED WITH REGARDS TO IP

When the team began developing their product, they didn't have enough funds to deal with IP matters.

However, down the line, the team participated in an Accelerator Program which organized IP awareness sessions/workshops with IP experts. These sessions turned out to be very valuable to the team as they got familiar with IP in general and learned a lot of things such as the legal protective tools (NDAs), IP strategy, drafting a patent and the importance of prior art when seeking to register a patent.

The team ended up working with one of the IP experts and they mainly focused on the prior art search and patent draft.

Prior art search is an important step in the process of seeking for a patent since it helps identify the existence of a similar registered/disclosed patent and confirm whether or not it is novel thus eligible to be patented.

Even though they had IP experts working with them, prior art search turned out to be challenging for the team who had trouble understanding the existing patents as the language used is very technical and peculiar. It was also difficult for them to describe their innovation to the IP experts in words they could all understand which was problematic since a patent needs to be specific in its description in order to avoid being infringed or to duplicate someone else's work.



### LESSONS LEARNED

- Strategizing is essential regardless of the funds: Even when the necessary funds are not available, entrepreneurs should always have an IP strategy put in place. The strategy can include the identification of the startup's IP assets and the use of confidential/assignment agreements. Furthermore, when having a small budget, the strategy scope could be extended to include a prior art search and a first patent draft. By doing this, entrepreneurs can focus on developing their innovation all while protecting their IP and being ready for its registration upon raising funds, in their own way!
- Optimizing IP sessions. In order to optimize the IP sessions/workshops, it is important for IP experts to mention IP technical terms in order for them to understand the process of filing, as well as other important details along the process such as the timing to conduct the prior art and the description of the IP. Such experts could also familiarize the IP glossary in order for entrepreneurs to understand. When there is a mutual understanding, the prior art search (in case of filing a patent), as well as the draft of the innovation, will then be easier for the lawyer in question and for the start-up itself.



## INDUSTRIAL DESIGNS AND MODELS

### DEFINITION

"An industrial design constitutes the ornamental or aesthetic aspect of an article. An industrial design may consist of three-dimensional features, such as the shape of an article, or two-dimensional features, such as patterns, lines or color."\*

\* Industrial Designs. Industrial designs. (n.d.). Retrieved September 22, 2021, from <https://www.wipo.int/designs/en/>.

### INDUSTRIAL DESIGNS AND MODELS

Industrial designs and models are applied to a wide variety of products of industry and handcraft items, including technology or medical equipment and tools, watches and jewelry, and other luxury goods, in addition to home appliances, vehicle frames, buildings, textile designs and leisure goods such as toys/games and pet toys.

### CRITERIA FOR INDUSTRIAL DESIGN/MODEL REGISTRATION

An industrial design or model can be registered if it is new and original.

"The assessment of novelty and originality varies from country to country. In general, an industrial design is considered to be new or novel if:

- 1 It has not previously been disclosed to the public and it may be considered original
- 2 If it significantly differs from known designs or combinations of known design features."

### REGISTRATION FORMALITIES

In most countries, an industrial design needs to be registered in order to be protected under the industrial design law as a 'registered design'.

In some countries, industrial designs are protected under patent law as 'design patents'... or as 'works of art' under copyright law.

However, in some countries, the registration of an industrial design is not mandatory to benefit from protection. In such a case, this design is known as an "unregistered industrial design" and benefits from the protection set forth by the relevant jurisdiction.

### FOR THE PROTECTION AT THE NATIONAL OR REGIONAL LEVEL

The owner of the industrial design or model must file a registration application before the Intellectual Property office in the country or the territory where the protection is requested.

Such application must be submitted in conformity with the novelty and originality criteria. Some countries, however, allow for a "grace period" to file a registration application after disclosure of the industrial design. Such a "grace period" is usually **6 to 12 months**.

### THE PROTECTION AT THE INTERNATIONAL LEVEL

A single international application may be filed instead of several applications filed in several countries where the protection is requested, in conformity with the WIPO-administered [Hague Agreement](#), which provides for registering up to 100 designs in a large number of territories through one single international application.

Is the convention that deals with the protection of Industrial designs.

### TERMS OF PROTECTION

Industrial designs and models benefit from protection for a defined term. The term of protection differs from one country to another, but must not be less than **10 years**. In many countries, such protection is granted for consecutive periods that can be renewed.

### RIGHTS AND ADVANTAGES ARISING FROM THE REGISTRATION OF AN INDUSTRIAL DESIGN OR MODEL

The owner of a registered industrial design or model benefits from an exclusive right with regards thereof.

This translates in preventing others from making, using, or selling your invention and therefore having exclusivity on exploiting it commercially by making, using, selling and licensing the said invention, which

leads to the following advantages:

#### FINANCIAL RETURNS:

By allowing the holder of the registered



designs to make profits from exploiting their invention.

#### OWNERSHIP RECOGNITION:

By acknowledging the creativity of the inventor and



their contribution to the facilitation of the life of the public.

#### MINIMIZING RISKS:

By preventing infringements and limiting unfair competition.



NEXT: CASE STUDY





## CASE STUDY: INDUSTRIAL DESIGN

### DESCRIPTION OF STARTUP

A start-up specializing in the modeling and manufacturing of 3D construction games consisting of three-dimensional features.

### WHAT'S THEIR INNOVATION/IP?

The founder of the start-up wanted to protect the pieces that constitute the model as well as the end result itself.

Since the end result is an artistic work, it falls under copyright. As per the Berne Convention, as soon as an artistic work is disclosed, the individual who first discloses such invention is by default the inventor of the work disclosed.

On the other hand, the model and its pieces constitute an Industrial Design that has to be registered in order to be protected and for the inventor to benefit from the exclusive economic rights related thereof. Under the country's law, Industrial Design can be registered for a period of 5, 10 or 15 years at the most.

As per the territorial principle, each country's IP laws may slightly differ from other countries; it is always important to inquire about the laws applicable in each country where one wishes to register an IP.

For example, depending on the country, an Industrial Design application can include up to 100 designs to be registered subject to them falling under the same category (Industrial Design classification is provided by the Locarno Agreement). Also, and depending on the country, this sort of design may be protected under patent law as "Design patent".

### CHALLENGE ENCOUNTERED WITH REGARDS TO IP

The team behind the newly established industry, was guided by the IP office to identify under which IP component they could register their 3D model - Industrial Designs. However, the founder didn't know that there was a 6-month **priority** delay under the Paris Convention to register the said design in another country.

Once an Industrial Design is registered in the home country, it can only be registered in other countries during 6 months after the date of registration in the home country.

This means that for the first model registered, the start-up can't register it in another country anymore, meaning a competitor could exploit (not register) the model in another country but on a non-exclusive basis.

The IP Office also offered the founder great support in informing the latter of the "Hague Convention" that allows her to seek protection in multiple countries through one centralized application.

A priority claim is made to an earlier-filed IP right application for a current application (to enjoy the prior filing date of the earlier right).



### LESSON LEARNED

- **Importance of IP offices and Business Support Organizations (incubators) as well as public bodies' support:** As startups are mainly focused on developing their product and have no background in the technical/legal aspect of IP at an early stage; it is important to have IP offices and Business Support Organizations educate the entrepreneurs and raise awareness on IP matters.
- **Strategizing in light of Priority Delay:** In this case, the founder registered the first design without being aware of the 6-month priority delay. Although the founder knew that IP registration was essential, there was a lack of awareness and strategy. When ready to register a type of IP (especially the ones which require novelty as a condition), one must always keep in mind (i) the applicable priority delays and (ii) the countries in which it wants to seek protection during the said priority delay.





## TRADEMARK

### DEFINITION

"A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises."\*

\* Trademarks. (n.d.).WIPO. Retrieved September 22, 2021.

### FORMS OF TRADEMARK

"A word or a combination of words, letters, and numerals can perfectly constitute a trademark. But trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used as distinguishing features..."

### EXAMPLE

The MGM lion sound, Nike's "Just do it" and so on.

### TRADEMARK REGISTRATION CRITERIA

A trademark must be unique compared to other trademarks.

A trademark is important because:

- 1 It is a symbol that helps the general public identify your services and/or products
- 2 It is a way to attract customers to one's enterprise
- 3 It protects customers from being misled by counterfeit products.

### REGISTRATION FORMALITIES

A trademark must be registered by each person, entity or company in order to have the right to claim ownership of the trademark, to use it on an exclusive basis, and to protect it from any violations.

In the US, people tend to add the "TM" symbol next to their unregistered trademark. ® symbol is used when the trademark is registered.

The trademark shall be registered before **the national or regional** competent authority by filing a trademark registration application and paying the due fees.

**At the international level,** the applicant can either register the trademark

- The country where the trademark owner seeks protection
- By filling a single international application under the WIPO-administered Madrid Agreement and pay one set of fees in order to protect the trademark in 124 countries.

### TERMS OF PROTECTION

The term of protection depends on each country. In general, the protection is granted for **10 years** with the right to renew such term for additional periods against payment of the renewal annuities set forth.

### RIGHTS AND ADVANTAGES ARISING FROM REGISTERING A TRADEMARK

The trademark owner will have an exclusive right over the use of the trademark, which may lead to the following advantages:

#### FINANCIAL RETURNS:

- By attracting customers and thus increasing the profits.
- by allowing the trademark owner to make profits by authorizing third parties to make and distribute products and/or services under that trademark



#### OWNERSHIP RECOGNITION:

By acknowledging the creativity of the inventor and their contribution to the facilitation of the life of the public.



#### MINIMIZING RISKS:

By preventing infringements and limiting unfair competition.





## CASE STUDY: TRADEMARK

### DESCRIPTION OF START-UP

This industry develops products and toolkits dedicated to musicians.

Their first release was their own personal automatic guitar tuner. The company then released its more advanced tuners, with improved tuning accuracy and enhanced noise immunity. It is built with carefully tooled and proprietary audio algorithms. When placed on the tuning peg, the latest tuner will listen to the vibrations of your guitar string, analyze its pitch, and automatically turn the peg to get your string into perfect tune.

The industry aims at enriching the lives of musicians through technology and enhancing their experience.

### WHAT'S THEIR INNOVATION/IP?

The product is made out of audio algorithms. This type of product can be protected by a utility patent as it covers the creation of a new or improved—and useful—product. A fun fact is that the Company's founders are engineers and musicians which was an advantage in drafting their patent.

Additionally, and like most companies, their trademark was also deemed to be an asset to their company as they are commercializing their innovative product under this name and thus wanted to protect it as well.

### CHALLENGED ENCOUNTERED WITH REGARDS TO IP

At first, and since one of the founders lived in Canada, they registered their first patent there. Following this initial step, they registered their patent in the US and EPO through the PCT.

PCT is an international convention for patents that provides a centralized application process for applicants seeking to protect their patent in multiple jurisdictions. PCT allows applicants to choose the countries (whether individually or regionally) in which it wishes to seek protection.

However, the registration in EPO did not last as they weren't made aware of the high maintenance costs and did not have the budget to cover such costs at an early stage.

They pursued and completed the registration in the USA and were granted a patent there. The US was selected as a jurisdiction in their case due to the fact that it is where their biggest market is and since the USA is one of the biggest players in terms of technology.

For their trademarks, they followed the same strategy and registered it in the most relevant countries to the music industry: China, Europe and the US. The cost consideration was still present, but as trademarks are less complex as an IP compared to patents and thus less expensive, ?? it wasn't an issue.



### LESSON LEARNED

- **Identification of Markets:** With time and experience, the founders realized that they needed to register their patent in the countries relevant to the music industry, and that if there wasn't enough budget to cover all the market, the smart way was to at least cover the majority of it.
- **Costs Considerations:** The founders also realized that the selection of countries has to be made based on cost considerations. Sometimes registration in all markets is not possible since not only the registration fees are high but also the maintenance fees.
- **Importance of awareness and continuous learning on IP matters:** The founders were very curious from the beginning and never disregarded the importance of their IP. However, they know that there is never enough information one can have with regards to IP. For example, they weren't aware that the Madrid Protocol allows them to seek trademark registration in multiple countries which could have been an interesting route to explore when registering their trademark.



## GEOGRAPHICAL INDICATIONS

### DEFINITION

"A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially linked to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production."\*

\* WIPO. (n.d.). *Geographical indications. What do they specify?* Retrieved September 22, 2021.

### TYPES OF PRODUCTS IDENTIFIED GEOGRAPHICAL INDICATIONS (GIS)

"Geographical indications are typically used for agricultural products, food articles, wine and spirit drinks, handicrafts, and industrial products", which evolve with years thanks to the improved expertise and know-how of local producers and the residents of the geographical region and because of the likely changes in the weather and natural resources that add improved features to the products compared to those of the same classification.

### CRITERIA FOR GI REGISTRATION

GIs must be registrable as per laws. In addition, the GI-identified product must be:

- 1 Related to the geographical origin
- 2 Determined by a given feature, reputation, or other characteristic particular to the said geographical origin.

### REGISTRATION FORMALITIES

In order to be protected, GIs must be registered.

The registration enables producers of the specific geographical region to exercise the rights arising from the protected GI.

There are three main ways to protect a geographical indication:

- So-called *sui generis* systems (i.e. special regimes of protection)
- Using collective or certification marks
- Methods focusing on business practices, including administrative product approval schemes

### THE NATIONAL OR REGIONAL PROTECTION

The registration application shall be filed as per the national laws in each country, either by an individual producer or a group of producers of such products identified by the relevant GI, before a national or regional department, a private authority for the protection of GIs or national IP offices.

### THE INTERNATIONAL PROTECTION

WIPO-administered Lisbon Agreement provides for a single GI registration, known as the international registration, in order to protect the registered GI in all territories of the Contracting States to the Agreement, provided such GI has been already registered in one of the aforesaid Contracting States.

### TERMS OF PROTECTION

If the national laws do not provide for a specific term for GI protection, **a GI benefits from the protection throughout the registration term**, i.e. as of the date of registration until the date of the annulment of registration.

Geographical indications registered as collective and certification marks are generally protected for renewable **ten-year periods**.

### ADVANTAGES RELEVANT TO REGISTERED GIS

A registered GI right allows those who have the right to use the indication to prevent its use by a third party, whose product does not conform to the standards applicable to such a product, thus leading to the following rights and advantages:

- Increasing the interest of consumers in the geographical origin and characteristics of the product and granting a distinct identity to the GI-identified products compared to others on the market - "Geographical indications can thus be a key element in developing collective brands for quality-bound-to-origin products."
- Promoting the brand image and fair competition, increasing export opportunities and consequently limiting unfair competition Failure to protect the GI-identified products results in the unrestricted use of the GI and the diminution and even loss of GI value Preventing third parties from registering the GI as a trademark and limiting the risk that such GI becomes a generic term Allowing the GI owner(s) to make profits from the exploitation and disposition of rights arising from the GI ownership

### LIMITATIONS ON GI REGISTRATION

Some restrictions and exceptions apply to the rights and advantages arising from the protected GI.

Such restrictions and exceptions include the following:

- Signs that do not qualify as geographical indications under the applicable law.
- From a legal point of view, potential obstacles to successfully registering a geographical indication (GI) may include the following:
  - Conflict with a prior mark
  - Generic character of the term that constitutes the GI
  - The existence of a homonymous geographical indication, the use of which would be considered potentially misleading as to the product's true origin
  - The indication's name being that of a plant variety or animal breed
  - The lack of protection of the GI in its country of origin

A protected geographical indication does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a geographical indication is usually obtained by acquiring a right over the sign that constitutes the indication



## TRADE SECRET

### DEFINITION

"Trade secrets are Intellectual Property (IP) rights on confidential information that may be sold or licensed. In general, to qualify as a trade secret, the information must be

- Commercially valuable because it is secretive;
- Known only to a limited group of persons; and
- Subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements for business partners and employees."<sup>\*</sup>

<sup>\*</sup> Trade secrets. WIPO. (n.d.). Retrieved September 22, 2021.

### CRITERIA FOR QUALIFYING AN INFORMATION AS TRADE SECRET

A trade secret includes any material or information that gives you a competitive advantage over your competitors because of its confidential aspect.

**EXAMPLE**

A special recipe,  
A know-how,  
list of suppliers, and so on.

### How to maintain a trade secret, undisclosed?

Nothing is absolute, but there are some ways to exploit them commercially all while ensuring they remain confidential:

- 1 Trying to limit the number of people who are aware of the trade secrets
- 2 Putting in place a policy that explains who can access your trade secrets and how they're protected, keeping all employees informed about such policies regularly and conducting training in that regard.
- 3 Sign nondisclosure agreements with employees and third parties' partners before granting them access to the trade secrets especially when licensing its know how (Franchise agreements and so on)

### REGISTRATION

Trade secrets **are not registered** because they are automatically protected upon meeting the criteria for their qualification as trade secrets without further formalities.

### TERMS OF PROTECTION

Trade secrets are protected **for an unlimited period unless publicly disclosed or illegally accessed by third parties.**

Time is of essence for the protection length of a trade secret; it can be protected as long as it is confidential. The secrets to some inventions can be discovered with time (testing, technology, reverse engineering). Therefore, it is very necessary to assess whether an invention can benefit from a trade secret protection or if its registration under the right IP element is necessary.

Practically most inventions are trade secrets before their disclosure and registration under their respective IP element.

### ADVANTAGES RELATED TO THE PROTECTION OF TRADE SECRETS

Trade Secrets mainly confer their owners with an exclusive competitive advantage over competitors worldwide, which allows them to commercially exploit them and gain profits either directly and/or through third parties.

### LIMITATIONS ON THE PROTECTION OF TRADE SECRETS

If and only if a third party obtains the trade secret by way of illegal means (commercial espionage, unfair competition, breach of confidentiality), the trade secret owner can claim infringement. However, if the trade secrets go public because the right measures were not taken or because of negligence, the trade secret owner will have no legal recourse.

Indeed, "A trade secret owner, however, cannot stop others from using the same technical or commercial information, if they acquired or developed such information independently by themselves..."



## COPYRIGHT

### DEFINITION

"Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works." Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.\*

\* Copyright. WIPO. (n.d.). Retrieved September 22, 2021.

The literary and artistic property is divided into two categories: 1<sup>st</sup> being related to **copyright** and 2<sup>nd</sup> to **neighboring rights**.

Copyright includes:

- Literary works such as novels, poems, plays, reference works, newspaper articles
- Computer programs, databases
- Films, musical compositions, and choreography
- Artistic works such as paintings, drawings, photographs, and sculpture
- Architecture; and advertisements, maps, and technical drawings.

**EXAMPLE** TV Series (Sounds and Video),  
Architectural Design.

As for the neighboring rights they include similar rights to copyright namely:

- Rights of performers (such as actors/musicians) to exploit their performance rights of producers of phonograms to exploit their phonograms (such as cassette tapes and DVDs) rights of broadcasting organizations to exploit their TV and radio broadcasts rights of publishing houses to exploit their **publications**

### PROTECTION APPLICABILITY CRITERIA

The two criteria elements of a copyright are instead of is as follows:

- 1 Protected copyright works must be innovative.
- 2 Copyright protection does not extend to ideas.

Applications are published in the Official Gazettes for notification and possible oppositions by interested third parties.

### REGISTRATION FORMALITIES

Any person creating a literary, artistic, musical or cinematographic work has the right of absolute ownership of such work.

**In most countries**, in conformity with [Berne Convention](#), literary and artistic works are automatically protected without mandatory registration or other formalities. It is worth noting that copyright protection is automatically guaranteed at the international level in all Contracting States to Berne Convention.

**Other countries** apply, however, an optional registration system to such works. Registering a literary or artistic work is deemed important as it contributes to the settlement of disputes arising from the said work, namely disputes over ownership thereof, facilitation of financial transactions and sales, and assignment and/or transfer of rights. In addition, such registration shifts the burden of proof from the author to the infringing party.

Is the convention that deals with the protection of Copyright works and the rights of their creators such as authors, musicians, poets, and so on.

Therefore, some authors depending on their works and on its form of exploitation may decide to register it. Indeed, when an original work has a popular online presence or can be easily reproduced, authors tend to officially register them.

### THE © SYMBOL

In the past, some countries required copyrights holders to comply with some formalities like adding the © symbol next to their work. Even Though very few countries impose this formality today, many copyright holders still include the symbol © next to their work as a way to prevent infringements.

Here are some other tips and tricks to prevent infringements without a formal registration:

- [Watermarking your work](#)
- [Adding a copyright notice that includes the © symbol, the authors' name and year of publication.](#)
- [Uploading low quality images online](#)
- [Keeping track of the first time the work was disclosed \(time, place, date\)](#)
- [Signing the required NDA when necessary](#)

## TERMS OF PROTECTION

The protection **is effective from the date of fixation of the work and its publishing or from the date of public performance of the work**. The term of protection depends on the country; however, as a general rule, the protection of the economic rights lasts throughout the life of the author in addition to 50 years starting from the end of the year of the death of the author.

The duration of moral rights varies from a country to another. In the USA, moral rights expire upon the death of the author, in Canada they last **50 years** after the author's death whereas in France they are perpetual.

## RIGHTS AND ADVANTAGES ARISING FROM COPYRIGHT

These include **primary economic rights** including **economic rights** (related to the author) and **neighboring rights** (related to third parties), as well as **moral rights**

### 1- PRIMARY ECONOMIC RIGHTS

#### a. Economic Rights (related to the author)

The copyright owner has economic rights that confer upon them the exclusive right to materially exploit their work.

The copyright owner has also the right to either authorize or prohibit third parties from doing the following acts:

- Reproduce, print, record or photocopy the work by all available means, including audio and/or visual recording
- Transform the work into a film
- Translate the work into other languages; use excerpts thereof; or modify, alter or adapt the same
- Sell, distribute or rent the work
- Import copies of the work made abroad
- Perform and communicate the work to the public

#### b. Neighboring Rights (related to third parties)

"A separate set of copyright-type rights given to certain persons or bodies that help make works available to the public. The beneficiaries of related rights in national legislations are usually performers, producers of phonograms, and broadcasting organizations."

The owner of neighboring rights has the following exclusive economic rights:

- The performers may authorize third parties to do or prohibit them from doing the following acts: fixing or recording their unfixed performance and broadcasting or communicating to the public their unfixed performance.
- Producers of phonograms may authorize third parties to do or prohibit them from doing the following acts: reproducing directly or indirectly their phonograms and renting the same for commercial purposes.
- Broadcasting organizations may authorize third parties to do or prohibit them from doing the following acts: rebroadcasting their broadcasts in any way whatsoever, reproducing unauthorized fixations of their broadcasts, fixing their broadcasts, and communicating to the public their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.
- Publishing houses publishing printed or written works may authorize third parties to do or prohibit them from doing the following acts: reproducing such works by photographic means or for commercial purposes.

### 2- MORAL RIGHTS

Moral rights, contrary to the economic rights that give their author control over the commercial exploitation of their works, give the author public recognition over their works.

Moral rights represent the right of the author to claim authorship of their work, to prohibit third parties from altering, improving, modifying or changing their work in a way harming their honor, reputation, fame or literary, artistic or scientific status. The same applies to the owner of the neighboring rights.

As per the Berne Convention, moral rights are only accorded to individual authors, and in many national laws they remain with the authors even after the authors have transferred their economic rights. Furthermore, the laws of many countries provide that the initial right owner may transfer all economic rights in a work to a third party, although often moral rights cannot be transferred.

In some countries like the USA, authors may waive their moral rights whereas in other countries they may not (this is subject to certain exceptions).

## LIMITATIONS AND EXCEPTIONS APPLICABLE TO COPYRIGHT

In some events, the protected literary and artistic works may be used without the authorization or approval of the copyright owner or without payment of specific fees. This is applicable if such uses are subject to restrictions and exceptions provided for in the national laws, such as restrictions on "the quotation of works; the use of news of the day; or the creation of accessible formats for print-disabled people."



## CASE STUDY: COPYRIGHT

### DESCRIPTION OF STARTUP

This start-up is an ad-based streaming service which offers original productions amongst other content.

#### WHAT'S THEIR INNOVATION/IP?

The business operates through a platform using an existing technology (like most streaming based businesses), and monetizes through ads, content creation and other ways.

As explained within the guidebook, intellectual property is the most valuable asset(s) to any business. Depending on the business, IP can include one or more components.

For this newly established enterprise, their value lies in the combination of their trademark, their original content production, and their scripts. Script and Content fall under copyright protection since they represent a creative expression of ideas in a tangible form: a text, visual images, etc.

#### CHALLENGE ENCOUNTERED WITH REGARDS TO IP

When being approached by a production entity to buy one of their scripts, the team was asked to have the script registered and protected in order to buy it free and clear of any restrictions whatsoever, confirming that the work is original and thus will most likely not face any infringement accusations/lawsuits, and in the event it does, it would get resolved quickly since there is proof of ownership. However, when the team was asked to sign a paper waiving their economic/moral rights with regards to the script, one of the script team members, an academic, refused to waive his moral rights attached to his input.

Eventually:

- a. the team member withdrew from the script writing and
- b. a waiver was signed by the academic to the benefit of the Company with regards to the research findings related to the script.

This caused delays of approximately 6 months before the team could close the deal with the production entity.

In this case, discussing the potential waivers of the moral rights of the author prior to writing the script would have saved them a lot of time and would have clearly set the rights and obligations of all of the authors at the beginning of the process thus avoiding delays in finalizing the deal with the production entity and misunderstandings with the co-author/academic.



### LESSON LEARNED

The lack of awareness regarding copyright impacted the operations of the business, with the 6-month delay, which shows how important it is for each entrepreneur to be familiar with intellectual property and to set a strategy with regards to this. Today, more than ever, the team behind this streaming platform insists on awareness and strategy when it comes to intellectual property in order for entrepreneurs to be able to focus on developing their business all while protecting its value even with no or low IP budget.

Copyright is not required to be registered in order to be recognized. However, registration offers additional protection when it comes to ownership, statutory claims etc.

Moral Right Assignment: Always request a waiver when an author is producing a work for hire, this will help to avoid potential blockage/lawsuits with authors refusing to give up their moral rights. This can be very sensitive when working with academics.



## STRATEGIZING

Startups (and any kind of enterprise) and entrepreneurs should always set a plan with regards to the protection of their IP protection. So, **what** should be protected, **when, where and how?**

### WHAT?

One must always identify what the assets of the company are, what makes it distinctive, what gives it an economic advantage, and a competitive advantage in order to protect such assets under their respective IPR.

### WHEN?

Once the assets are identified, it is important to know what kind of IP is being dealt with in order to take the right steps that lead to its registration.



#### DISCLAIMER

AS A RULE OF THUMB, WHEN ONE DOESN'T KNOW EXACTLY WHAT THE FORMALITIES (IF ANY) OR LIMITATIONS OF AN ASSET/IP ARE, ONE MUST TAKE ALL PRECAUTIONS TO ENSURE THAT THE WORKS REMAIN CONFIDENTIAL (BY LIMITING THE DISCLOSURE TO SPECIFIC PEOPLE AND SIGNING NDA).

While some IP elements such as copyrights are automatically granted as of the day of publication, other IPs such as patents shouldn't be disclosed before being granted with regards to a certain work (or they'll be considered as prior art and will prohibit the author from seeking a patent with regards to the work).

However, even when dealing with copyright, one must always be informed of the advantages, risks and limitations related to any IP right.

**EXAMPLE** If a copyright work is disclosed privately to a third party and this third party reveals the work to the public, then the latter shall be considered as the copyright holder and the original author will have to involve a lawyer to deal with this infringement or theft.

Once the IP elements are identified, one can start strategizing the IP protection; meaning taking the right measures to maintain its value and getting informed about the time and costs related to the protection and/or registration of their IP. Startups will often seek funds for their IP registration since safeguarding it is considered important for investors but the costs (filing fees and attorney fees) related thereof can be quite hefty (depending on the IP type and on the enterprise's target countries).

A startup should always ensure that its founders, employers, advisors and any individual or entity working on the development of its product or service, enters into IP assignment agreements to protect the startup and maintain its value. IP isn't limited to registered IPR but includes anything that brings commercial value to a startup and/or enterprise. It is important for startup founders to assign their IP to the company. If a co-founder leaves the business before the assignment of an IP, they may have grounds to claim the IP they developed before the incorporation of the company as their own.

### WHERE?

IPR are territorial rights. This means that the rights granted with regards to a registered IP are only approved in the country/region in which it is filed and registered.

Some startups register their assets in the countries that represent their main markets and/or in countries where their competitors are mostly present.

When assessing in which countries/regions to register an IP right, start-ups must also consider factors such as the time and costs of the registration. Sometimes the costs are too high compared to a very small market.

Enterprises' incentives to register an IP in countries are the following:

- the country in question represents their main market
- the country in question is home to most of the enterprise's competitors
- the country in question alleviates fiscal burdens of IP registration

### HOW?

Each IP element has a protection/registration process and each process may differ from one jurisdiction to another.

There are some international and regional conventions that allow individuals/enterprises to seek protection/registration in multiple countries (of their choice) by filing one IP application.

## LEGAL OVERLAP

An invention can include multiple IP components, meaning different IPR can be granted for the same creation.

On one hand, when several IP components relate to the same invention, the creator can choose to have their invention protected under one IPR rather than another.

**EXAMPLE** For example, while a trade secret can be protected under patent law and/or kept as a trade secret (meaning be subject to reasonable efforts to maintain its secrecy from competitors), the creators should be careful in selecting the most adequate IPR protection.

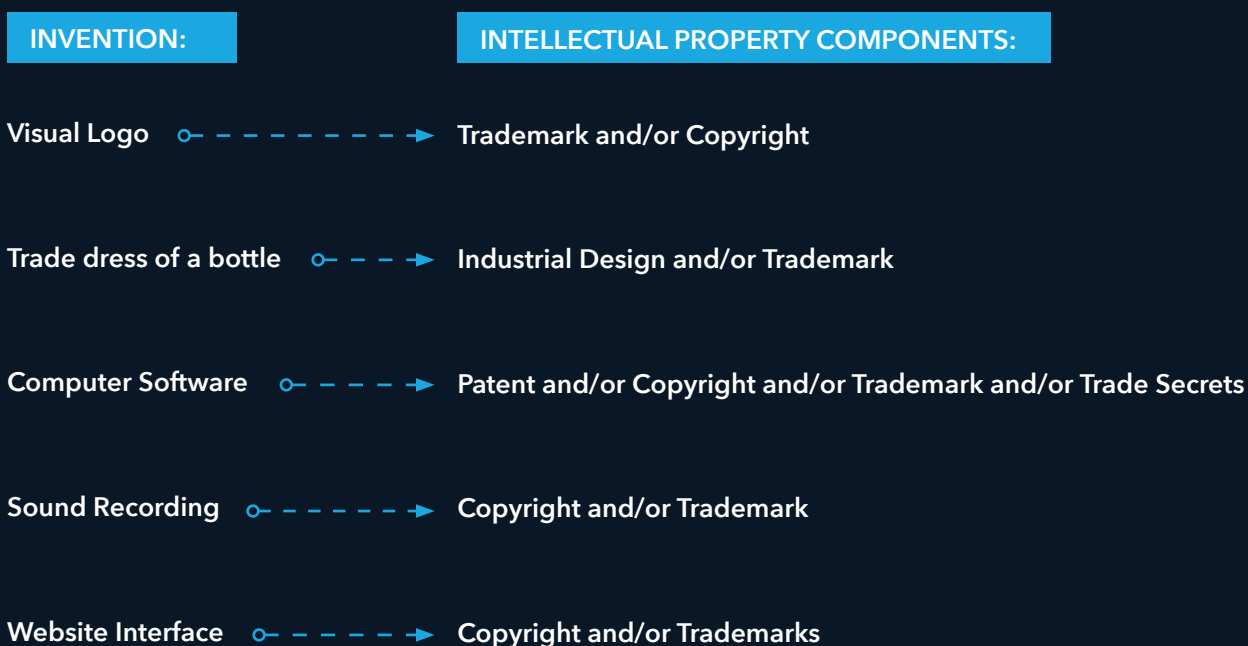
The selection of the adequate IPR will depend on the invention itself and the commercial strategy. If it can be discovered or reverse engineered (in the case of a software), the creator may resort to a patent law. However, if it can be kept secret with the adequate licensing, NCA and NDA agreements put in place, creators would stick to the trade secret practice as patents only last **20 years** and then fall into the public domain.

On the other hand, creators can choose to have their invention protected by a combination of IPR. In the case of a software program for instance, and where the law allows it, having both patent and copyright protections is beneficial. Patent protections for a software might end up becoming obsolete (especially regarding the newer version thereof in comparison with the original version) while a copyright protection might encompass the whole program regardless of the development thereof.

**EXAMPLE** Apple protects certain aspects of its technology with patents; it uses copyright to protect the software and trademark to protect the "Apple" and symbol related.

The benefits of protecting an invention with a combination of IPR lie in being able, as a creator and rights holder, to minimize the risks related to the different types of infringements and obtain the most damages possible. Infringements can lead to bankruptcy or the loss of the attention of investors for example, which can be harmful for an enterprise.

As mentioned earlier, IPR may become invalid with time and creators might benefit more in protecting their invention with one IP element rather than another or through a combination of IPR. Since there are different pros and cons for each invention (with regards to multiple different factors), creators must always require support from IP experts to assess what the right protection for their invention is. These experts can give a better understanding of the breadth and scope of each IP component, the complexities of protecting the same invention through several IPR and explain the advantages and risks related thereof.



## CHAPTER 3

**INTERNATIONAL FRAMEWORKS**

This section will provide the main international treaties and conventions related to Intellectual Property Rights. It will depict each convention's purpose, characteristics and process as well as the standards it adheres to and the protection procedure.

The relevant treaties and conventions showcased below are the following:





## PARIS CONVENTION (PC)

### STANDARDS AND PROTECTION PROCEDURES



#### CONVENTION DETAILS

**Convention**  
International

**Depositary**  
World Intellectual Property Organization

**Contracting Countries**  
177 (includes Lebanon, Egypt, Tunisia).

#### IP Kind

- Patent
- Trademark
- Industrial Designs
- Utility Models
- Service Marks
- Trade Names
- Unfair Competition
- Collective Marks



#### COST

N/A - the PC has an automatic priority protection effect in signatory countries as of the date of **home filing\***.



#### PROCESS

**Right of Priority:** Upon filing an application in one of the Contracting States, the applicant may, within a certain period of time (**12 months** for patents and utility models; **6 months** for industrial designs and marks), apply for protection in any of the other Contracting States; meaning they will have priority over applications filed during this period.

**Automatic Protection:** Only for Trade Names. Trade names are the commercial names used upon registration of a legal entity.



#### PURPOSE

The Paris Convention is one of the first conventions to tackle legal matters related to IP protection. It gives priority for companies or individuals to protect their IP by allowing the filing of a single application in the applicant's home country while automatically preserving the rights in other Contracting States of the PC during **6/12 months** as of the date of filing in the home country. In such a case, when an applicant files for a trademark in one contracting states, his mark will enjoy priority over all identical applications if filed in other contracting states within 6 months after the date of filing for the first time in one contracting state.



#### CHARACTERISTICS

The Right of Priority is advantageous since it gives the applicants a delay to register their IP in the chosen jurisdictions in light of Budget/ Strategy. It can be more affordable if the company is interested in protecting the IP in previously identified countries, especially if no translations are involved.

The right of priority's main purpose is to create an earlier date of protection vis-à-vis national filings that take place prior to the registration of the mark enjoying a priority. The priority of the registration in one of the member countries is set for **12 months** for patents and utility models and **6 months** for trademarks and industrial designs.

\* Is the national filing of an IP right in the home country of the applicant.



## BERNE CONVENTION (BC)

### STANDARDS AND PROTECTION PROCEDURES



#### CONVENTION DETAILS

##### Convention

International

##### Depositary

WIPO

##### Contracting Countries

179 (including Lebanon, Egypt and Tunisia).

##### IP Kind

Copyrights and neighboring rights: books, music, paintings, sculpture and films; computer programs, databases, advertisements, maps and technical drawings; performers, broadcasters and producers of sound recordings.



#### PURPOSE

The Berne Convention deals with the protection of creative works and the rights of their authors. It is based on three basic principles and contains the provisions with regards to copyright protection and developing countries that want to make use of them.

##### 3 Principles:

**Principle of National Treatment:** Contracting state agreed to give works created by foreign authors the same protection as the works created in its territory.

**Principle of Automatic Protection:** No requirement of registration/formalities or notifications.

**Principle of "Independence" of Protection:** the protection applicable to the work may vary depending on the territory where it's used.



#### COST

N/A - The BC has an automatic protection effect in Contracting States as of the date of home filing.



#### PROCESS

**Automatic Protection:** Authors have ownership of their works as of the day said creation is disclosed by them.

**Eligibility:** Authors that are citizens of or resident in Contracting States.



#### CHARACTERISTICS

**Rights Granted to Authors:** Economic rights (aka Material rights): the right to control the exploitation of the works for commercial purposes or other purposes + the right to refrain anyone else from using an author's works. Moral right: is the right to be recognized at the author of a work.

**Duration of Economic Rights:** Throughout the life of the Author + 50 years as of their death (or more depending on Contracting State).

**Duration of Moral Rights:** Perpetual. To note that Moral rights can't be transferred or traded, but an author may agree to waive the said rights.

**Exceptions:** The Contracting State legislation may provide the possibility of using some works without the author's authorization (i.e.: with regards to educational activities).

Art.9 (2) BC: "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

**BC also details:** the neighboring rights of performers, broadcasters and producers of phonograph recordings. Neighboring or related rights should be also listed and explained as the copyright extends to performers, broadcasters and producers of sound recordings, not only the original authors of the work.



## WIPO COPYRIGHT TREATY

(UNDER THE BERNE CONVENTION)



### CONVENTION DETAILS

#### Convention

International

#### Depositary

WIPO

#### IP Kind.

Computer programs

Compilations of data or other material.



### PROCESS

**Automatic Protection:** Authors have ownership of their works as of the day the said creation is disclosed by them.

**Eligibility:** Authors that are citizens of or residents in Contracting States of BC.



### COST

N/A - The BC has an automatic protection effect in Contracting States as of the date of home filing.



### PURPOSE

The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors in the digital environment.



### CHARACTERISTICS

#### Rights Granted to Author:

**Economic rights:** The right to control the exploitation of the works for commercial purposes or other purposes and the right to refrain anyone else from using an author's works.

The rights are:

The right of distribution is the right to authorize the availability to the public of the original and copies of the work through sale or other transfer of ownership.

The right of rental is the right to authorize the public the commercial rental of the original and copies of three kinds of works: (i) computer programs (except where the computer program itself is not the essential object of the rental); (ii) cinematographic works (but only in cases where commercial rental has led to widespread copying of such works, materially impairing the exclusive right of reproduction); and (iii) works embodied in phonograms as determined in the national law of Contracting Parties (except for countries which, since April 15, 1994, have had a system enforced for equitable remuneration of such rental).

The right of communication to the public is the right to authorize any communication to the public, by wire or wireless means, including "making the works available to the public in a way that the individuals may access the work from any place and at any time they choose". The quoted expression covers in particular on-demand, interactive communication through the Internet.

**Moral right:** Is the right to be recognized at the author of a work.

**Duration of Protection:** Throughout the life of the Author **+50 years** as of their death (or more depending on the Contracting State)

**Exceptions:** Art. 10 WCT "(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author."

The rights granted under the WCT are the same as the BC, but the WCT is focused on rights of authors of work in the digital area. Hence, authors enjoy the same rights in both BC and WCT. Article 3 of the WCT reads: "Contracting Parties shall apply *mutatis mutandis* the provisions of Articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty".



## PATENT COOPERATION TREATY (PCT)

### STANDARDS AND PROTECTION PROCEDURES



#### CONVENTION DETAILS

##### Convention

International

##### Depositary

WIPO

##### Contracting Countries

153 countries (include Egypt and Tunisia but **NOT** Lebanon).

Lebanon is not part of the PCT; however, the filing of a patent under the PCT is considered as claiming the priority of a foreign patent application in Lebanon, hence, the Lebanese application would be granted the earlier date of the PCT filing.

It must be noted that the filing in Lebanon while claiming priority according to a PCT filing must be done within the 12-month period as of the priority date, i.e. the date when the PCT application was filed.

##### IP Kind

Patent



#### COST

**Fees of International Phase:** Both official and professional fees apply. They depend on each case and the complexity of the patent.

**Fees of National Phase:** Not Applicable

**Annual Renewal Costs:** Not Applicable



#### PROCESS

**Registration Office:** An international patent application can be filed with the applicant's **national office\*** (if a Signatory of the PCT); with WIPO through its International Bureau or with any regional office, to the extent permitted by the applicable law of each Contracting Country. (Ref to regional patent conventions below).

**Eligibility:** Benefits residents or nationals (companies and/or individuals) of Contracting States.

**Length of Process:** International + National Phase ranging from **18 months to 30 months** plus.



#### PURPOSE

PCT allows applicants to seek patent registration in multiple countries by filing an international patent application with the national IP office in which the patent was first granted.

The phase during which the applicant files the international patent application is usually referred to as the "International Phase" and the phase during which patents are granted by the selected countries is referred to as the "National Phase":

**International Phase:** consists of (i) filing an international application through the applicant's national office, regional office or WIPO's International Bureau, (ii) establishing an international search report and a written opinion by WIPO's International Searching Authority (ISA), (iii) publicizing the international application and related documents by the IB, and optionally, (iv) establishing an international preliminary examination/report.

**National Phase:** Upon finalization of the formalities to be executed under the international phase, on average 30 months as of the filing date of the initial patent application, the applicant can start seeking patents in the selected countries by paying the offices of the said countries the required fees and executing all required formalities where applicable (translation, appointment of a legal representative and so on).



#### CHARACTERISTICS

**Priority to the Paris Convention:** It can claim the Paris Convention priority to an earlier-filed application.

**Postpones Major Costs:** High up-front fees and Postponing National registration fees.

**Gives time to strategize:** Time-buying to identify the markets/countries where to register the patent since it reserves your rights for about **2.5 years** (international and national phase) from the priority date. Longer than the **12 months** Paris Convention Delay.

**Duration of Protection:** **20 years** subject to the payment of the annual renewal costs.

\* Is the local IP office that handles and governs IP matters locally in a certain jurisdiction.



## EUROPEAN PATENT CONVENTION

### STANDARDS AND PROTECTION PROCEDURES



#### CONVENTION DETAILS

##### Convention

Regional

##### Depositary

Germany

##### Contracting Countries

Albania, Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

**Extension states:** (MA) Morocco, (MD) Republic of Moldova, (TN) Tunisia, and (KH) Cambodia

##### IP Kind

- Patent
- European Patent Office



#### COST

**Registration Costs:** They vary depending on the complexity of the patent.

Prior art search fees, and drafting fees (professional), in addition to a cost for validation for designated countries. The said cost depends on the number of designated countries.

Translation fees depend on the number of words/pages and the source and target languages.

**Annual Renewal Costs:** the 3<sup>rd</sup> annuity becomes due the year following the entry.



#### PROCESS

**Registration Office:** European Patent Office.

**Eligibility:** Benefits legal or physical residents of Contracting States. For non-residents a professional representative has to be appointed with a local address.

**Length of Process:** **3-5 years** from the filing date.



#### PURPOSE

EPC has established a single European procedure for the grant of patents on the basis of a single application and created a uniform body of substantive patent law designed to provide easier, cheaper and stronger protection for inventions in the contracting states.



#### CHARACTERISTICS

Centralized application, fees and renewal process. Save time and money since filing is centralized and costs of obtaining a patent in each country is higher than through the EPC.

**Duration of Protection:** **20 years** subject to the payment of the annual renewal costs (noting that in certain cases the duration of protection may be extended).





## EURASIAN PATENT CONVENTION

### STANDARDS AND PROTECTION PROCEDURES



#### CONVENTION DETAILS

##### Convention

Regional

##### Depositary

EAPO (Russia)

##### Contracting countries

Armenia, Azerbaijan, Belarus, Russia, Kyrgyzstan, Kazakhstan, Tajikistan, Turkmenistan



#### COST

##### Official and Professional Fees:

They vary depending on the complexity of the patent.



#### PROCESS

**Registration Office:** Eurasian Patent Office

**Eligibility:** Applicants who do not have their residence or principal place of business in one of the Contracting States of the EA have to file application and communicate only with the assistance of the registered Eurasian Patent Attorney.

**Length of Process: 2 - 4 years.** The length varies depending on the complexity of the patent and the number of national jurisdictions chosen.



#### PURPOSE

Eurasian patent system provides a uniform application procedure for physical and legal individuals to protect their inventions on the basis of a single Eurasian patent valid in the territory of nine States party to the Eurasian Patent Convention (EAPC)



#### CHARACTERISTICS

Centralized application, fees and renewal process. Save time and money since filing is centralized and costs of obtaining a patent in each country is higher than through the EOPC.

**Duration of Protection: 20 years** subject to the payment of the annual renewal costs.



## ARIPO AGREEMENT

### STANDARDS AND PROTECTION PROCEDURES



#### CONVENTION DETAILS

##### Convention

Regional

##### Depositary

African Regional Intellectual Property Organization

##### Contracting States

Botswana; The Gambia; Ghana; Kenya; Lesotho; Liberia; Malawi; Mozambique; Namibia; Rwanda; Sao Tome and Principe; Sierra Leon; Sudan; Swaziland; Tanzania; Uganda; Zambia; Zimbabwe.

##### IP Kind

- Mark
- Industrial Design
- Patent
- Utility Model
- Traditional Knowledge



#### CHARACTERISTICS

**Centralized application, fees and renewal process:** Save time and money since filing is centralized and

costs of obtaining a patent in each country is higher than through ARIPO.

Patent, Industrial Design and Utility Model: ARIPO is mandated to **grant\*** patents, Industrial Designs and Utility Models on behalf of the Harare Protocol Contracting States in accordance with the provisions of the Harare Protocol on Patents, Designs and Utility Models. The Harare Protocol was adopted on December 10, 1982 at Harare, Zimbabwe. The protocol entered into force in 1984.

Under the protocol, an applicant for the grant of a patent, Designs or Utility Model for an invention can, by filing only one application, designate any one of the Harare Protocol Contracting States in which that applicant wishes the invention to be accorded protection.

ARIPO itself can be designated under the PCT. It is also a member of the Paris Convention for the Protection of Industrial Property.

**Duration for Patent: 20 years** subject to payment of yearly renewal costs.

**Duration for Industrial Design and Utility Models: 10 years** subject to the payment of the annual renewal fees.

Trademark: ARIPO is mandated to register **marks and the** administration of such registered marks on behalf of the Banjul Protocol Contracting States in accordance with the provisions of the Banjul Protocol on Marks, which was adopted on November 19, 1993, at Banjul, The Gambia.

The Banjul Protocol establishes a trademark application filing system along the lines of the Harare Protocol. An applicant may file a single application either at one of the Banjul Protocol Contracting States or directly with the ARIPO Office. Since 1997, the protocol has been extensively revised in order to make it compatible with the TRIPS Agreement and the Trademark Law Treaty as to make it more user-friendly.

**Duration of Protection: 10 years** as of filing and renewable perpetually for periods of **10 years**.

**\* In the case of a positive examination, the IP office grants the IP right and issues a certificate of grant**



#### PROCESS

**Registration Office:** The protocol requires the filing of the application to be made with any one of the Contracting States or directly with the ARIPO Office.

**Eligibility:** Representation is mandatory for applicants who are not resident or whose principal place of business is not situated in a contracting state.

##### Length of Process:

**2 to 4 years** for Patent.

**9 to 12 months** for Industrial Design.

**12 to 18 months** for trademarks.



#### PURPOSE

The African Regional Intellectual Property Organization (ARIPO) is an inter-governmental organization (IGO) that facilitates cooperation among member states in intellectual property matters, with the objective of pooling financial and human resources and seeking technological advancement for economic, social, technological, scientific and industrial development.



## MADRID SYSTEM

(MADRID PROTOCOL AND MADRID AGREEMENT)



### CONVENTION DETAILS

**Convention**  
International

**Depositary**  
WIPO

**Signatories**  
124 countries (including Egypt and Tunisia, NOT Lebanon).

**IP Kind**  
Trademark



### PURPOSE

Allows an applicant to seek the registration of its trademarks in multiple countries by filing one international application.



### COST

**Registration Fees\***: Basic fee.

Complementary fee for each Contracting Country. A supplementary fee for each class of goods and services in excess of three.

Professional fees are also due.

If the national office of the applicant is in one of the Least Developed Countries, they can benefit from a 90 percent reduction in the basic fee.

**Annual Renewal Costs**: There are no annual renewal costs for trademarks. Renewal costs are due when the trademark's validity is due for renewal.



### PROCESS

**Registration Office**: International Bureau of WIPO through the Intermediary of the applicant's home country IP Office.

**Eligibility**: Application can be done by a natural person or legal entity having a connection through:

- Establishment, domicile or nationality
- With a Contracting Party to the Agreement or the Protocol.

A representative is needed to file the application.

**Length of Process**: **12 to 18 months** (varies for each jurisdiction).



### CHARACTERISTICS

Centralized application, fees and renewal process. Save time and money.

**Duration**: **10 years** renewable perpetually for periods of **10 years**.

\* Fee Calculator on WIPO.



## EU TRADEMARK REGULATION AND COMMUNITY DESIGN REGULATION

### STANDARDS AND PROTECTION PROCEDURES



#### CONVENTION DETAILS

Convention

Regional

Depository

EU

Contracting Countries

European Union (27 countries).

IP Kind

Trademark

Community Design (known as Industrial Design)



#### COST

Official (including publication) and professional fees are due. They are calculated on a case by case basis.



#### PURPOSE

In an effort to harmonize industrial design protection and trademark protection across EU countries,

the EU implemented the EU Trademark regulation and Community Design Regulation which allows an EU applicant to benefit from a unitary protection in the EU by filing a single application.



#### PROCESS

**Registration Office:** EUIPO (European Union Intellectual Property Office).

**Eligibility:** Representation is mandatory for applicants who are not resident or whose principal place of business is not situated in a contracting state.

**Length of Process:** Trademark: **4 to 5 months** as of filing.

**Designs: 2 to 3 months.**

**Opposition\*:** Filing an opposition against an EU trade mark application can be filed by anyone who can prove they are proprietors of earlier rights of the trade mark.

Filing an opposition against an EU trade mark application should be done **3 months** following the publication of the EU trade mark application in the EU Trade Marks Bulletin.



#### CHARACTERISTICS

**Time and Cost Efficient:**

Centralized application, fees and renewal process. Save time and money.

**Duration for Trademarks:**

**10 years** renewable perpetually for periods of **10 years.**

**Duration for Designs:**

A registered design is initially valid for **5 years** from the filing date and can be renewed for **5-year** periods, up to a maximum of **25 years**, whereas an unregistered design only grants protection for **3 years** from the date of its first public disclosure within the EU territory.

\*Is a proceeding filed at the IP office where a third party can object to the registration of an IP right for conflicting prior rights.



## NICE AGREEMENT

### STANDARDS



#### CONVENTION DETAILS

##### Convention

International

##### Depositary

WIPO

##### Signatories

European Union (27 countries).

##### IP Kind

Classification of goods and services for Trademark.



#### PURPOSE

The Nice Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks (The Nice Classification).



## TRIPS AGREEMENT (WTO)

### STANDARDS



#### CONVENTION DETAILS

##### Convention

International

##### Depositary

WIPO

##### Contracting countries

164 Signatories (including Egypt and Tunisia NOT Lebanon).

##### IP Kind

- Industrial Designs
- Geographical Indications
- Trademarks
- Copyrights and related rights
- Patents
- Layout-designs of integrated circuits
- Protection of undisclosed information



#### PURPOSE

The TRIPS Agreement is a minimum standards agreement which allows Members to provide more extensive protection of Intellectual Property if they so wish. Members are left free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice.



# HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

## STANDARDS



### CONVENTION DETAILS

**Convention**  
International

**Depositary**  
WIPO

**Contracting Countries**  
120 countries (Egypt and Tunisia).

**IP Kind**  
Industrial Design  
Hague agreement established the Hague System of international registration



### PROCESS

**Registration Office**  
WIPO

#### Eligibility

- (a) be a national of a Contracting Party or a member State of an intergovernmental organization, which is a Contracting Party, such as the European Union or the African Intellectual Property Organization, or
- (b) have a domicile in the territory of a Contracting Party, or
- (c) have a real and effective industrial or commercial establishment in the territory of a Contracting Party.



### COST

#### Official and professional fees

A basic fee should be paid for one design and each additional design added to the application would also entail payment of extra fees.

Publication fees are also due depending on the length of the published notice.



### PURPOSE

The Hague System allows applicants to register an industrial design by filing a single international application before the central WIPO, enabling design owners to protect their designs with minimum formalities in multiple countries or regions.



### CHARACTERISTICS

Centralized application, fees and renewal process. Save time and money.

No need for a prior National application.

#### Duration

Under the Hague System, you are guaranteed at least **15 years** of protection. Your international registration is valid for an initial period of **5 years**, counting from the date of registration. You can then renew it at least twice, up to the maximum duration of protection allowed by each contracting party.



## GENEVA ACT OF THE LISBON AGREEMENT ON APPELLATIONS



### CONVENTION DETAILS

#### Convention

International

#### Depositary

WIPO

#### Contracting Countries

120 countries (Egypt and Tunisia).

#### Beneficiaries

The right to use a protected geographical indication and Appellations of Origin, belongs to producers in the geographical area defined, who comply with the specific conditions of production for the product.

Under the Geneva Act, both appellations of origin and geographical indications can be registered internationally so that they are protected in other Contracting Parties.

A geographical indication is a sign used on products that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place.

Certain requirements for appellations of origin – that the raw materials be sourced in the place of origin and that the processing of the product also take place there – do not necessarily apply in equal measure for a product to be protected as a geographical indication.

The Geneva Act also covers trans-border appellations of origin and geographical indications – those that originate from a geographical area which extends over the territory of two adjacent Contracting Parties. These may file joint or separate applications in respect of such appellations of origin or geographical indications.

#### IP Kind

Geographical Indications (GI) and Appellations of Origin (AO)

Applications may be filed by beneficiaries and / or natural person or legal entity having standing under the law of a contracting party to assert the rights of the beneficiaries or other rights in the appellation of origin or geographical indication.



### COST

Both official and professional fees.



### PROCESS

#### Eligibility

Can be filed directly by the beneficiaries themselves or their representatives, or by the national Competent Authority (usually the national industrial property office).



### PURPOSE

The Lisbon system provides a means of obtaining protection for appellations of origin in several countries through a single international registration procedure in one language, with one set of fees in one currency.

Protection of registered AOs/GIs against becoming generic in the other countries of Lisbon agreement member states.



### CHARACTERISTICS

As long as the AO/GI is protected in the Contracting Party of Origin.

## CHAPTER 4

# NATIONAL FRAMEWORKS

This section provides a familiar overview of the different types of registration processes and their application in each target jurisdiction, **Egypt, Lebanon and Tunisia**. A small comparative analysis is also present to give entrepreneurs a better idea of the characteristics of each country's legal framework

### Intellectual Property Rights Systems



APPLICABLE LAWS



DEPOSIT OR  
EXAMINATION SYSTEM



OPPOSITION  
PROCESS



IP APPLICATION  
RENEWAL PROCESS

### A Comparative Analysis of Tunisia, Egypt and Lebanon

- [INTERNATIONAL CONVENTIONS & TREATIES](#)
- [PROCESS SUMMARY FOR PATENT OFFICES](#)
- [PROCESS SUMMARY FOR TRADEMARKS](#)
- [PROCESS SUMMARY FOR DESIGNS](#)

\*You can find a more detailed legal framework for Egypt in Annex 1, for Tunisia in Annex 2 and for Lebanon in Annex 3.



## INTELLECTUAL PROPERTY RIGHTS SYSTEMS

Filing an application before the competent authorities in Lebanon, Egypt or Tunisia will not follow the same procedures. There are mainly two different types of filing systems around the world, a filing system with examination and opposition and a deposit system. Both systems are available in the three countries of interest in the present study.

### APPLICABLE LAWS



#### LEBANON

Lebanon has a set of IP laws which date back to the French Mandate era (trademarks and industrial designs), while some other types of IP have had a legislative review in 1999 (copyright) and 2000 (patents).



#### EGYPT

Egypt has had a legislative review in 2002 with Law No. 82 of 2002 pertaining to the Protection of IPR, which encompasses all types of IPR (TMs, Patents, Industrial Designs and Copyrights).



#### TUNISIA

Tunisia has several IP related laws; the most recent ones for trademarks are Law No. 36 and Law No. 21 for the year 2001. They also include an examination and opposition procedure prior to accepting the registration.

### DEPOSIT OR EXAMINATION SYSTEM

While **Egypt and Tunisia** have filing systems that comprise an examination by the registrar prior to accepting and registering the IP right applied for, **the Lebanese** filing system is known as a deposit one, where the IP application filed would be accepted without an *ex ante* examination.

The advantages of the Deposit System are usually perceived as being the disadvantages of the examination system and vice versa.

- **The Examination System** takes more time to come into effect, but this is due to the thorough prior art and research undertaken before the registration. This can minimize the risks of infringement or invalidation.
- **The Deposit System** on the other hand is a quicker process but includes risks of being invalidated if a similar patent has already been registered.

### OPPOSITION PROCESS

The registration process in countries adopting the examination also consists of a period during which the IP right applied for would be subject to an opposition that can be filed by any interested party. The decision regarding the opposition would of course have repercussions on the application for registration. When the opposition is accepted, the IP application filed for would be refused, and when the opposition is dismissed, the registration takes place.

**The Lebanese deposit system** grants the patent to the applicant at his own responsibility. Any interested party may later (post grant) claim its invalidity in the court of law.

**Tunisia and Egypt**, however, do conduct **an examination** and the patent is only granted once it meets the prerequisites of novelty and inventive steps.

**The deposit system** for all applications and IP components is the same for the three target jurisdictions.







### IP APPLICATION RENEWAL PROCESS

It is important to note that not all IP components can be renewed. The identification of renewable and nonrenewable IP can be done with the support of IP attorneys and experts that can provide advice prior to an IP registration process.


**The renewal system** is almost identical in all countries concerned. Some details are prerequisites may vary between each country.

# COMPARATIVE ANALYSIS

## INTERNATIONAL CONVENTIONS AND TREATIES

ITEM	EGYPT	TUNISIA	LEBANON
 <p>PARIS CONVENTION</p>	 <p>12 months from priority, no extensions</p>	 <p>12 months from priority, no extensions</p>	 <p>12 months from priority, no extensions</p>
REQUIREMENTS	<ul style="list-style-type: none"> <li>- Arabic title and abstract, at filing</li> <li>- Certified copy of priority, 3 months</li> <li>- Assignment, 3 months (legalized)</li> <li>- POA, 4 months (legalized)</li> <li>- Complete Arabic translation, 6 months</li> <li>- All deadlines are non-extendable</li> </ul>	<ul style="list-style-type: none"> <li>- Filing in Arabic, French or English</li> <li>- Certified copy of priority, 1 month</li> <li>- Assignment, 1 month (simple copy)</li> <li>- POA, 1 month (simple copy)</li> <li>- Deadlines are extendable on a monthly basis</li> </ul>	<ul style="list-style-type: none"> <li>- Arabic title, claims and abstract, 3 months</li> <li>- Certified copy of priority, 3 months</li> <li>- Assignment, 3 months (legalized)</li> <li>- POA, 3 months (legalized)</li> <li>- All deadlines are extendable</li> </ul>
 <p>PCT NATIONAL ENTRY</p>	<p>30 months from priority, no extensions</p>	<p>30 months from priority, no extensions</p>	<p>Lebanon is still not a member of PCT. However, by practice, the Registrar <b>accepts</b> applications with claiming priority based on PCT applications (12 months from priority)</p>
REQUIREMENTS	<ul style="list-style-type: none"> <li>- Arabic title and abstract, at filing</li> <li>- POA, 4 months (legalized)</li> <li>- Complete Arabic translation, 6 months</li> <li>- All deadlines are non-extendable</li> </ul>	<ul style="list-style-type: none"> <li>- Filing in Arabic, French or English</li> <li>- POA, 1 month (simple copy)</li> <li>- Deadlines are extendable on a monthly basis</li> </ul>	<ul style="list-style-type: none"> <li>- Arabic title, claims and abstract, 3 months</li> <li>- Certified copy of priority, 3 months</li> <li>- Assignment, 3 months (legalized)</li> <li>- POA, 3 months (legalized)</li> <li>- All deadlines are extendable</li> </ul>
 <p>EP VALIDATION - EPO EUROPEAN PATENT OFFICE</p>	<p>Not Applicable</p>	<p>2 months from EP publication</p>	<p>12 months from priority, no extensions</p>
REQUIREMENTS		<ul style="list-style-type: none"> <li>- Copy of claims, French/English</li> <li>- Copy of intent to grant</li> <li>- POA, 1 month (simple copy)</li> </ul>	<ul style="list-style-type: none"> <li>- Arabic title, claims and abstract, 3 months</li> <li>- Certified copy of priority, 3 months</li> <li>- Assignment, 3 months (legalized)</li> <li>- POA, 3 months (legalized)</li> <li>- All deadlines are extendable</li> </ul>

## PROCESS SUMMARY FOR PATENT OFFICES

		 EGYPT	 TUNISIA	 LEBANON
	<b>DEFINITION</b>			
<b>EXAMINATION</b>	All documentation is included and fees paid.	Due within <b>6 months</b>	<b>No substantive examination*</b>	No substantive examination*
<b>PROSECUTION</b>	To ensure that the application satisfies the patentability requirements.	1st <b>office action*</b> issued within <b>2-3 years</b>	No office actions	No office actions
<b>PUBLICATION</b>	In most countries, the patent is published after 18 months from the filing date.	Upon allowance ( <b>4-6 years</b> from filing)	<b>15-18 months</b> from filing	<b>18 months</b> from filing
<b>OPPOSITION</b>	Patent offices provide a period during which third parties may oppose the grant. Oppositions may be pre-grant or post-grant.	<b>60 days</b> from publication date	<b>60 days</b> from publication date	No opposition
<b>GRANT</b>	If the examination reaches a positive conclusion, the patent office grants the patent and issues a certificate of grant.	<b>1 month</b> after the end of the opposition period	Same date as publication	Same date as filing
<b>ISSUANCE</b>		<b>1-2 months</b> after grant	<b>2-3 years</b> after publication	<b>1-2 months</b> after publication
<b>ANNUITIES</b>	Maintaining the patent: a yearly maintenance fee is to be paid to keep the patent alive during the term of protection.	Due on the anniversary of the filing date, minus 1 day	Due by end of the filing anniversary month	Due on the anniversary of the filing date
<b>TERM</b>	The term of protection of a patent is 20 years from the filing date.	<b>20 years</b> from filing date, minus 1 day	<b>20 years</b> from filing date	<b>20 years</b> from filing date




**\*Substantive examination:**

To ensure that the application satisfies the registration requirements and for checking all registration criteria is met.

**\*Office action:**

Decision issued by examiners listing any legal issue in the IP right application.

## PROCESS SUMMARY FOR TRADEMARKS

	 <b>EGYPT</b>	 <b>TUNISIA</b>	 <b>LEBANON</b>
<b>FILING REQUIREMENTS</b>	<ul style="list-style-type: none"> <li>- Power of Attorney Legalized by Egyptian Consulate</li> <li>- Certificate of Incorporation of the applicant Legalized by Egyptian Consulate</li> </ul>	Power of Attorney simply signed	<ul style="list-style-type: none"> <li>- Power of Attorney Legalized</li> <li>- Commercial Circular Copy</li> <li>- Certificate of Incorporation Copy</li> </ul>
<b>CLASSIFICATION</b>	10th Edition of the Nice Classification – Single-class application	11th Edition of the Nice Classification – Multi-class application	11th Edition of the Nice Classification – Multi-class application
<b>PRIOR SEARCH</b>	Possible for word and device marks	Possible for word and device marks	Possible for word and device marks
<b>EXAMINATION</b>	On formal, absolute and relative grounds.	On formal and absolute grounds. No examination is performed on trademarks as to relative grounds (similarity with prior marks)	Lebanon is a deposit system. Examination is done on formal and absolute grounds only. No examination is performed on trademarks as to relative grounds (similarity with prior marks)
<b>OPPOSITION</b>	60 days from publication date	60 days from publication date	No provision
<b>TIME FRAME</b>	2-3 years to complete the registration	18-24 months to complete the registration	1-2 months to complete the registration
<b>PROTECTION TERM</b>	10 years as of the filing date renewable for periods of 10 years each	10 years as of the filing date renewable for periods of 10 years each	15 years as of the filing date renewable for periods of 15 years each
<b>USE REQUIREMENT *</b>	Vulnerable to cancellation by any interested third party if there has been no effective use of the mark for a period of 5 consecutive years from the registration date.	Vulnerable to cancellation by any interested third party if there has been no effective use of the mark for a period of 5 consecutive years from the registration date.	No provision

\*Use requirement:

Is the actual use of an IP right in the actual course of trade.

## PROCESS SUMMARY FOR DESIGNS

	 <b>EGYPT</b>	 <b>TUNISIA</b>	 <b>LEBANON</b>
<b>FILING REQUIREMENTS</b>	<ul style="list-style-type: none"> <li>- Power of Attorney Legalized by Egyptian Consulate</li> <li>- Certificate of Incorporation of the applicant Legalized by Egyptian Consulate</li> </ul>	Power of Attorney simply signed	<ul style="list-style-type: none"> <li>- Power of Attorney Legalized</li> <li>- Commercial Circular Copy</li> <li>- Certificate of Incorporation Copy</li> </ul>
<b>PRIOR SEARCH</b>	Designs may be searched by title and subject matter. Recommended not compulsory.	Not applicable	Not applicable
<b>EXAMINATION</b>	Examination is done as to form and novelty.	Examination is done as to form and novelty.	The Lebanese Industrial Design system is a deposit system rather than a registration system with examination. This means that the examination is only made to formal prerequisites and not a substantial one.
<b>PUBLICATION</b>	Once examined it will be published in official gazette	Yes, after registration	After <b>3-4 months</b> from filing date
<b>OPPOSITION</b>	<b>60 days</b> from publication date	Not applicable	Not applicable
<b>ANNUITIES</b>	Not applicable	Not applicable	Not applicable
<b>TIME FRAME</b>	From filing to registration <b>12 to 24 months</b>	<b>2-3 months</b> from filing until registration	<b>1-2 months</b> to complete the registration
<b>PROTECTION TERM</b>	<b>10 years</b> from filing date Renewable for one term of 5 years	<b>5, 10 or 15 years</b> (could be chosen at the time of filing). If initially filed for <b>5 years</b> , could be renewed for 2 consecutive periods of <b>5 years</b> each. If initially filed for <b>10 years</b> , then could be renewed for a period of <b>5 years</b> . If initially filed for <b>15 years</b> , it is the maximum timeframe of protection of a design and is non-renewable.	<b>25 years</b> from filing date
<b>USE REQUIREMENT</b>	Not mandatory	Not applicable	Not required

## CHAPTER 5

# FREQUENTLY ASKED QUESTIONS

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This section of the guidebook identifies the main questions asked by entrepreneurs and aims at providing easy and familiar answers to them.

The questions tackled range from:



GENERAL QUESTIONS  
ABOUT IPR



TRADEMARKS



PATENTS



COPYRIGHTS



INDUSTRIAL DESIGNS



## GENERAL QUESTIONS - Q&A

### IS THERE INTERNATIONAL PROTECTION OVER THE DIFFERENT TYPES OF INTELLECTUAL PROPERTY?

The protection of Intellectual Property Rights is normally territorial, which means that it is restricted to the geographical territory where it has been obtained.

In some instances, however, conventions can grant an extra-territorial protection to certain IPR. For example, the Berne Convention extends the scope of protection of copyrighted works beyond their "native" lands. Another common example would be the Madrid Convention, which allows the protection of a Trademark in up to 124 countries, through a single application and the payment of one set of fees.

### CAN I FILE FOR IP PROTECTION BY MYSELF?

Normally yes. However, it is recommended to retain the services of an IP expert, especially when facing complex procedures. For example, seeking the services of a Patent Attorney is strongly advisable, given the high technicality of Patent Law practice, precisely when writing the Patent. Another common example would be Trademark filings, specifically when the search would reveal prior similar Trademarks that can constitute an obstacle against the new Trademark application. In such cases, a Trademark Attorney can properly assess the risks caused by the prior registrations and accurately advise on the appropriate steps to be taken.

### CAN I CONTINUE FILING APPLICATIONS FOR MY INVENTION AT ANY TIME FOLLOWING ITS REGISTRATION IN THE FILING/HOME COUNTRY?

No, it is not indefinite. Under the Paris Convention, there are **6/12 months** of priority filing that start on the first filing date and under the PCT, there are **18 months** of priority filing that start on the first filing date.

### IS IP PROTECTION ABSOLUTE AND INDEFINITE?

IP protection is not absolute nor indefinite. It can expire if not renewed, and it can be cancelled for non-use or by a Court decision following an infringement action.

### WHEN CAN AN IP BE DISCLOSED BEFORE/WITHOUT REGISTRATION?

As stated above, registration is normally not needed for Trademarks and Copyrights, which means that they can be disclosed prior to the registration thereof. On the other hand, Patent and Industrial Designs can be disclosed after the first filing but not before their registration.

### WHAT IS PUBLIC DOMAIN AND WHAT DOES IT ENTAIL?

Public Domain consists of all creative works to which no exclusive IPR apply, i.e. that are not owned by specific individuals/entities. Such rights may have expired, been forfeited, waived, or may be inapplicable. Anyone can use a public domain work without the need to obtain any permission, but no one can ever own it.

### CAN MY COMPANY NOT OWN ANY IP?

Even if not aware of it, all companies inherently have IP assets, which are part of the non-physical property of a business. Such assets are legally protected and can be enforced before a Court. The most common types of IPR include copyrights, patents, Trademarks and Trade secrets.

### CAN AN INVENTION HAVE DIFFERENT IP LEGAL PROTECTION?

Yes. Software can be protected under a utility patent or a copyright; a functional invention with an innovative physical form can be protected under a design patent or a copyright.

A logo can be subject to both copyright and trademark protections.

An industrial design can also be protected as a 3D mark.



## TRADEMARKS - Q & A

### IS THE REGISTRATION OF THE TRADE NAME OF YOUR COMPANY SUFFICIENT?

A Trade name is entitled to legal protection, which means that an action can be taken against anyone who has registered or is using an identical or similar Trade name or Trademark. It is still recommended to have a valid Trademark registration as well for an enhanced legal protection and for additional legal grounds.

A trade name is the full name of your business; it is the legal denomination of the company that identifies it.

A trademark, however, is the sign that distinguishes the product/service of your company and differentiates it from others.

### WHAT SHOULD BE KEPT IN MIND WHEN SELECTING OR CREATING A TRADEMARK?

Before adopting or registering the mark, you should clear it; i.e. conduct searches to see if any prior identical or similar registration exists, which would possibly impede the registration and/or use of your trademark.

Searches can be carried on the internet, telephone books, registers of commerce, official searches at the trademarks registries. It is recommended to seek the advice of an IP expert when conducting a search, as the latter can properly assess the Trademark's availability for registration and use and help overcome any possible obstacles which might be revealed by the search.

### WHO IS AUTHORIZED TO APPLY FOR TRADEMARK REGISTRATION?

Anyone who intends to use a trademark or to have it used by third parties can apply for registration. It can be either an individual or a legal entity.

### IS IT COMPULSORY TO REGISTER A COMPANY'S TRADEMARKS?

While not compulsory, it is highly advisable, as it gives you the right to defend your rights in case of infringement. In some jurisdictions, such as Lebanon, no infringement action can be initiated before the Court unless the infringed Trademark has been duly registered first.

It must also be noted that, in some jurisdictions, legal protection can occur through the simple registration, without the need to use the Trademark. In Lebanon, for instance, a registered Trademark will enjoy legal protection regardless of any use thereof, and the Trademark owner can challenge any infringement against it without the need to prove the use of his mark. In various other jurisdictions however, the use is compulsory. Otherwise, the Trademark can be subject to a cancellation action for non-use.

### IS TRADEMARK REGISTRATION IN YOUR HOME COUNTRY VALID INTERNATIONALLY?

No. The legal rights arising out of a trademark registration are normally limited to the territory to which they pertain; unless your mark is considered to be a well-known mark. The status of well-known marks is defined by courts.

International registrations usually help establish the well-known character of the Trademark, precisely in the event of an infringement action. Of course, we will have to submit copies of relevant registration certificates.

Such certificates are however not sufficient to establish the well-known character, as we will need to provide the Court with additional documentation, such as international advertising material relating to the Trademark.

### SHOULD YOU CONSIDER PROTECTING YOUR TRADEMARK ABROAD?

It is highly advisable to register your trademark abroad if you wish to use or to grant a license to use in other countries. Additionally, and as mentioned above, such international registrations will help establish the well-known character of the Trademark, and thus, its ability to benefit from the broad legal protection granted by the provisions of article 6 bis of the Paris Convention.



### HOW LONG DOES IT TAKE TO REGISTER A TRADEMARK?

The time required for the registration of a trademark will vary from country to country, generally ranging from 3 months to two years, depending, among other things, on whether the trademark office conducts substantive examination and whether oppositions are applicable before the TM office.

Make sure that you apply for registration of a trademark well in advance so that its registration is secured in time for its use in the advertising and marketing of the relevant products.

### HOW SHOULD YOU USE TRADEMARKS IN ADVERTISING?

If your mark is registered with a specific design or typeface, make sure that the trademark is used exactly as it is registered, especially in jurisdictions where the registered Trademark can be subject to a cancellation for non-use.

### FOR HOW LONG IS YOUR REGISTERED TRADEMARK PROTECTED?

The mark may be renewed indefinitely by paying the required renewal fees.

### WHEN TO USE ® AND ™?

There are two symbols commonly used to mark trademarks ® and ™

You can use the ™ symbol whenever you wish to claim a trademark. You do not need to file any paperwork to receive permission to use the ™ symbol.

The ® symbol may only be used after your trademark is registered. In some jurisdictions like Lebanon for example, the use of the ® symbol, when the Trademark is actually not registered, is an act punishable by Law.

### WHAT SHOULD YOUR BUSINESS DO IF ITS TRADEMARK IS BEING USED BY OTHERS WITHOUT AUTHORIZATION?

The burden of enforcing a trademark is mainly on the trademark owner. It is up to your company as a trademark owner to identify any violation and to decide what measures should be taken to enforce your trademark rights.

It is always useful to seek legal expert advice if you believe that someone is infringing your trademark. An IP lawyer would be the right person to give you information on the existing options and will provide you with advice on how to enforce your rights.

### CAN I USE/DISCLOSE MY TRADEMARK BEFORE REGISTERING IT?

Unlike other IPs that shouldn't be disclosed before registration, trademark use, like copyright use, even before/without registration can constitute a proof of ownership, precisely in jurisdictions where Trademark ownership rights can arise out of prior use.

In many jurisdictions, the use is compulsory in order to maintain the validity of a registered Trademark. As a matter of fact, a registered Trademark can be subject to a cancellation action for non-use.



## PATENTS - Q & A

### WHAT RIGHTS ARE GRANTED BY PATENTS?

A patent grants an owner the right to exclude others from commercially using the invention without the owner's permission (manufacturing, using, offering for sale, selling).

### HOW LONG DOES IT TAKE TO OBTAIN PATENT PROTECTION?

The average time for grant is **2 to 5 years**.

### FROM WHAT DATE IS MY INVENTION PROTECTED AND FOR HOW LONG?

Your rights start on the date of grant of your patent and are usually granted for a limited period, generally **20 years** from the filing date of the application.

However, the filing date of a patent application would be taken into account to calculate when the protection has started, once the patent is granted.

### IF AN INVENTION IS PATENTABLE, IS IT ALWAYS WISE TO APPLY FOR PATENT PROTECTION?

Applying for a patent application may be costly and difficult to obtain. It entails annual payments that increase progressively. A patent would not be granted unless a thorough examination is done and no opposition is filed against it.

Therefore, a commercial study about the pros and cons of having a patent would be necessary prior to initiating such an effort.

Some other alternatives might be available to secure (as much as possible) some kind of protection to an invention such as: utility models, NDAs, and so on.

To file or not to file a patent application is strictly a business decision.

### ARE PATENTED INVENTIONS PROTECTED WORLDWIDE?

No. Patents are territorial rights, which means that an invention is only protected in the countries or regions where patent protection has been obtained. There's a big misconception around this as people tend to refer to conventions as international patents, but the international aspect of the convention is that it allows for a centralized application in multiple jurisdictions of the patent author's choice.

### HOW MUCH DOES IT COST TO PATENT AN INVENTION?

The costs involved while preparing and filing a patent are: Prior art search cost; cost for Drafting; Official filing fees; Patent attorney fees; Translation costs and yearly Maintenance or renewal fees. The fees are decided on a nation level, and they are frequently subject to revisions. Hence, a potential applicant needs to identify the markets where his products - subject of the invention- are to be offered, in order to assess the related costs for a patent registration. [Can't we add a minimal -maximal range just to give an idea?]

### WHEN SHOULD YOU APPLY FOR PATENT PROTECTION ABROAD?

The date of your first application in the filing/home country is called "priority date" and any subsequent applications in other countries filed within **12 months** will benefit from the earlier application, which means that if someone else files the same patent application in other countries, his application would be rejected for lack of novelty based on the first registration in the home country if the 12-month period has not lapsed.

### WHAT HAPPENS IF SOMEONE REGISTERS MY PATENT IN A COUNTRY IN WHICH I HAVEN'T FILED FOR A PATENT?

Theoretically, this can't be done since the art contained in registered patent is considered disclosed and thus the invention would no longer be considered as novel. However, a third party may file for a patent application similar to yours and have the same patent granted if prior art is not done properly, or the drafting of the claims is inaccurate. In this case, you can file a lawsuit against that person.

### CAN SOMEONE ELSE USE MY PATENT IN A COUNTRY IN WHICH IT IS NOT GRANTED?

Yes, but on a non-exclusive basis. You can also use your patent in a country in which you have not been granted a patent, but on a non-exclusive basis!

### HOW DO YOU APPLY FOR PATENT PROTECTION ABROAD?

There are three ways of protecting a patent abroad: The national route; the regional route and the international route.

### WHY APPLY FOR PATENTS ABROAD?

Patents rights are territorial; the invention is only protected in the country where the patent has been granted approval.

If you have not been granted a patent with effect in a given country, your invention will not be protected in that country, enabling anybody else to make, use, import or sell your invention in that country on a non-exclusive basis.

### WHO IS AN INVENTOR AND WHO OWNS THE RIGHTS OVER A PATENT?

The person who conceived the invention is the inventor, while the person (or company) that files the patent application is the applicant.

Make sure there is clarity on issues relating to the rights over the invention: Employee inventions, Independent contractors, Joint inventors and Joint owners. The person who conceives the invention is often the person who files the patent unless, under an IP Assignment Agreement/Work for Hire, the invention has been assigned to the benefit of a company by the person who has conceived it, in which case the company shall file the patent application since it now owns it.

### IF THE INVENTOR IS AN EMPLOYEE IN THE COMPANY, DOES HE/SHE OWN THE PATENT?

Not really. Employees who reach a new invention in relation to their job duties cannot be considered the inventor, but their employer can. However, the employer can have a different agreement with the employee.

### WHAT IS A PRIOR ART SEARCH? AND WHAT DOES IT MEAN?

Prior art search is the process of searching if your invention already exists/ is disclosed, even if not registered under a patent. This search can prevent you from wasting money on a patent application if the search uncovers prior art references since one of the conditions for a patent to be accepted is the novelty requirement; hence, if prior art exists before the date of the patent application, then the patent would be lacking novelty and would be rejected.

Prior art is evidence, if any, that your invention is already known. Prior art does not need to exist physically or be commercially available. It is enough that someone, anywhere in the world, at any time

prior to the application date, has described or shown or manufactured something that contains a use of technology that is very similar to your invention.

While preliminary searches may be performed through free on-line databases, most companies requiring patent information for making key business decisions will generally rely on the services of patent professionals, who are usually experts in the specific field, i.e. pharmacist and patent expert; or engineer and patent expert...

### IS A PATENT CONSIDERED AN OWNERSHIP LIKE A TRADEMARK?

No. A trademark can be renewed indefinitely while a patent lapses after **20 years** and is more like an exclusive right granted by the state for a certain period of time. After the lapse thereof, the invention would be considered as free to be used by the public.

### CAN I DISCLOSE MY INVENTION BEFORE BEING GRANTED THE PATENT?

One of the conditions to apply for a patent is the novelty of your invention. Accordingly, if there is any evidence of prior art, even if something is disclosed by yourself, the invention would lose its novelty aspect and could not be qualified for a patent application. Hence, the answer is: No.

### DOES FILING FOR AN APPLICATION FOR PATENT AND/OR INDUSTRIAL DESIGNS MEAN IT'S PROTECTED/REGISTERED?

Filing for a patent/industrial design application doesn't give you any rights; the rights start on the date the patent is granted/industrial design is registered.

However, the filing date of the application offers some kind of protection as it sets a cutoff date after which any public disclosures cannot form prior art.

An industrial design is not "owned" by the registration thereof, but by the user, which means that even if you register an ID, if you do not use it, you are not the owner.

## IS SOFTWARE CONSIDERED A COPYRIGHT OR A PATENT?

This has been an eternal debate, but in general and as per practices, as long as the software isn't translated into an invention, it is considered as copyright; as soon as it is applied, the author should be filing a utility patent.

## IS IT POSSIBLE TO AMEND A PATENT APPLICATION?

Up to a specific period of time, it is possible, but not beyond that time. Amending claims of a patent cannot include a "new" claim, but rather how the claim and/or the sketches are drafted.

## WHAT IS THE 1 YEAR GRACE PERIOD OFFERED TO INVENTORS WHO HAVE DISCLOSED THEIR OWN INVENTION IN THE US?

A 1-year grace period applies for US patent filings, which means that inventors have up to one year from their earliest date of public disclosure of their invention to file a US patent application.

For example, if you have publicly disclosed your product or concept for the first time at a trade show, you can still file a US patent application within **12 months** of that public disclosure.

This 1-year grace period may also be available to foreign inventors, but foreign applicants should check their own country's laws requiring foreign filing licenses for inventions made in their origin country.

## WHAT CAN MAKE A PATENT INVALID?

If one can prove that the invention was known or used by others or patented or described in a publication in any country before the filing date of an invention, the patent is invalid.

## WHAT TOOLS CAN YOU USE TO CONDUCT A PRIOR ART SEARCH?

You may use the following links <http://www.uspto.gov/patents/process/search/index.jsp#heading-4> ; [https://books.google.com/advanced\\_patent\\_search](https://books.google.com/advanced_patent_search); <https://patents.google.com/>; <https://www.epo.org/searching-for-patents.html> and search for keywords of the patent to try to find out if the idea of the patent had already been filed/registered.

## WHAT MATERIAL TO INCLUDE IN A PATENT APPLICATION?

To be able to file for a patent application, the applicant/inventor should write the specifications of the patent which include all its features, the way it works and most importantly the novel aspect of the invention. Once the specifications are drafted, each patent should also include the claims and drawings. The claims are the major points showing the novelty of the patent and the drawings are necessary to show and clarify how this technique works.

## WHAT ARE THE COSTS FOR FILING A PATENT?

Charges of the Patent registration differ from one country to another as they depend on many factors:

- The official fees imposed in each country
- The applicant's nationality and if he is an individual or company.
- The length and complication of the patent (specifications).
- Many charges that cannot be anticipated in advance and which will incur throughout the registration process such as translation charges, responding to office actions, amendments and so on. All these actions will entail additional charges that will be calculated on time spent basis.
- Additional fees would incur for annuities (maintenance fees), which are due on each patent in the second year and every following year during the term of protection (**20 years**). These fees differ from one country to another and from one year to another.

For reference and budgeting purposes, the charges, (both official and professional fees) to file a patent may be as follows: Lebanon US\$1,250; Egypt US\$3,000; Tunisia US\$800; Europe Euro10,000 to 15,000 and USA US\$10,000 to 15,000.



## COPYRIGHTS - Q&A

### WHAT DOES © MEAN?

The copyright symbol is used to indicate that somebody legally owns the rights to make and distribute copies of a particular work. Of course, it also serves as an indication that the work is protected under Copyright Laws, and that any unauthorized use thereof can lead to legal repercussions.

### DOES COPYRIGHT HAVE TO BE REGISTERED?

Normally it doesn't, since Copyright protection arises as of the moment the work is made publicly available. The registration is still recommended in order to facilitate proving the ownership of the work. Additionally, in some jurisdictions, the registration is needed in order to be able to file a Copyright infringement lawsuit

### CAN I REGISTER COPYRIGHT?

According to Berne Convention, copyright protection is obtained automatically without the need for registration or other formalities.

Most countries nonetheless have a system in place to allow for the voluntary registration of works. Such registrations can help solve disputes over ownership or creation and facilitate financial transactions, sales, and transfer of rights.

### HOW CAN I OBTAIN CERTIFIED PROOF OF EXISTENCE FOR MY CREATIVE WORK?

When you opt for not registering your copyright according to Berne Convention, you can still use WIPO PROOF that offers creators the possibility of recording and digitally certifying possession of the work. This digitally encrypted proof, which cannot be modified, can certify the existence of the work at a moment in time.



## INDUSTRIAL DESIGNS - Q&A

### WHAT IS THE DIFFERENCE BETWEEN AN INDUSTRIAL DESIGN RIGHT AND A PATENT?

An industrial design right protects only the appearance or aesthetic features of a product, whereas a patent protects an invention that offers a new technical solution to a problem. In principle, an industrial design right does not protect the technical or functional features of a product. Such features could, however, potentially be protected by a patent.

### WHAT CONDITIONS MUST BE MET TO OBTAIN INDUSTRIAL DESIGN PROTECTION?

Depending on the applicable laws, independently created industrial designs must fulfil some or all of the following criteria: novelty/originality.

The assessment of novelty and originality varies from country to country. In general, an industrial design is considered to be new or novel if it has not

previously been disclosed to the public and it may be considered original if it significantly differs from known designs or combinations of known design features.

### CAN A DESIGN BE DISCLOSED PRIOR TO REGISTRATION?

It is still preferable to file an application for design protection before you disclose your design, but the grace period is available in some countries if you need it.

The novelty grace period is provided by some national IP offices, while disclosing a design for a product in other countries may put your design at risk of losing the Novelty criteria to get a design registration. The grace period should be handled with caution and not relied upon as a matter of course.

## CHAPTER 6

# GLOSSARY:

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This section defines important vocabulary pertaining to the legal and entrepreneurial aspect of Intellectual Property Rights.

**Registration Procedure:** The procedures for registering IPR are governed by the rules and regulations of national and regional IP offices.

**Jurisdiction / National protection:** Country of protection.

**Regional Office:** Is the IP office that handles and governs IP matters for a number of jurisdictions.

**National Office:** Is the local IP office that handles and governs IP matters locally in a certain jurisdiction.

**Applicant:** An individual or other legal entity that files an application for a Trademark. The applicant can be an individual or a corporation (company).

**Application:** The formal request for IPR at an IP office, whereupon the office examines the application and decides whether to grant or refuse protection. Application also refers to a set of documents submitted to an office by the applicant.

**Home filing:** Is the national filing of an IP right in the home country of the applicant.

**Prior Search:** To determine the prior rights in the field.

**Formal Examination:** To check all documentation is included and fees are paid.

**Substantive Examination:** To ensure that the application satisfies the registration requirements and to check all registration criteria is met.

**Office Action:** Decision issued by examiners listing any legal issue in the IP right application.

**Appeal:** Reply filed by the applicant in response to the office action.

**Publication:** Applications are published in the Official Gazettes for notification and possible oppositions by interested third parties.

**Opposition:** Is a proceeding filed at the IP office where a third party can object to the registration of an IP right for conflicting prior rights.

**Grant:** In the case of a positive examination, the IP office grants the IP right and issues a certificate of grant.

**Term:** The validity period of an IP right.

**Use requirement:** Is the actual use of an IP right in the actual course of trade.

**International Convention:** Is an agreement between different countries from across the world to facilitate the registration and protection of an IP right.

**WIPO:** A United Nations specialized agency established in 1967 dedicated to the promotion of innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective international IP system.

**The Patent Cooperation Treaty (PCT):** is an international Patent law treaty, concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states.

**Berne Convention:** Is the convention that deals with the protection of Copyright works and the rights of their creators such as authors, musicians, poets and so on.

**Hague Convention:** Is the convention that deals with the protection of Industrial designs.

**Contracting states:** Countries members to certain treaty/agreement.

**Infringement:** The unauthorized use of an IP right in a manner that is likely to cause confusion, deception, or mistake about the source/ownership of the right.

**Enforcement:** is the legal actions taken by the applicant/owner of an IP right to maintain his IPR and ensure that no third party uses them without authorization.

**Claiming priority:** A priority claim is made to an earlier-filed IP right application for a current application (to enjoy the prior filing date of the earlier right).

**Assignment of priority rights:** Is shifting the ownership of an IP right from its current holder to a new entity.

## CHAPTER 7

# REFERENCES

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## CHAPTER 8

# ANNEXES

## ANNEX 1 - EGYPTIAN IPR LEGAL FRAMEWORK

### PATENT - CHARACTERISTICS - PROTECTION TERM



#### DEFINITION

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of achieving a specific work, or offers a new technical solution to a problem.

The patent rights are conferred on the inventor or their successors in title.

If the invention is a jointly developed IP, the joint inventors shall have equal shares in the patent rights unless otherwise agreed. However, if the same invention is made by several independent inventors, the patent rights are conferred on the applicant that filed the first patent application.

The patent is an assignable or transferable deed.



#### PATENTABILITY CRITERIA (ART. 1)

Patents are granted under the Egyptian law to any invention that is new, involves an inventive step and is industrially applicable, regardless of whether the invention is related to a new industrial product or process or to a new application to known industrial processes.

Patents are also given independently of any amendment, improvement or addition to the invention already patented, provided such invention is new, involves an inventive step and is susceptible or capable of industrial application as mentioned above. The patent is issued to the person introducing such an amendment, improvement or addition in conformity with this law.



#### THE FOLLOWING INVENTIONS ARE NOT PATENTABLE (ART. 2)

1. Inventions the use of which is intended to compromise / whose usage compromises the national security or public order and morality, or substantially prejudices the environment or threatens the life or health of the human being, fauna or flora.
2. Scientific discoveries and theories, mathematical procedures, programs and drawings.
3. Diagnostics, treatment and surgery of the human being or animal.
4. Plant or animal varieties, no matter how rare or wild they are, in addition to processes that are essentially biological for the production of plants or animals.
5. Living organisms, tissues and cells, in addition to natural biomaterials, DNA and genome.



#### PROTECTION TERM

Term of protection of an invention is **20 years** starting from the date of filing the patent application in Egypt for national applications or from the date of filing of international applications (PCT).



#### REGISTERING A PATENT

##### DOCUMENTS:

Documents required with the application filed:

1. Brief description of the invention in Arabic and English to be included in the application form.
2. Detailed and comprehensive description of the invention (The Arabic translation of the detailed description shall be submitted within 6 months from the date of filing in Egypt).
3. Drawings (if any)



Documents required within statutory deadlines from the date of filing:

1. Power of attorney from the applicant signed and certified by the Consulate of Egypt Statutory deadline: **4 months** from the date of filing in Egypt.
2. Report of the prior art search with the relevant Arabic translation Statutory deadline: **3 months** from the date of filing in Egypt.
3. Waiver agreement concluded between the inventors and the applicant, to be signed and certified by the Consulate in Egypt (this document is not required unless the prior art search is carried out in the name of the inventors) Statutory deadline: **4 months** from the date of filing in Egypt.
4. Articles of incorporation of the company or a copy of the certificate of commercial registration to be signed and certified by the Consulate of Egypt 4 months from the date of filing in Egypt.

With respect to PCT applications, documents #2, 3 and 4 mentioned above are not necessary.

### EXAMINATION FORMALITIES

- Each patent application is identified with a serial number and indicates the date and time of submission. Applications are numbered on January 1st of each year. The applicant is then given a receipt showing the serial number of the relevant application, which shall bear along with the attachments thereto the stamp of the competent office and shall also indicate the serial number relevant thereto and date and time of submission thereof.
- The application is examined to ensure the invention is new, involves an inventive step and is industrially applicable.
- The Egyptian Patent Office shall notify the applicant or their representative of the decisions related to the amendments to the application. If the applicant fails to introduce the said amendments within 3 months as of the date of notification, such failure shall be deemed as an act of renunciation of the application.
- In the event of application approval: The application is published in the patent journal within 90 days from the issuance of the approval decision. The patent file with all documents attached thereto shall be made accessible to any member of the public. The applicant shall be informed of the fees payable for the patent printing services. The applicant shall then pay the said fees within 3 months upon being informed. Otherwise, their application shall be deemed invalid.
- In the event of application refusal: The applicant may oppose the refusal decision within 30 days upon being notified against the payment of the fees determined in the implementing regulations. The applicant shall then be notified of the date of the meeting to be held to examine the said opposition.

### PAYABLE FEES

- Patent Application Form: EGP 150
- Examination Fees (for non-Egyptians): EGP 17,000
- Arabic Translation Verification Fees: EGP 15/page
- Printing Fees: EGP 15 + EGP 50 / binding
- Appeal\*: EGP 250
- Opposition to patent issuance: EGP 500

Annuities starting from 2nd year following the date of filing until protection expiry:



- With respect to the applicants, the annuity decreases by 10% of its value.
- With respect to individuals and sole proprietorships, the annuity decreases by 50% of its value provided the number of personnel is maximum 10.
- A 7% delay penalty is payable for each year of delay.

\* Reply filed by the applicant in response to the office action.

## INDUSTRIAL DESIGNS AND MODELS - CRITERIA - PROTECTION TERM



### DEFINITION OF AN INDUSTRIAL DRAWING OR MODEL (ART. 119)

Is considered an industrial design or model any arrangement of lines or any solid object colored or not, having an original appearance and capable of industrial application.



### THE FOLLOWING INDUSTRIAL DESIGNS OR MODELS CANNOT BE REGISTERED (ART. 124)

1. The design or model required generally by the technical or functional components of the product.
2. The design or model involving religious slogans or symbols or national emblems or flags, whether relevant to Egypt or any other country, or the use of which compromises the public order or morality.
3. The design or model matching with, similar to, or resembling a registered trademark or well-known mark.



### THE INDUSTRIAL DESIGN OR MODEL IS NO LONGER CONSIDERED NEW IN THE FOLLOWING EVENTS (ART. 120)

1. If it is presented to the public, or described, or if its scope of application is presented before the date of filing the registration application.  
However, the industrial design or model will not lose its novelty character under the following conditions:
  - 1) if such presentation or description occurs following the filing of the registration application in any WTO member state or any state that signed a reciprocity agreement with Egypt
  - 2) if such presentation or description occurs as part of a national or international exhibition
  - 3) if such design or model is published during any conference or in any scientific journal within **6 months** prior to the filing of the registration application in Egypt.
2. If it involves insignificant differences compared to a previously registered industrial design or model or if it is allocated to a different type of product compared to the type assigned to the previously registered design or model.



### PROTECTION TERM (ART. 126)

Term of protection granted to registered industrial design or model is **10 years** starting from the date of filing the registration application in Egypt.

Such protection term is renewable for **5 years** when the owner of the industrial design or model submits a renewal application in the last year of the said term in conformity with the conditions provided for in the implementing regulations of this law.

However, the owner of the design or model may submit a renewal application within 3 months upon the expiry of the protection term. Otherwise, the competent office may exercise its discretion to cancel the registration application.



### REGISTERING AN INDUSTRIAL DRAWING OR MODEL

#### DOCUMENTS

#### Documents required with the application filed:

4 copies of the industrial design or model. However, it is possible to submit a sample of the products allocated to such design or model if they can be conserved.

#### Documents required within statutory deadlines from the date of filing:

1. Power of attorney from the applicant signed and certified by the Consulate of Egypt Statutory deadline: **6 months** from the date of filing in Egypt.
2. Certified report of the prior art search Statutory deadline: **6 months** from the date of filing in Egypt.
3. Waiver agreement concluded between the designers/modelists and the applicant, to be signed and certified by the Consulate in Egypt (this document is not required unless the prior art search is carried out in the name of the designers/modelists) Statutory deadline: **6 months** from the date of filing in Egypt.
4. Articles of incorporation of the company or a copy of the certificate of commercial registration to be signed and certified by the Consulate of Egypt **6 months** from the date of filing in Egypt.

## REGISTRATION AND EXAMINATION FORMALITIES

- The industrial design or model registration applications are recorded in a special register maintained by the competent authority. Each application is given a serial number that indicates the date and time of filing. The applicant is given a receipt including the serial number of the application, applicant's name and date and time of filing.
- In the event of application approval: The applicant is notified of the application approval and the fees of publication in the journal that become payable. Upon publishing the application in the journal and after expiry of the opposition deadline (60 days), the registration fees become payable.
- In the event of application refusal: The applicant is notified of the application refusal with the relevant justifications. The applicant may then appeal against the refusal decision within a deadline of maximum 30 days following the date of notification.

## PAYABLE FEES

- Filing a design or model: EGP 34.2
- Submitting an additional design or model in the same application: EGP 17.1
- Publishing in the official gazette: EGP 68.4
- Registering: EGP 85.5
- Renewing: EGP 85.5
- Renewing in the grace period (3 months): EGP 114
- Issuing an appeal: EGP 114
- Filing an opposition: EGP 85.5

In addition to the fiscal stamps payable

## TRADEMARKS



### DEFINITION

A trademark is any mark distinguishing a service or a product from others on the market. A trademark includes in particular names with a distinct form, signatures, letters, words, numbers, drawings, shop addresses, stamps and seals, graphics, embossed designs, color combinations with a special form, and any combination of the aforesaid components that are used or will be used for any of the following purposes:

- A. Distinguish the products of an industrial work, agricultural exploitation, forest or mineral resource exploitation or any goods;**
- B. Indicate the origin, type, class of the products or goods;**
- C. Provide a guarantee thereon;**
- D. Inform about the mode of preparation relevant thereto;**
- E. Describe the process of service execution. At all events, a trademark must be perceivable.**



### MARKS THAT CANNOT BE REGISTERED AS TRADEMARKS

The following marks or any of their components cannot be registered:

1. Marks having no special feature or formed of signs or data that simply represent the name that is conventionally used for ordinary products, drawings or photos relevant thereto.
2. Marks compromising the public order or morality.
3. Public or media slogans and other symbols relevant to the country or other countries or to regional or international organizations, including any imitations thereof.
4. Marks similar to or matching with symbols of religious nature.
5. Red Cross or Red Crescent Sign or any other similar signs, including any imitations thereof.
6. Photos or slogans belonging to third parties unless authorized by the same.
7. Data related to honors degrees that the applicant has no proof thereof.
8. Geographical indications and appellations of origin that aim to mislead the public or create confusion among the public or that include false data on the origin of products, whether goods or services, or on their other properties, in addition to such marks indicating counterfeit or false trade names.



### TRADEMARK OWNERSHIP

The person filing the registration application is considered the owner of the industrial design or model provided the same has been used during the **5 years** following the registration date and on condition the priority of use is given to a third party. In such a case, the party who registered the trademark in their name at a prior date may file an opposition to cancel such registration within the five-year term mentioned above. However, if the registration proves to be an ill-intentioned act, an opposition may be filed to cancel the registration of the trademark at any time without sticking to any deadline.



## REGISTERING THE TRADEMARK

The Trademarks and Industrial Designs Office shall register the trademarks in a special register in conformity with this law and its implementing regulations.

DOCUMENTS	FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES
1. Trademark registration application form.	Filing the application before the Trademarks and Industrial Designs Office.	3-4 days	EGP 100
2. Image of the trademark (4 copies).	Examining the application and receiving the examination notice.	12-15 months	N/A
3. Original copy of the power of attorney.	Paying the publication fees within 6 months as of the date of notification.	7-14 days	EGP 185
4. Original copy of the articles of incorporation of the company.	Publishing in the official gazette.	1-2 months upon paying the publication fees.	N/A
5. Prior art search document (if any).	Opposition deadline: 60 days as of the date of publication.		N/A
	Paying the registration fees.	7-14 days upon expiry of the opposition deadline.	EGP 156
	In the event of application refusal: The applicant may oppose the refusal decision within 30 days upon being notified against the payment of the fees determined in the implementing regulations. The applicant shall be then notified of the date of the meeting to be held to examine the said opposition.	3 days	EGP 156

The term of protection granted to the registered trademark is **10 years**. It is renewable for similar periods at the request of the trademark owner each time during the last year of the term of protection against the payment of the registration fees payable with respect to the first registration application. Within a deadline of maximum **6 months** following the expiry of the aforesaid period, the owner of the trademark may file a protection renewal application against the payment of the prescribed fees in addition to the fees provided for in the implementing regulations of this law up to a maximum value of EGP 500. Otherwise, the competent office may cancel the relevant trademark.

- Renewal fees before expiry of the protection term: EGP 156
- Trademark renewal fees during the grace period (6 months): EGP 306

Upon cancellation, the trademark may be registered anew and exclusively in the name of the trademark owner, and that within **3 years** following the cancellation date. Registration will be based on each case and in conformity with the prescribed registration procedures. The registration fees shall amount to the maximum value of EGP 1,000. Upon expiry of the aforementioned period, the trademark may be registered in the names of the trademark owner and third parties for the same products. Likewise, registration fees shall amount to those prescribed for the first registration application. However, if the cancellation executes an enforceable court decision dismissing the right of priority over trademark registration, such trademark shall be then registered in the name of a third party upon cancellation.

Fees of registration a new upon cancellation: EGP 1,160



## FILING AN OPPOSITION TO THE TRADEMARK REGISTRATION

### OPPOSITION AND DEADLINE

- The Trademarks and Industrial Designs Office shall publish the approval decision regarding the trademark registration in the journal of trademarks and industrial designs and models.
- Any stakeholder may file an opposition in writing to the trademark registration as per a notice addressed to the competent office and including justifications for such opposition.
- The opposition must be filed within sixty days upon the date of publication.
- This deadline shall apply to national and international trademarks. However, it is customary for the Trademarks and Industrial Designs Office to grant an additional 60-day period as a distance deadline for trademarks published in the international journals.

### OPPOSITION PROCEDURES AND EXAMINATION OF OPPOSITION

- Filing the opposition: The opposition shall be filed by the stakeholder in person or through their representative as per the form approved in this regard.
- The opposition must include the justifications upon which such opposition relies. The Trademarks and Industrial Designs Office shall send a copy of the notice of opposition to the registration application within 30 days upon receiving such notice.
- Such deadline is set for organizational purposes and has no legal effects in the event of failure to meet the deadline.
- The registration applicant shall submit to the competent office a written reply to the opposition with the relevant justifications within 30 days upon receiving the opposition notice. Otherwise, the applicant shall be considered as having renounced the registration application.
- The litigants may request a hearing session upon payment of the prescribed fees.

### DECISION ISSUED ON THE SUBJECT OF THE OPPOSITION

- The Trademarks and Industrial Designs Office shall issue a justified decision on the opposition filed, either by accepting or rejecting the registration after having heard the litigants.
- The approval decision may bind the applicant to meet the necessary requirements for the trademark registration.
- The decision issued on the subject of the opposition may be appealed before the competent administrative court within 60 days upon issuance of the decision.

## EXAMPLES ON TRADEMARK REGISTRATION OPPOSITION CASES FILED IN EGYPT:

EXAMPLE

### 1. REJECTING THE REGISTRATION OF MORO TRADEMARK

- Cadbury UK LIMITED filed an international registration application for its well-known trademark, MORO, in Egypt under class 30 on 02/13/2017.
- The examiner at the Trademarks and Industrial Designs Office in Egypt issued a decision rejecting the registration of the trademark due to the prior registration of two similar trademarks under the same class 30: MOURRY and MORC.
- The decision was appealed before the administrative court, which decided that MORO trademark was a well-known trademark and acknowledged the substantial differences between such trademark and other trademarks conflicting therewith. Accordingly, the court overturned the decision of the Trademarks and Industrial Designs Office and ordered the completion of the registration procedures relevant to the trademark object of dispute.

EXAMPLE

### 2. CANCELING THE REGISTRATION OF JUVEDERM TRADEMARK

- Our client, ALLERGAN HOLDINGS FRANCE SAS filed a lawsuit before the economic court in the Arab Republic of Egypt to cancel the international registration of the trademark JUVEDERM under no. 1266937, whose protection term was extended in Egypt in 2015 with respect to classes 3, 35 and 44 that are registered under the name of 1) DERMAVETA and 2) JUVEDERM ELITE CLINICS S.A.E, given the similarities of both trademarks with the well-known JUVEDERM trademark that is already registered internationally on May 23, 2003 under classes 5 and 10.
- The case file was referred to the office of experts, which issued the expert's report confirming the defendant had used a trademark on products that are significantly similar to other products in terms of name, syllables and design as well as phonetically and vocally speaking. Accordingly, it was agreed in the report that such similarities would create confusion among consumers and violate the IPR of the plaintiff... Based on the expert's report, the plaintiff produced the necessary supporting documents issued by the competent judicial and administrative authorities in other countries that confirmed the plaintiff - and not the defendant - had the right of priority over its trademark.
- Accordingly, the court ruled the cancelation of the registration of JUVEDERM trademark under no. 1266937 for classes 3, 35 and 44, including the legal effects incurred upon both defendants.

## PROTECTING THE COPYRIGHT



### DEFINITION

The literary and artistic property is classified under two categories: copyright and neighboring rights; a copyright includes the literary works and artistic works. As to the neighboring rights of the copyright, they include rights similar thereto.



### PROTECTED WORKS (ART. 139 AND ART. 140)

Any creative work, be it literary, artistic or scientific, regardless of its nature, mode of expression, importance or object of classification thereof.

In particular:

- a. Books, brochures, articles, bulletins and other written works.
- b. Computer programs.
- c. Databases whether readable by computer or otherwise.
- d. Seminars, allocutions, speeches and any other verbal works if registered
- e. Dramatic works, musicals and pantomime.
- f. Vocal or instrumental music.
- g. Audiovisual works.
- h. Architectural works.
- i. Artworks involving geometric lines or colors, in addition to sculpture, stone carving, textile printing and other similar works related to fine art.
- j. Photographic works and the like.
- k. Works of applied art and figurative art.
- l. Illustrations, geographic maps, drawings (sketches) or geographic, topographic or architectural 3D works.
- m. Derivative works without prejudice to the statutory protection granted to the works deriving therefrom, including the protection of the work title if considered creative.

In addition to secondary works:

- Translations of works.
- Adaptations and other alterations of a literary or artistic work.
- Musical arrangements.
- Compilations of work and data authorized by the copyright owner or their general or special representatives/heirs, provided the content selection or arrangement is creative.



### PROTECTION APPLICABILITY (ART. 139 AND ART. 140)

#### CONCERNING WORKS

- Works published for the first time in Egypt or in any WTO member state.

#### CONCERNING AUTHORS

- Egyptian authors regardless of the place of residence.
- Foreign authors providing they are nationals of any WTO member state or persons acting in a similar capacity.
- Filmmakers and scriptwriters headquartered or residing in any WTO member state.
- Architects that executed architectural works in any WTO member state or other artistic works introduced to any other building or establishment located in any WTO member state.

With respect to neighboring rights of the copyright:

1. Performers satisfying any of the following requirements:
  - a. if the performance is executed in any WTO member state.
  - b. If the producer of a phonogram is a national of a WTO member state or if the first fixation of the sound is executed on the territory of a WTO member state.
  - c. If the performance is transmitted by a broadcasting organization headquartered in any WTO member state and the broadcast is transmitted from a transmitter also based in any WTO member state.
2. Producers of phonograms if the first fixation of sound is executed in any WTO member state.
3. Broadcasting organizations if headquartered on the territory of any WTO member state and providing the broadcast is transmitted from a transmitter also based in any WTO member state.

PROTECTION TERM (FROM ART. UNTIL ART.)	
WORK	PROTECTION TERM
Works of joint authorship.	Throughout the life of the joint authors plus <b>50 years</b> following the decease of the last joint author.
Audiovisual works.	<ul style="list-style-type: none"> <li>• <b>50 years</b> from the date of the first authorized publication of the work.</li> <li>• In the event of non-publication, the <b>50-year</b> period shall run effective from the end of the year in which the work is achieved.</li> </ul>
Collective works.	<ul style="list-style-type: none"> <li>• <b>50 years</b> from the date of the first authorized publication of the work.</li> <li>• Economic rights may be extinguished on such works published for the first time posthumously upon the expiry of a <b>50-year</b> term starting from the date of publication or date of presentation to the public for the first time, whichever comes later.</li> <li>• Art. 162 of the law</li> </ul>
Economic rights: <ul style="list-style-type: none"> <li>• If the work is published under the author's real name.</li> <li>• If the work is published anonymously or under a pen name.</li> </ul>	<ul style="list-style-type: none"> <li>• Throughout the life of the author plus <b>50 years</b> starting from the date of decease of the author (Art. 160)</li> <li>• <b>50 years</b> from the date of the first publication or date of presentation to the public, whichever comes later. (Art. 163)</li> </ul>
Moral rights.	Lifetime, perpetual protection. (Art. 143)
Publications under the name of a legal person.	<b>50 years</b> from the date of publication or date of presentation to the public for the first time, whichever comes later. (Art. 162)
Works posthumously published.	<b>50 years</b> from the date of publication or date of presentation to the public for the first time, whichever comes later. (Art. 162)





## RIGHTS CONFERRED ON THE COPYRIGHT AND NEIGHBORING RIGHTS

### ECONOMIC RIGHTS

The author and their general heirs have an exclusive right to:

- **Authorize or prevent any exploitation** of their work in any way whatsoever, namely by way of reproduction, broadcasting, rebroadcasting, public performance, public communication, translation, alteration, lease, borrowing, or presentation to the public, including making such work accessible by computer, online, across computer networks or telecom networks or otherwise.

The author and their heirs have the **right to follow up on the works related to the exploitation of the original version of their work**. Such exploitation entitles the author and their heir to a percentage of 10% maximum of the proceeds from each process of exploitation of such version. (Art. 147)

- **The author may transfer to third parties all or part of their economic rights under this law.**

The disposition of such economic rights is valid only if there is a written deed in this regard that must explicitly provide for each right object of disposition, in a separate manner and in detail, and must determine the term and object of disposition as well as the term and location of exploitation.

The author shall remain the owner of any such economic rights not explicitly transferred to third parties. The author's authorization to exploit any of such rights shall not be interpreted as a permission to exploit the other economic rights pertaining to the same work.

Without prejudice to the moral rights of the author provided for hereunder, he may not carry out any activity to hamper the exploitation of the right object of disposition. (Art. 149)

- **The author has the right to a cash or in-kind remuneration; the same deems fair in return for the transferred economic right or rights pertaining to the author's work** based on a percentage of the profit from such exploitation. The author may also agree with the transferee on a lump sum remuneration or a mixed remuneration. (Art. 150)

The economic rights of the author pertaining to the work published or in circulation may be an object of seizure. However, the economic rights concerning the posthumously published works may not be seized unless it is proven that the author wished to publish the same before their death. **(Art. 154)**

### MORAL RIGHTS

The author and the general heir exercise inalienable and imprescriptible moral rights. Such rights include in particular:

1. Right to publicly present the work for the first time.
2. Right to claim authorship of the work.
3. Right to prohibit any amendment to the work that the authors consider as an act of alteration or misrepresentation thereof. Amendments introduced as part of a translation work shall not be deemed a violation unless the translator fails to indicate the omissions or changes effected or compromises the reputation and status of the author. (Art. 143).

In the event of serious reasons, the author may alone request from the court of first instance to issue an injunction order to prohibit or take out of circulation their work or to prohibit considerable amendments to the same despite the fact that the author disposes of the economic rights transferred. In such a case, the author shall pay the transferee beneficiary of the economic rights transferred a fair compensation within a deadline set by the court. Otherwise, the injunction order becomes null and void. (Art 144)

Any disposition of the moral rights prescribed above is deemed null and void.



## NEIGHBORING RIGHTS

PROTECTION APPLICABILITY	RIGHTS OF OWNERS OF NEIGHBORING RIGHTS	PROTECTION TERM
<p>The performers benefit from the statutory protection upon satisfying any of the following requirements:</p> <ol style="list-style-type: none"> <li>If the performance is made in any WTO member state.</li> <li>If the producer of the phonogram is a national of any WTO member state or if the first fixation of the sound is made on the territory of a WTO member state.</li> <li>If the performance is transmitted by a broadcasting organization headquartered in any WTO member state and the broadcast is transmitted from a transmitter also based in any WTO member state.</li> </ol>	<p>The performers have the following exclusive economic rights:</p> <ol style="list-style-type: none"> <li>Communicate their performance to the public and authorize the public communication, lease or borrowing of the original fixation or copies thereof.</li> <li>Prohibit any exploitation of their performance in any way without their prior written consent. Unauthorized exploitation shall mean in particular any fixation of a live performance on a material support, lease of the fixation in return for a direct or indirect commercial profit, or the broadcasting of the performance to the public.</li> <li>Lease or borrow the original fixation or copies thereof in return for a direct or indirect commercial profit, regardless of the ownership of the original version or copies that are leased or borrowed.</li> <li>Communicate to the public a fixed performance through a broadcasting station, by computer or otherwise in a way allowing the audience to receive the performance individually, at any place and any time. This article is not applicable to the performance fixed as part of an audiovisual registration unless otherwise agreed.</li> </ol>	<p>50 years starting from the date of performance or fixation as applicable.</p>
<p>The statutory protection is conferred on the producers of phonograms if the first fixation of sound is executed in any WTO member state.</p>	<p>The producers of phonograms have the following exclusive economic rights:</p> <ol style="list-style-type: none"> <li>Prohibit any exploitation of their phonograms in any way without their prior written consent. Unauthorized manipulation shall mean in particular the reproduction, lease, broadcasting or communication of such phonogram whether by computer or otherwise.</li> <li>Authorize the communication of their phonogram by wire or wireless means, by computer or otherwise.</li> </ol>	<p>50 years starting from the date of fixation or publication, whichever occurs later.</p>
<p>The statutory protection is conferred on the broadcasting organizations if they are headquartered on the territory of any WTO member state and providing the broadcast is transmitted from a transmitter also based in any WTO member state.</p>	<p>The broadcasting organizations have the following exclusive economic rights:</p> <ol style="list-style-type: none"> <li>Authorize the exploitation of their fixed broadcasts.</li> <li>Prohibit any communication of their TV fixed broadcasts to the public without their prior written consent. Unauthorized exploitation shall mean in particular the fixation, reproduction, sale, lease, rebroadcasting, redistribution or transmission to the public of such broadcasts in any way, including suppression or destruction of any firewall for such broadcasts such as data encryption or otherwise.</li> </ol>	<p>The broadcasting organizations have an exclusive economic right entitling the same to exploit their broadcasts for a period of 20 years starting from the date of the first fixation of such broadcasts.</p>

## EXCEPTIONS TO THE PROTECTION (ART. 171 AND ART. 178)

WITHOUT THE CONSENT OF THE COPYRIGHT OWNER AND WITHOUT INDEMNITY THERETO, THE FOLLOWING ACTIONS ARE AUTHORIZED TO ANY NATURAL PERSON:

<p>Reproduce, record or make a single copy of any work protected under this Law, providing the following criteria are met:</p>	<ul style="list-style-type: none"> <li>- Such actions are for their personal or private use.</li> <li>- The work has been legally published.</li> </ul> <p><b>Note:</b> The reproduction or copy of the original within a company or any other work environment shall not be considered for a personal and private use.</p> <p>Such exception is not applied if the reproduction, record or copy harms the other rights and interests of the copyright owner.</p> <p>In particular, the following actions are prohibited:</p> <ul style="list-style-type: none"> <li>- Reproduce or copy architectural works or works related to the fine art, applied art or figurative art unless exhibited in a public place.</li> <li>- Reproduce or copy all or a substantial part of the musical notes of a musical work.</li> <li>- Reproduce or copy all or a substantial part of a database or computer program.</li> </ul>
<p>Make one copy of the computer program with the full knowledge of the legal possessor thereof in order to maintain a copy or replace the original version if the same is lost, destroyed or useless, or to take an extract from the program, even if the extract exceeds the size required for the use of such program provided the extraction serves the purpose authorized in this regard.</p>	<p>The original version or extract must be destroyed upon expiry of the possession title. The implementing regulations of this law shall provide for the conditions and events of extraction from a computer program.</p>
<p>Conduct analytical studies of the work or take excerpts or extracts therefrom for the purposes of a review, discussion or media coverage.</p>	<ul style="list-style-type: none"> <li>- The size of the extract in use shall not exceed the required and regular size agreed upon in such cases.</li> <li>- The name of the author and source must be always mentioned if the work bears the author's name.</li> </ul>
<p>Reproduce a short article, abstract or an excerpt from a work.</p> <p>Reproduce short fragments of a work in a written version or as a sound or visual registration or as an audiovisual registration for educational, illustrative or explanatory purposes.</p>	<ul style="list-style-type: none"> <li>- The work must be reproduced once or at separate, non-consecutive intervals.</li> <li>- The name of the author and the title of the work must be indicated on each copy.</li> </ul> <p>Provided that the work is reproduced within the reasonable limits in line with the purpose of reproduction and on condition that the name of the author and the title of the work be indicated on each copy when possible.</p>
<p>Making a single copy of the work by an archives or documentation center or a non-profit library, whether directly or indirectly, in any of the following events:</p>	<p>The reproduction must be related to a published article, abstract, excerpt from a work, providing the purpose of such reproduction is to meet the request of a natural person to prepare a study or a paper. Such reproduction must be done once only or in separate intervals.</p> <ul style="list-style-type: none"> <li>- The purpose of the reproduction must be to preserve the original version or to replace a lost, damaged or useless version when it is impossible to obtain another original version under reasonable conditions.</li> </ul>

<p>Any person may request a personal authorization from the competent ministry to reproduce and / or translate a work protected under this law, without the consent of the author, for the purposes mentioned below, in return for a fair remuneration payable to the author or their heir, providing such authorization does not violate the regular exploitation right related to the said work or does not prejudice unjustifiably the legal interests of the author or the copyright owners.</p> <p>The authorization, which shall have an educational purpose, regardless of the level and type of education, shall be issued by a justified decision determining its term and territorial scope. The implementing regulations of this law shall provide for the authorization events and conditions and classes of fees payable up to a maximum value of EGP 1,000 per work.</p>	<p>The competent ministry shall be the Ministry of Culture.</p>
<p>Reproduce, copy or record any work to be used in legal or administrative proceedings</p>	<p>To the extent necessary for such proceedings.</p>
<p>The media may use extracts of the works seen or heard of during the ongoing developments in the course of reporting such events in the media, provided that:</p>	<ul style="list-style-type: none"> <li>- This is done to the extent permissible to media as agreed upon.</li> <li>- The name of the author and the source are mentioned.</li> </ul>
<p>The media may publish pictures of architectural works, visual artistic works, photographic works or works of applied arts, provided that:</p>	<ul style="list-style-type: none"> <li>- Such works are made available in places open to the public.</li> </ul>
<p>Display or perform a work in public during the following occasions:</p>	<ul style="list-style-type: none"> <li>- Official ceremonies within the limits required for such ceremonies.</li> <li>- Within the range of activities carried out by educational institutions during which teachers or students use the work, provided that the audience is limited to the teachers, students, students' parents and persons directly involved in the activities of the said educational institution.</li> </ul>
<p>Display an artistic work in museums or in exhibitions organized inside museums, provided that:</p>	<ul style="list-style-type: none"> <li>- The museum owns the material object that contains the work.</li> <li>- Such display is not prejudicial to the legal interests of the author.</li> </ul>
<p>Reproduce or make a copy of the artistic work in order to be published in catalogs intended to promote the sale of the work, provided that:</p>	<ul style="list-style-type: none"> <li>- Such reproduction or copy is not prejudicial to the legal interests of the author.</li> </ul>



## REGISTER AN ARTISTIC, LITERARY, MUSICAL OR CINEMATOGRAPHIC WORK

Each creative, literary, artistic or scientific production, regardless of the nature, form of expression, importance or purpose thereof is described as a work under the Egyptian law.

The author is the person creating the work, whether the work is published in the author's real name or under a pen name providing this does not raise doubts about the identity of the author and the work is ascribed to the latter in their capacity as the author unless there is evidence to the contrary. Accordingly, the author has the right of ownership of the said work without any formalities.

**Any person may obtain from the competent ministry a certificate of deposit related to a work, fixed performance, phonogram or broadcast in return for fees payable as per the implementing regulations of this law up to a maximum value of EGP 1,000/certificate (Art. 186)**

The publishers, printing houses and producers of such works, fixed performances, phonograms and broadcasts are jointly liable for depositing a copy or several copies thereof - up to 10 copies. The competent ministry shall issue a decision determining the number of copies or counterparts in line with the nature of each work and the depositary.

Failure to deposit a copy thereof shall not prejudice the copyright or neighboring rights hereunder. The publishers, printing houses or producers in violation of paragraph 1 of this article are subject to a penalty of not less than EGP 1,000 and not more than EGP 3,000 per work, phonogram, fixed performance or broadcast without prejudice to the deposit requirement.

Such works published in newspapers, magazines and journals are not subject to the deposit requirement unless the work is published separately.

### DURATION OF COMPLETION

Without delay.

### DEPOSITARY

- Ministry of Culture
- Ministry of Information with respect to broadcasting organizations
- Ministry of Communications and Information Technology with respect to computer programs and databases.

### ATTACHMENTS AND PLACE OF COMPLETION OF FORMALITIES

1. Application form signed by the applicant or their representative, including: Title and nature of work, phonogram, performance, or broadcast. Name, capacity and address of the author or owners of the neighboring rights. Type of work on which the applicant relies to file a deposit application if the applicant is other than the author or owners of the neighboring rights.
2. Each ministry shall determine the number of copies required upon deposit.
3. A copy of the commercial registration certificate if the applicant is a legal person.



## INFRINGEMENTS AND SANCTIONS

### INFRINGEMENTS

- Sell, lease or put into circulation, in any form whatsoever, a work, phonogram or broadcast protected under this law without the prior written consent of the author or owner of the neighboring right.
- Knowingly counterfeit, sell, offer to sell, put into circulation or lease a work, phonogram or broadcast.
- Knowingly counterfeit on the national territory, sell, offer to sell, put into circulation, lease or export a work, phonogram or broadcast.
- Publish a work, phonogram, broadcast or performance protected under this law by computer, online, across computer networks or telecom networks or otherwise, without the prior written consent of the author or owner of the neighboring right.
- Manufacture, assemble or import for the purpose of selling or leasing any hardware, software or device designed or created to circumvent a firewall program used by the author or owner of the neighboring right such as data encryption or otherwise.
- Suppress, disable or make defective with intent a firewall program used by the author or owner of the neighboring right such as data encryption or otherwise.

### PRIMARY SANCTIONS

- Shall be subject to a prison sentence of at least one month and a penalty of a minimum of EGP 5,000 and a maximum of EGP 10,000 or either of the two penalties.
- Several penalties may be imposed in the event of multiple works, phonograms, broadcasts or performances object of infringement.
- In the event of recidivism, the convicted party shall be subject to a prison sentence of at least 3 months and a penalty of a minimum of EGP 10,000 and a maximum of EGP 50,000.

### SECONDARY SANCTIONS

- Seize the copies object of infringement or resulting from such infringement, in addition to the equipment and tools used to commit the infringement.
- Close the establishment used by the convicted party to commit the infringement for a maximum period of 6 months. The closure shall be pronounced as a binding order in case of recidivism with respect to the infringement acts below:
  - Knowingly counterfeit, sell, offer to sell, put into circulation or lease a work, phonogram or broadcast.
  - Knowingly counterfeit on the national territory, sell, offer to sell, put into circulation, lease or export a work, phonogram or broadcast.
- Publish the operative part of the convicting sentence in one or several newspapers at the convicted party's expense.

# I- INFRINGEMENTS AND SANCTIONS UNDER THE EGYPTIAN LAW

## 1- INFRINGEMENTS RELATED TO PATENTS

### LEGAL REFERENCE

Art. 32 of Law No. 82/2002

### PRESCRIBED INFRINGEMENTS

Anyone counterfeiting a patented object of invention or a utility model for commercial purposes in conformity with this law.

Anyone knowingly selling, offering to sell, putting into circulation, importing or acquiring for commercial purposes counterfeit products which are an object of a patented invention, patented utility model or patented production process.

Anyone illegally labelling their products, commercial advertisements, packaging or otherwise using false information leading the consumer to believe their invention or utility model has been patented.

### PRIMARY AND SECONDARY SANCTIONS

A penalty of a minimum EGP 20,000 and a maximum of EGP 100,000.

Seizure of the counterfeit items object of infringement with the tools used to commit the infringement. The convicting sentence shall be published in one or several newspapers at the convicted party's expense.

### INCREASED SANCTIONS

In case of recidivism, the convicted party shall be subject to a prison sentence of a maximum of **2 years** and a penalty of a minimum of EGP 40,000 and a maximum of EGP 200,000.

## 2- INFRINGEMENTS RELATED TO LAYOUT DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

### LEGAL REFERENCE

Art. 50 and Art. 53 of Law No. 82/2002

### PRESCRIBED INFRINGEMENTS

Any natural or legal person is prohibited from executing any of the following acts without the prior written consent of the owner of the protected layout design:

Reproduce the entire layout design or any part added thereto, whether such reproduction is introduced into the integrated circuit or otherwise.

Import, sell, or distribute the layout design for commercial purposes, whether separately, as a part of an integrated circuit or as a component of an item.

### PRIMARY AND SECONDARY SANCTIONS

A penalty of a minimum EGP 20,000 and a maximum of EGP 100,000.

### INCREASED SANCTIONS

In the event of recidivism, the convicted party shall be subject to a prison sentence of a maximum of **2 years** and a penalty of a minimum of EGP 40,000 and a maximum of EGP 200,000.

### 3- INFRINGEMENTS RELATED TO CONFIDENTIAL INFORMATION

#### LEGAL REFERENCE

Art. 61 of Law No. 82/2002

#### PRESCRIBED INFRINGEMENTS

Without prejudice to any heavier sanction prescribed by the law, is punishable anyone disclosing, possessing or using by illegal means the information protected under this law with their full knowledge about the confidential nature of the information that has become accessible through the aforesaid means.

#### PRIMARY AND SECONDARY SANCTIONS

A penalty of a minimum EGP 10,000 and a maximum of EGP 50,000.

#### INCREASED SANCTIONS

In the event of recidivism, the convicted party shall be subject to a prison sentence of a maximum of 2 years and a penalty of a minimum of EGP 50,000 and a maximum of EGP 100,000.

### 4- INFRINGEMENTS RELATED TO TRADEMARKS AND COMMERCIAL DATA

#### LEGAL REFERENCE

Art. 113 of Law No. 82/2002

#### PRESCRIBED INFRINGEMENTS

- Anyone counterfeiting or copying a duly registered trademark with intent to confuse the consumer.
- Anyone using with intent a counterfeit or copied trademark.
- Anyone using with intent a trademark owned by third parties on their products.
- Anyone knowingly selling, offering to sell, putting into circulation, possessing for the purpose to sell or to put into circulation products bearing a counterfeit, copied or illegal trademark.

#### PRIMARY AND SECONDARY SANCTIONS

Shall be subject to a prison sentence of at least **2 months** and a penalty of a minimum of EGP 5,000 and a maximum of EGP 20,000 or either of the two penalties.

Seizure of products object of infringement or the profits or items resulting therefrom, including tools used to commit the infringement.

In its convicting sentence, the court may pronounce the closure of the establishment used by the convicted party to commit the infringement for a maximum period of 6 months.

#### INCREASED SANCTIONS

In the event of recidivism, the convicted party shall be subject to a prison sentence of at least **2 months** and a penalty of a minimum of EGP 10,000 and a maximum of EGP 50,000. The closure of the establishment object of infringement shall be pronounced by a binding order.

#### LEGAL REFERENCE

Art. 114 of Law No. 82/2002

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**PRESCRIBED INFRINGEMENTS**

- Anyone posting false commercial information related to their products, shops, warehouses, including the business name thereof, or relevant to the packaging, invoices, correspondence, advertisements or any other means of public promotion.
- Anyone adding illegally a statement to their trademark or the corporate letterhead to make third parties believe such trademark is registered.
- Anyone using an unregistered trademark in the events provided for in Para. 2, 3, 5 7 and 8 of Art. 67 of this law.
- Anyone falsely associating any type of medals, awards, diplomas or honorary degrees with any product, person or commercial name.
- Anyone collaborating with third parties to offer to sell their own products or to attribute to such products the properties of common products on sale unless they clearly indicate the source and type of such properties.
- Anyone naming or offering to sell, by any means, an item in order to mislead in a way the consumer into thinking such item is associated with a geographical indication of a special reputation contrary to the real origin thereof.
- Anyone producing items at an entity reputed to produce such items and putting a geographical indication on their products similar to products of other geographical indications in order to mislead the consumer into thinking they are produced at the aforesaid entity.

**PRIMARY AND SECONDARY SANCTIONS**

Shall be subject to a prison sentence of at least 2 months and a penalty of a minimum of EGP 5,000 and a maximum of EGP 20,000 or either of the two penalties.

**INCREASED SANCTIONS**

In the event of recidivism, the convicted party shall be subject to a prison sentence of at least 2 months and a penalty of a minimum of EGP 10,000 and a maximum of EGP 50,000. The closure of the establishment object of infringement shall be pronounced by a binding order.

**LEGAL REFERENCE**

Art. 134 of Law No. 82/2002

**PRESCRIBED INFRINGEMENTS**

Anyone copying an industrial design or model duly registered and protected under this law.

Anyone knowingly producing, selling, offering to sell or possessing, with the intent to sell or put into circulation, products having a counterfeit industrial design or model.

Anyone illegally putting information whether on their products, in the commercial advertisements, on specific tools or otherwise to mislead the consumer into believing the industrial design or model has been registered.

**PRIMARY AND SECONDARY SANCTIONS**

A penalty of a minimum of EGP 4,000 and a maximum of EGP 10,000.

Seizure of the counterfeit industrial design or model, including the tools used to commit the infringement. The convicting sentence shall be published in one or several newspapers at the convicted party's expense.

**INCREASED SANCTIONS**

In the event of recidivism, the convicted party shall be subject to a prison sentence of at least **1 month** and a penalty of a minimum of EGP 8,000 and a maximum of EGP 20,000.

## 5- INFRINGEMENTS RELATED TO COPYRIGHT AND NEIGHBORING RIGHTS

### LEGAL REFERENCE

Art. 181 of Law No. 82/2002

### PRESCRIBED INFRINGEMENTS

Sell, lease or put into circulation in any form whatsoever a work, phonogram or broadcast protected under this law without the prior written consent of the author or owner of the neighboring right.

Knowingly counterfeit, sell, offer to sell, put into circulation or lease a work, phonogram or broadcast.

Knowingly counterfeit on the national territory, sell, offer to sell, put into circulation, lease or export a work, phonogram or broadcast.

Publish a work, phonogram, broadcast or performance protected under this law by computer, online, across computer networks or telecom networks or otherwise, without the prior written consent of the author or owner of the neighboring right.

Manufacture, assemble or import for the purpose of selling or leasing any hardware, software or device designed or created to circumvent a firewall program used by the author or owner of the neighboring right such as data encryption or otherwise.

Suppress, disable or make defective with intent a firewall program used by the author or owner of the neighboring right such as data encryption or otherwise.

Infringe any economic or moral right relevant to copyright or neighboring rights provided for under this law. Several penalties may be imposed in the event of multiple works, phonograms, broadcasts or performances object of infringement.

### PRIMARY AND SECONDARY SANCTIONS

Shall be subject to a prison sentence of at least one month and a penalty of a minimum of EGP 5,000 and a maximum of EGP 10,000 or either of the two penalties.

Seizure of copies object of infringement or resulting from such infringement, including the tools and equipment used to commit the infringement.

Publish the operative part of the conviction in one or several newspapers at the convicted party's expense.

In its convicting sentence, the court may pronounce the closure of the establishment used by the convicted party to commit the infringement for a maximum period of **6 months**.

### INCREASED SANCTIONS

In the event of recidivism, the convicted party shall be subject to a prison sentence of at least **3 months** and a penalty of a minimum of EGP 10,000 and a maximum of EGP 50,000.

### LEGAL REFERENCE

Art. 187 of Law No. 82/2002

### PRESCRIBED INFRINGEMENTS

Failure of shops that put into circulation, offer to sell, lease, borrow or authorize to use such works, phonograms, registered performances or broadcasts to comply with the following:

- Obtain an authorization from the competent ministry in return for the fees prescribed under the implementing regulations of this law up to a maximum of EGP 1,000.
- Maintaining regular bookkeeping reflecting accurate data on each work, phonogram or broadcast, including year of circulation.

**PRIMARY AND SECONDARY SANCTIONS**

A penalty of a minimum of EGP 5,000 and a maximum of EGP 10,000.

**INCREASED SANCTIONS**

In the event of recidivism, the convicted party shall be subject to a penalty of a minimum of EGP 10,000 and a maximum of EGP 20,000.

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**LEGAL REFERENCE**

Art. 203 of Law No. 82 of 2002

**PRESCRIBED INFRINGEMENTS**

Anyone violating with intent the provisions of Art. 189 to Art. 202.

**PRIMARY AND SECONDARY SANCTIONS**

A penalty of a minimum EGP 10,000 and a maximum of EGP 50,000.  
Seizure of seeds and seedlings object of infringement.

**INCREASED SANCTIONS**

In the event of recidivism, the convicted party shall be subject to a prison sentence of at least **3 months** up to a maximum of 1 year and a penalty of a minimum of EGP 20,000 and a maximum of EGP 100,000.

**6- INFRINGEMENTS RELATED TO PLANT VARIETIES****LEGAL REFERENCE**

Art. 203 of Law No. 82 of 2002

**PRESCRIBED INFRINGEMENTS**

Anyone violating with intent the provisions of Art. 189 to Art. 202.

**PRIMARY AND SECONDARY SANCTIONS**

A penalty of a minimum EGP 10,000 and a maximum of EGP 50,000.  
Seizure of seeds and seedlings object of infringement.

**INCREASED SANCTIONS**

In the event of recidivism, the convicted party shall be subject to a prison sentence of at least **3 months** up to a maximum of 1 year and a penalty of a minimum of EGP 20,000 and a maximum of EGP 100,000.

## II- DISSUASIVE MEANS

The Egyptian law authorizes any person having standing or any stakeholder all means of protection of their rights under Law No. 82/2002 concerning the protection of IPR in Egypt before the ordinary jurisdiction. The Egyptian law also assigns all legal matters relevant to Law No. 82/2002 to the economic court as the competent court to decide on all civil or criminal cases.

Accordingly, there are several ways to file a lawsuit before the civil or criminal court:

### CRIMINAL CASES:

1. Bringing a criminal case by the public prosecutor: This is the usual way to bring a criminal case automatically by the public prosecutor if the latter deems the evidence produced as sufficient and there are grounds for the criminal case, whether in response to the complaint brought by the holder of the right before the competent authorities (police department, consumer protection service, drug regulatory authority...) or based on the investigation conducted directly by the competent authorities.
2. Private prosecution: This way is not prohibited by the law of the economic court or Law No. 82/2002 concerning the protection of IPR. In fact, private prosecution is acknowledged by the court of cassation in challenge No. 10368 - J.Y 85, by virtue of which a criminal case may be brought by filing a criminal case petition directly before the economic court without filing the same first before the public prosecution. This way is known as private prosecution.

### CIVIL PROCEEDINGS:

The civil proceedings under the Egyptian law are based on three pillars: fault, prejudice and causal link. There is a contractual liability if the act is committed in a contractual framework. Otherwise, the liability is considered a tortious liability.

If the three aforementioned pillars exist, any party having legal standing or any stakeholder may claim an indemnity for the damages sustained as the result of a fault by a third party. Otherwise, the injured party may claim an undefined indemnity of a value to be determined by the competent judge.

The civil proceedings may be filed along with another criminal case under one name: "Civil right claim before the criminal court". This is when the injured party to the criminal case seeks to claim not only sanctions under the penal code but also civil compensation for the damages sustained.

In conformity with the two-degree litigation principle, the Egyptian law authorizes any litigant to challenge the court decision and refer the case to another court of a different degree or to seek the extraordinary challenge methods, i.e. to challenge the appeal before the court of cassation without prejudice to the principle of no harm to the challenging party as the result of their challenge.

### CASES ON WELL-KNOWN TRADEMARKS BEFORE EGYPTIAN COURTS:

#### EXAMPLE

#### 1. (SANYO ELECTRIC CO., LTD JAPAN VS. SANYO MISR ELECTRONICS):

SANYO ELECTRIC Co., LTD JAPAN filed a lawsuit against SANYO MISR ELECTRONICS under no. 765 of 2008 before the Court of First Instance - commercial circuit - in Giza to contest the right of priority by the defendant over using SANYO trademark and commercial name, which were both owned and registered internationally and locally in the name of the appellant, as well as to enforce an injunction order against the defendant prohibiting them from using or exploiting any similar trademarks or commercial names that would create confusion among consumers about such products on the market, consequently misleading the public into thinking that both companies were related and that the plaintiff was the representative of the defendant or was appointed by the latter for promotional purposes. All such acts represent faults that would mislead the client into thinking that the defendant had rights over SANYO name and trademark contrary to the reality.

The defendant argued that it was one of the largest electronics companies operating under SANYO, a trademark and a commercial name duly registered in the plaintiff's name and to their benefit, internationally and locally, under several classes. SANYO became a well-known trademark and thus enjoyed protection under the Egyptian law and international conventions on IPR. According to the plaintiff, the defendant had been using with intent such a well-known trademark on their products whose type was similar to the type of products the appellant was famous for. Such misuse had misled the consumer into thinking that the two litigants were related. In addition, the defendant used to export the products object of litigation,

thus compromising the reputation of the plaintiff and shaking the consumer's confidence in the plaintiff's products. Such acts represented a violation of the IPR related to the plaintiff's trademark and commercial name and constituted unfair competition.

On April 10, 2012, the court ruled the defendant had no priority right over using SANYO trademark and commercial name, which were duly registered in the name of the appellant and compelled the defendant to pay an amount of EGP 300,000 as final financial and moral compensation to the damages sustained. The court also ordered the sentence be published in a national newspaper at the defendant's expense.

SANYO MISR ELECTRONICS challenged the decision rendered by the court of appeal in Cairo on March 15, 2011 by filing challenge No. 8121 - J.Y 81 before the court of cassation. In response thereto, the public prosecutor submitted a memo dismissing the challenge.

Therefore, the court dismissed the challenge and compelled the challenging party to pay the costs of the legal proceedings in addition to a sum of EGP 200 in attorney's fees.

## 2. UNILEVER PLC VS. EVA PHARMA FOR PHARMACEUTICALS & MEDICAL APPLIANCES

UNILEVER PLC brought a case against EVA PHARMA for Pharmaceuticals & Medical Appliances under No. 10216 - J.Y 61, No. 10217 - J.Y 61 and No. 10218 - J.Y 61 dismissing the decisions of the Trademarks and Industrial Designs Office and rejecting the registration applications under No. 151303, 151304 and 161845. The plaintiff argued that it owned the well-known trademark, Vaseline, which had been in use since 1877 and that the defendant filed an application to register EVaseline trademark. In response thereto, the plaintiff filed an opposition to the registration application; however, to their surprise, the opposition was rejected and the trademark object of litigation was registered under No. 151303.

Having compared the trademark owned by UNILEVER and that registered by EVA PHARMA, the court decided that trademarks were used on products under the same classes 3 and 5 and both trademarks have several similarities, namely phonetically and vocally. In light of the fact that a trademark was a way of introduction of a product to the public and that Vaseline was a well-known registered trademark and given that the consumer generally linked the trademark to the product such as the case for several well-known marks like Dettol and Pampers, regardless of the definition of "Vaseline" given by some dictionaries as being a petroleum jelly contrary to other dictionaries that recognized "Vaseline" as a trademark, the court decided to reject the decisions of the Trademarks and Industrial Designs Office.

The defendant challenged the decision of the court by filing challenge No. 15870 - J.Y 55 before the court of cassation. However, the public prosecutor filed a memo rejecting the challenge.

Accordingly, on 12/23/2017, the court rejected the challenge and compelled the challenging party to pay the costs of the legal proceedings relevant to the challenge.

In order to guarantee the optimal protection for consumers and IP right owners, the competent authorities are keen to launch regular control campaigns on the market to seize counterfeit products or products of an unknown origin. In parallel, Egypt has made significant progress in fighting and controlling the import of and trade in counterfeit products.

## ANNEX 2- TUNISAN IPR LEGAL FRAMEWORK

### PATENT - CHARACTERISTICS - PROTECTION TERM

Law no. 2000-84 of 08/24/2000



#### DEFINITION

Each invention relevant to a product or manufacturing process is protected by a title known as a patent.

A patent is given to original inventions that result from an inventive activity and are industrially applicable.

A certificate is issued by the national competent authority including a description of the invention and producing legal effects entitling the patent owner to exploit such invention (i.e. reproduce, use, sell or supply such an invention) solely or through third parties under a license.



#### PATENTABILITY CRITERIA (ART. 2)

The invention is patentable if it meets the following criteria:

- If it is new.
- If it involves an inventive activity.
- If it is industrially applicable.

If such criteria are no longer met, the patent becomes null and void by a court order. The patent is invalid if it is proven that the invention forms a part of a prior art, does not involve an inventive activity, or is industrially inapplicable. (Art. 55)

It is worth noting that the patent is given on the applicant's own responsibility. The Office of Intellectual Property is not liable, in any way, (1) for the validity, value or novelty of the invention, (2) for the satisfaction of the industrial application or inventive activity criteria, (3) or for the accuracy or reliability of the invention description. (Art. 35)



#### THE FOLLOWING INVENTIONS (ART. 2)

- New industrial product.
- New process resulting in a known industrial product or outcome.
- Every new application of a known industrial method or means.
- New collection of known methods or means.



#### TERM OF EXPLOITATION OF THE INVENTION OBJECT OF PATENT / TERM OF PROTECTION

20 years from filing the patent application before the Office of Intellectual Property.

(Art. 36)



### REGISTERING A PATENT

Whoever creates an industrial invention has the exclusive right to exploit the same, provided they have filed a patent application, registered such invention and obtained a patent certificate from the Office of Industrial Property.

ATTACHMENTS AND PLACE OF COMPLETION OF FORMALITIES	FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES	
<p>1. Application form signed by the applicant or their agent, including:</p> <ul style="list-style-type: none"> <li>Name, nationality, place of residence and profession of applicant.</li> <li>Title of the invention.</li> <li>Name and place of residence of the agent if any.</li> <li>Date of filing the first international patent application if any.</li> </ul> <p>2. Special power of attorney if the applicant is represented by an agent abroad.</p> <p>3. The following documents must be presented in two copies in a sealed envelope:</p> <ul style="list-style-type: none"> <li>Title of the invention.</li> <li>Descriptive abstract of the invention summarizing the most important technical elements.</li> <li>Description and abstract of the invention (in Arabic, French or English).</li> <li>Claims highlighting the novelty and originality characteristics to be protected (in Arabic, French or English - the Arabic version in two copies).</li> <li>Drawings related to the invention for illustrative purposes.</li> <li>List of attachments, including all attached documents without any exception with the corresponding number of pages.</li> </ul> <p>The patent owner or their agent must sign all documents attached to the application.</p>	<ul style="list-style-type: none"> <li>Submitting the documents before INNORPI.</li> <li>Obtaining the receipt of payment of the filing fees.</li> <li>Registering the application.</li> </ul>	<p>Without delay</p> <p>3-4 days.</p>	<p>Filing fees and first annuity: TND 167.200, all taxes included.</p> <p>Originality claim fees starting from the 11th component: TND 35.700, all taxes included.</p>	
				<p>Filing fees and first annuity: TND 167.200, all taxes included.</p> <p>Originality claim fees starting from the 11th component: TND 35.700, all taxes included.</p>
		<p>Examining the patent application by the Office of Patents (INNORPI) in case of approval within <b>18 months</b> starting from the date of filing.</p>	18 months.	
		<p>Registering the patent in case of no opposition filed within <b>2 months</b> starting from the date of publication in INNORPI official journal, Muwassafet.</p>		
	<p>Receiving the certificate with a copy of the following documents:</p> <ul style="list-style-type: none"> <li>Description and abstract of the invention.</li> <li>Drawings for illustrative purposes (if any)</li> <li>List of claims.</li> </ul>	20 months.		



## INFRINGEMENTS AND SANCTIONS

### INFRINGEMENTS

#### Counterfeiting

- With respect to a patent duly disclosed to the public, any patent infringement constitutes a counterfeit crime.
- Whoever infringes knowingly a patent duly disclosed to the public.
- Other than the producer of the counterfeit item, the person that knowingly displays, puts to sale, uses or possesses for usage or sale the counterfeit item.
- The persons that participated or intervened in counterfeiting or incited a third party to do so.

Third parties are prohibited from doing the following acts without the authorization of the patent owner or their successors in title:

- Manufacture, offer, trade in, use, import or acquire for the aforesaid purposes the patented product;
- Use the patented manufacturing process;
- Offer, sell, buy, use, import or acquire for the aforesaid purposes the patented product resulting from the patented manufacturing process. (Art. 46)

### PRIMARY SANCTIONS

Penalty amounting to TND 5,000 to 50,000 and in the event of recidivism, a prison sentence of **1 to 6 months**.

- In the event of recidivism.
- If the perpetrator has a contractual relation with the patent owner.
- Paying compensation for the moral and material damages, loss of profits and profits earned by the perpetrator.
- Seizing the items object of litigation, including the machinery and tools used by the perpetrator.

If it is established by a court order that the products are counterfeit, the judiciary authority may then dispose of the said products by:

Either destroying the products under the supervision of the Tunisian Customs:

Or prohibiting marketing thereof without prejudice to the rights of the patent owner (Art. 96)

### SECONDARY SANCTIONS

- Seizing and destroying such items, machinery and tools that damaged the patent or that were used by the perpetrator to infringe such patent.
- Posting the sentence in such locations decided by the court and publishing the same in two local newspapers at the expense of the losing party.



## TRADEMARKS & SERVICE MARKS: FORMS - OWNERSHIP - USE



### DEFINITION OF A TRADEMARK/SERVICE MARK- TRADEMARK/SERVICE MARK FORMS AND CHARACTERISTICS (ART. 2 OF LAW NO. 36 OF APRIL 17, 2001)

A trademark or a service mark is a visible sign distinguishing the products or services provided by a natural or legal person.

The components of such a sign can be as follows:

- a. Designations of all forms (e.g., words, word combinations, titles, geographical names, pseudonyms, numbers and symbols).
- b. Figurative signs (e.g., drawings, reliefs, forms, mainly those related to the product or its packaging or those characterizing the services or the disposition, combination or nuance of colors).
- c. Sound signs (e.g., melody and musical phrases).



### TRADEMARK/SERVICE MARK RESTRICTIONS (ART. 4 OF LAW NO. 36 OF APRIL 17, 2001)

A sign cannot be considered a mark or a component of a mark in the following events:

- a. If reproducing or imitating coats of arms, flags or other emblems, acronyms, designations or abbreviations related to any State, any intergovernmental organization or any organization created under an international convention unless this is authorized by the competent government authority or competent organization;
- b. If reproducing or imitating control and guarantee hallmarks or signs officially approved by a State unless this is authorized by the competent authority in the said State;
- c. If contrary to the public order and morality or if the use of which is prohibited by the law;
- d. If of a nature confusing the public especially in respect of the nature, quality or geographical origin of the product or service.



### TRADEMARK OWNERSHIP (ART. 72 AND ART. 74)

The ownership of a mark is established by way of registration. The ownership of a mark may also be established as co-ownership. The registration produces legal effects as of the date of filing the application for a ten-year period indefinitely renewable.



## REGISTERING A MARK

The ownership of a mark is established by way of registration. It may also be established as co-ownership. The registration produces legal effects as of the date of filing the application for a ten-year period indefinitely renewable. (Art. 6 of Law no. 36 of April 17, 2001 )

ATTACHMENTS AND PLACE OF COMPLETION OF FORMALITIES	FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES
<p>The following documents and details must be enclosed with the registration application:</p> <ul style="list-style-type: none"> <li>• The registration application submitted in one copy in conformity with the form prepared by the Office of Industrial Property.</li> <li>• Such application shall clearly state, in particular, the following details:</li> <li>• Identity and address of the applicant;</li> <li>• Sample of the mark in a 3D illustrative drawing;</li> <li>• Products and services bearing the mark, including the classes to which they belong;</li> <li>• Statement if applicable about the applicant's claim to exercise the right of priority with respect to the prior filing of an international application;</li> <li>• Attestation of settlement of payable fees;</li> <li>• Appointment of an agent (power of attorney) if applicable.</li> </ul>	<ul style="list-style-type: none"> <li>• Submitting the documents before INNORPI.</li> <li>• Receiving the certificate of registration that is numbered and dated.</li> </ul>	Without delay.	Mark registration: TND 595,600, all taxes included.
	Obtaining the receipt of payment of the registration fees.	3-4 days.	
	Publishing the registration upon examination.	12 months.	
	Filing an opposition to the mark registration.	2 months.	
	Receiving the original of the attestation.	1.5 year following the publication date.	TND 95,800, all taxes included.



## INFRINGEMENTS AND SANCTIONS

### INFRINGEMENTS

Trademark Counterfeiting:

- Reproducing, using or display a registered mark even by adding words such as: "formula, method, system, copy, type, process".
- Using a copied mark on products or services similar to those mentioned in the registration application.
- Deleting or changing a duly registered mark.
- Reproducing, using or displaying a registered mark including using a copied mark on products or services similar to those mentioned in the registration application.
- Copying a registered mark or using a counterfeit mark on products or services similar to those mentioned in the registration application.

### PRIMARY SANCTIONS

Shall be subject to a penalty of TND 10,000, TND 20,000 and TND 50,000 any person violating the provisions of Art. 22 and Art. 23 of Law no. 36 of April 17, 2001.

Any person knowingly possessing, without any legitimate motive, items bearing a counterfeit mark or any person knowingly selling, offering to sell, providing to third parties or offering to provide to third parties such products or services with a counterfeit mark.

In the event of recidivism of the infringements provided for under Art. 52 & Art. 53 of this Law, the court may order the imprisonment of the infringing party of 1 to 6 months in addition to a penalty that shall be doubled.

In all events, the court may authorize the publishing of the entire judgment or an extract thereof in newspapers it designates and the posting thereof in places it identifies, mainly on the main gateways of the factories or workshops of the convicted party as well as on the facade of their shops, at the expenses of the convicted party.

In the event of a judgment pronounced for the infringements provided under Art. 51, Art. 52 and Art. 53 of this Law, the court may order the seizure of such products and tools used to commit the crime.

The court may also order the destruction of the said products and tools.

## INDUSTRIAL DESIGNS AND MODELS

Law no. 2001- 21 dated 02/06/2001



### DEFINITION OF AN INDUSTRIAL DESIGN OR MODEL (ART.2)

The provisions of this law apply to any new design, any form of plastic arts or any industrial product different from other designs, forms or products similar thereto whether in terms of the distinctive appearance in general that adds to the original aspect

or the external effect or effects that give it a special and fresh appearance.



### CRITERIA OF THE REGISTRABLE INDUSTRIAL DESIGN OR MODEL (ART. 2)

An industrial design or model may be registered if it meets the following criteria:

- It is new.
- It involves an inventive step.



### FORMS OF INDUSTRIAL DESIGNS AND MODELS

Industrial designs and models are applied to a wide variety of products of industry and handicraft items, including technology or medical equipment and tools, watches and jewelry, and other luxury goods, in addition to home appliances, vehicle frames, buildings, textile designs and leisure goods.

The provisions of this law apply to any new design, any form of plastic arts or any industrial product different from other designs, forms or products similar thereto whether in terms of the distinctive appearance in general that adds to the original aspect thereto or the external effect or effects that give it a special and fresh appearance.

However, if the same object is considered both as a new industrial design or model and a patentable invention, and if the components of the novelty of such design or model are inseparable from those of the invention, such object can be protected exclusively under the law on patents (Art. 2).



### TERM OF PROTECTION (ART. 62)

The term of protection of an industrial design or model under this Law and based on the applicant's choice is **5 years**, **10 years** or a maximum of 15 years against the payment of fees determined as per a decree.



### REGISTERING AN INDUSTRIAL DESIGN OR MODEL

Any inventor of an industrial design or model has the right to use such design or model, including selling the same, providing the design or model has been duly filed and registered and a registration certificate has been obtained from INNORPI.

ATTACHMENTS AND PLACE OF COMPLETION OF FORMALITIES	FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES
<p>The applicant may submit, either in person or through their legal representative, an industrial design or model registration application to INNORPI (based on the form approved by the Ministry). The application must include the following attachments:</p> <p>A detailed description of the architectural design of the model or the design to be protected with the dimensions relevant thereto in two copies signed by the applicant or their legal representative.</p> <p>Illustrative drawings related to the drawing or model to be protected in two copies signed by the applicant or their legal representative.</p>	<ul style="list-style-type: none"> <li>Submitting the documents before INNORPI.</li> <li>Obtaining the receipt of payment of the filing fees.</li> </ul>	Without delay.	<p>A five-year protection: TND 132,690, all taxes included.</p> <p>A ten-year protection: TND 142,210, all taxes included.</p> <p>A fifteen-year protection: TND 154,110, all taxes included.</p>
	<ul style="list-style-type: none"> <li>Registering the application.</li> </ul>	30 days.	
	<ul style="list-style-type: none"> <li>Receiving the original of the certificate along with a copy of the description and the design / model to be protected.</li> </ul>	3 months	
	<ul style="list-style-type: none"> <li>Examining the application by INNORPI in case of approval within 9 months starting from the date of filing.</li> </ul>	9 months.	



### INFRINGEMENTS AND SANCTIONS

#### INFRINGEMENTS

Any infringement of the rights of the owner of the industrial design or model as defined under Art. 4 of this Law is deemed as criminal counterfeiting and shall incur upon the infringing party a civil and criminal liability.

#### PRIMARY SANCTIONS

Any person that knowingly infringes such rights shall be subject to:

-A penalty of TND 5,000 - TND 50,000

The court may authorize the publishing of the entire indicting judgment or an extract thereof in any of the newspapers it designates or the posting thereof in places it identifies at the expenses of the convicted party.

Shall be subject to a penalty of TND 1,000 to TND 5,000 any person that adds a statement to their company's documents, advertising content or products insinuating an industrial design or model was registered under this law whereas in reality such design or model has not been registered yet or its registration has been revoked or has expired.

The Public Prosecutor cannot initiate legal proceedings unless in response to the complaint filed by the injured party.

In the event of recidivism, a prison sentence may be ordered for 1 to 6 months in addition to the penalty that shall be doubled.

## PROTECTING THE COPYRIGHT



### DEFINITION

The literary and artistic property is classified under two categories: copyright and neighboring rights. A copyright includes the literary works and artistic works. As to the neighboring rights of the copyright, they include rights similar thereto.



### PROTECTED WORK (ART. 1 OF LAW NO. 36 OF 1994)

The copyright includes each innovative literary, scientific or artistic work of whatever value, in addition to the purpose for which it was created, the method or form of expression used for such work and the title of the work. It also applies to the work in its original version as well as in its derivative form.

Among the works covered by the copyright:

- Printed and written works, including books, brochures and other such works;
  - Works of theater or (audio or visual) broadcasts, whether they are dramatic works involving musicals, choreography or pantomime;
  - Musical composition with or without lyrics;
  - Works of photography to which are assimilated, under this Law, such works expressed through a process similar to photography;

Cinematographic works to which are assimilated, under this Law, such works expressed through a process producing visual effects similar to cinematography;

- Paintings, drawings, works of lithography, works of etching or wood carving and other similar artworks;
- Sculpture of all forms;
- Works of architecture that include drawings, models, examples and construction methods;
- Tapestries, woven fabric from looms, and works of applied arts, including sketches, models and the work itself;
- Maps, visual arts and plastic arts of a scientific or artistic nature;
- Conferences;
- Computer programs;
- Translations, arrangements and adaptations of the aforementioned works.



### PROTECTION APPLICABILITY (ART. 56)

#### CONCERNING WORKS

The provisions of this Law concerning copyright apply to the following:

- a. Works whose author or any other original owner is Tunisian or has a place of regular residence or corporate headquarters in Tunisia;
- b. Audiovisual works whose producer is Tunisian or has an ordinary place of residence or corporate headquarters in Tunisia;
- c. Works published for the first time in Tunisia or those published in Tunisia within 30 days following the date of the first publication in another country;
- d. Architectural works built in Tunisia or works of fine arts integrated into a building located in Tunisia.

The provisions of this Law concerning copyright also apply to such works benefitting from legal protection under an international convention ratified by Tunisia, such as Berne Convention.

#### CONCERNING AUTHORS

- Tunisian authors regardless of the place of residence.
- Non-Tunisian authors provided they are nationals or residents of one of the States acceding to Berne Convention for the Protection of Literary and Artistic Works or WIPO Copyright Treaty.
- Authors who are citizens of any of the Arab League Member States but not a State acceding to neither of the aforesaid conventions subject to reciprocity.

**TERM OF PROTECTION (ART. 18 - NEW)**

WORK	TERM OF PROTECTION
Works of joint authorship.	The protection lasts 50 years starting from January first of the year in which the last coauthor would die or from the date determined as per a court order to be the day on which such coauthor would die in the event of disappearance or absence of the same.
Audiovisual works.	<p>Art. 42-bis: The protection of the economic rights deriving from cinematographic or audiovisual works lasts 50 years starting from the date of the first public performance of the relevant work in a legitimate manner.</p> <p>In default of public performance thereof, the protection shall last 50 years starting from the date of completion of the first reference version.</p>
<p>Economic rights:</p> <ul style="list-style-type: none"> <li>• If the work is published under the author's real name.</li> <li>• If the work is published anonymously or under a pseudonym.</li> </ul>	<p>The protection of economic rights of the author lasts throughout his life and the remaining days of the year in which the same would die, in addition to 50 years starting from January 1st in which the last co-author would die. The date of death could also be determined as per a court order to be the day on which such co-author would be announced dead in case of disappearance or absence.</p> <p>The protection lasts 50 years starting from January first of the year following the year of the first publication of the work. The copyright shall be exercised in such a case by the publisher or distributor of the work.</p> <p>In the event the pseudonym used does not conceal the identity of the author to the public or if the author of an anonymous work or of a work published under a pseudonym reveals their true identity, the protection shall have the same term provided for in paragraph 2, Art. 18- new of Law no. 2009-33 of January 23, 2009 as modified by Law no. 94-36 of January 24, 1994 related to literary and artistic property.</p>
Moral rights.	<p>Art. 8 - new</p> <p>The author shall exercise economic and moral rights over their works.</p> <p>The moral rights are inalienable and imprescriptible and cannot be relinquished although they can be transferred by inheritance or under a testament.</p>
Publications under the name of a legal person.	50 years as of the end of the year of publication
Works subsequently published.	The protection lasts 50 years starting from January first of the year following the year of first publication of the work. In such a case, the copyright shall be exercised by the heirs and beneficiaries to the extent permissible by the applicable law.

**RIGHTS CONFERRED ON THE COPYRIGHT OWNER**



## ECONOMIC RIGHTS

The author shall exercise economic and moral rights over their works.

The moral rights are inalienable and imprescriptible and cannot be relinquished although they can be transferred by inheritance or under a testament.

The economic rights can be entirely or partially transferred by inheritance or legal disposition. They shall be exercised either by the author personally or through their authorized representative or by any other owner thereof under this Law.

In the event of a dispute between the heirs or beneficiaries of the will or other copyright owners arising from the exercise of their rights, the party having legal standing shall refer the dispute to the competent court for settlement.

Subject to the exceptions set forth by the law, no person can communicate to the public or reproduce any work owned by third parties in such a version or in such circumstances violating the author's economic and moral rights.

Art. 9- bis: The economic rights confer upon the author the exclusive right to exploit their work or to authorize third parties to exploit it in any of the following ways:

- a. **Reproducing the work in any way whatsoever such as by printing, photocopying, or audio/ audiovisual recording on tapes, phonographs or CDs, or through any software or other means;**
- b. **Communicating the work to the public by any means whatsoever, such as:**
  - Performance in public places like hotels, restaurants, land/sea/air transport means, festivals and concert halls;
  - Acting or public interpretation;
  - Wireless or wire broadcasting of works using:
    - Radio, TV and electronic transmitters or receptors and other broadcast means;
    - Amplifiers or any other signal, voice or image transmission devices;
    - Satellites, cables, information networks, and the like.
- c. All means of work exploitation in general, including commercial rental of the original version and copies thereof;
- d. Translations, adaptations, arrangements and other changes to the work that are defined under this law as derivative works.

## MORAL RIGHTS

The moral rights confer upon the author the exclusive right to:

- a. Communicate their work to the public and claim authorship thereof whether the work is published under their real name, under a pseudonym or anonymously;
- b. The author's name must be mentioned every time the work is communicated to the public and on each copy reproducing the content of the work, each time the same is communicated to the public in any form or means whatsoever in conformity with convention.
- c. Prohibit any deletion, change, addition or other modification to their work without their written authorization as well as prevent any alteration to such work that may prejudice the reputation or honor of the author;
- d. Withdraw their work from the market against payment of fair compensation in the event of any damages sustained by the licensed operator or distributor.

## NEIGHBORING RIGHTS



## 1- RIGHTS OF PERFORMERS

### PROTECTION APPLICABILITY ART. 57

#### If the producer of the phonogram is Tunisian

Art. 57 - new

The provisions of this Law on neighboring rights shall apply to the following:

##### a. Performances if:

- The artist is Tunisian;
- The performance takes place in Tunisia;
- The performance is fixed to a phonogram protected under this Law or it is not fixed but incorporated in a radio or TV broadcast protected under this Law.

##### b. Phonograms if:

- The producer is Tunisian;
- The first fixation of the audio or audiovisual content has taken place in Tunisia;
- The phonogram has been published for the first time in Tunisia;

##### c. Radio or TV broadcasts if:

- The broadcasting organization is headquartered in Tunisia;
- The radio or TV broadcast is transmitted from a station located in Tunisia.

The provisions of this Law also apply to the performances, phonograms and radio/TV broadcasts protected under an international convention ratified by Tunisia such as Berne Convention.

### RIGHTS OF OWNERS OF NEIGHBORING RIGHTS

#### MORAL RIGHTS ARE:

- With respect to their live audio or audiovisual performance or their performance fixed to a phonogram, claim authorship as performers, except in the event where the absence of such mention of authorship is dictated by the mode of exploitation of such performance;
- Object to any alterations, mutilations or changes to their performance that prejudice their reputation.

#### THE ECONOMIC RIGHTS ARE:

- Broadcast and communicate to the public their unfixed performance unless such performance has been already broadcast;
- Fix their unfixed performance;
- Reproduce directly or indirectly their performance fixed to a phonogram in any way and any form;
- Distribute to the public the original versions or copies thereof, either by selling the same or by any other means of ownership transfer;
- With respect to their performance fixed to a phonogram, rent the original versions or copies thereof for commercial purposes to the public even after their distribution by the performer personally or under a license therefrom;
- Communicate to the public their performance fixed to a phonogram whether by wireless or wire communication means to enable the public to access such performance anytime, anywhere.

These economic rights are recognized as exclusive rights conferred upon the performers to authorize third parties to exploit all or some of their performances.

#### TERM OF PROTECTION

The moral rights are inalienable and imprescriptible and cannot be relinquished although they can be transferred by inheritance or under a testament.

The protection of the economic rights of the performers lasts **50 years** starting from January first of the year following that in which the relevant performance would be fixed to a phonogram. In the event of an unfixed performance, the protection lasts **50 years** starting from January first of the year following that in which the relevant performance would be communicated to the public for the first time.

## 2- RIGHTS OF PRODUCERS OF PHONOGRAMS



### RIGHTS OF OWNERS OF NEIGHBORING RIGHTS

The producers of phonograms enjoy the following rights:

- Reproduce directly or indirectly their phonograms in any way and any form whatsoever;
- Distribute to the public the original versions or copies thereof, either by selling the same or by any other means of ownership transfer;
- With respect to their phonograms, rent the original versions or copies thereof for commercial purposes to the public even after their distribution by the performer personally or under a license therefrom;
- Communicate to the public their phonograms whether by wireless or wire communication means to enable the public to access such performance anytime, anywhere.

These economic rights are recognized as exclusive rights conferred upon the producers of phonograms to authorize third parties to exploit all or some of their phonograms.

### TERM OF PROTECTION

The protection of the rights of producers of phonograms lasts **50 years** starting from the year following that in which the phonogram would be published or from the year in which the fixation would occur in default of any publication within **50 years** from the date of fixation.

The protection of the rights of broadcasting organizations lasts **50 years** starting from the year following that in which:

- The fixation would occur with respect to phonograms and performances fixed therein;
- The performance would occur with respect to unfixed performances;
- The broadcasting would occur with respect to radio or TV broadcasts.

## 3- RIGHTS OF RADIO/TV BROADCASTING ORGANIZATIONS

### RIGHTS OF OWNERS OF NEIGHBORING RIGHTS

- Fix or record their broadcasts to a tangible medium or reproduce such recorded version;
- Rebroadcast their broadcasts;
- Communicate their TV broadcasts to the public if this is done in public venues against the payment of entrance fees.

These rights are recognized as exclusive rights conferred upon the broadcasting organizations to authorize third parties to exploit all or some of their broadcasts.

### TERM OF PROTECTION

The protection of the rights of producers of phonograms lasts **50 years** starting from the year following that in which the phonogram would be published or from the year in which the fixation would occur in default of any publication within **50 years** from the date of fixation.

The protection of the rights of broadcasting organizations lasts **50 years** starting from the year following that in which:

- The fixation would occur with respect to phonograms and performances fixed therein;
- The performance would occur with respect to unfixed performances;
- The broadcasting would occur with respect to radio or TV broadcasts.

## EXCEPTIONS TO THE PROTECTION

Without the consent of the copyright owner and without indemnity thereto, the following actions are authorized to any natural person:

### **Reproduce, record or make a single copy of any work protected under this Law.**

Art. 10 (new): Are considered legitimate the following forms of exploitation of the works protected that are at the disposal of the public, without the authorization of the author and without fees in return, in conformity with Art. 37 of this Law:

- a. Reproduce the work for personal use without prejudice to the ordinary exploitation of the work and the legitimate material interests of the author;
- b. Use the work for clarification and for educational purposes in prints, performances, drama works or phonograms;
- c. Reproduce isolated articles legally published in a newspaper or periodical or short excerpts from a work or a short work legally published to serve educational purposes or for exams in educational institutions, for non-profit purposes, to the extent justified by the objective to be fulfilled; provided to meet the following conditions:
  - Mention the source entirely and the author's name with each use of the work;
  - Use the work for non-profit or lucrative purposes;
- d. Reproduce or copy the news articles published in newspapers or periodicals about current economic, political or social events, or broadcasts of the same nature whether through press or radio/TV broadcasting or by public communication in such events where the rights of reproduction, copying or radio/TV broadcasting are not explicitly reserved, provided the source and the author's name are clearly mentioned if this name is mentioned in the source;
- e. Reproduce or record a copy of a protected work to be used in legal proceedings or administrative litigation, to the extent required by such proceedings or litigation, provided the source and the author's name are mentioned;
- f. Pastiches, parodies or caricatures of an original work without prejudice to the convention followed in such fields;
- g. Reproducing or copying an architectural work or a work of fine arts, applied arts or figurative arts if the work is permanently available in a public venue, except art galleries, museums or artistic legacy from ancestors.

Art. 11: Are authorized the citations and excerpts from a work that has been already made available to the public, without prejudice to the convention followed, to the extent justified by the scientific, educational or informative purpose to be achieved, including citations and excerpts used in news articles.

Such citations or excerpts may be used in their original or translated version.

### **Public libraries, non-profit archiving centers and institutions, and libraries in educational and training institutions**

Without the authorization of the author and without fees in return, the public libraries, non-profit archiving centers and institutions, and libraries in educational and training institutions, may make one or two copies of an original work to protect or replace the original version in the event the latter is damaged, lost or has become useless, on condition that such reproduction is done for non-profit and educational purposes.

They may also reproduce, without the authorization of the author or without fees in return, an article or an excerpt from a written work, except for computer programs, which is published in compilations of works or in a newspaper or periodical issue, provided such reproduction answers the request of a natural person and serves educational or research purposes. (Art. 12 - new)

### **Ministry of Culture**

**Art. 13 (new):** The Ministry of Culture may issue non-exclusive licenses for the following purposes:

- a. Make a copy of a protected work for publishing purposes provided that this work has not been published yet in Tunisia, in return for fees equivalent to the price set by the national publishing houses, 3 years following its first publication for scientific works, seven years following its first publication for fiction works or 5 years following the date of first publication for any other genre of works;
- b. Translate a protected work for publishing purposes within Tunisia in the form of a printed publication or a radio/TV broadcast, provided the said work has not been translated yet into the Arabic language or has not been yet in circulation or communicated to the public in Tunisia, one year following its first publication.

Licenses issued in conformity with the provisions of this Article are non-transferable to third parties in any way

whatsoever and are valid strictly in Tunisia.

On each copy of the work reproduced and/or translated under a license from the Ministry of Culture, a statement shall be added to indicate such copy is put into circulation strictly in Tunisia.

However, the public administration may dispatch copies of the work reproduced and/or translated under the aforesaid license to Tunisians living abroad for educational and research purposes, without fees in return.

The author's name and the original title of the work shall also be mentioned in all copies and translated versions of the original work as per the license provided for in § a) and § b) hereof.

In return for such licenses, the author is entitled to fair remuneration payable by the licensee to be determined by the national authority in charge of the collective management of copyrights and neighboring rights, which is responsible for the collection and payment of such remuneration to the copyright owner in absence of any amicable agreement between both parties.

**Art. 14 (new):** The licenses shall be issued under Art. 13 of this Law for educational and research purposes based on a license application submitted to the Ministry of Culture. Shall be enclosed with the application the supporting documents confirming that the applicant could not identify the copyright owner or their successors in title or that the latter refused to grant the required license for the reproduction or the translation of the work for publishing purposes despite diligent efforts by the applicant.

The applicant for license shall also serve a copy of the aforesaid application by registered mail to any international center in charge of managing the international conventions related to copyrights and neighboring rights of which Tunisia is a party and to the publisher whose name is mentioned in the work.

The aforesaid licenses for the reproduction of a protected work shall not be issued, not until the lapse of 6 months following the submission of the relevant application for scientific works and 3 months for other genres of works.

As for licenses for translation, such term shall be 9 months following the submission of the application.

Licenses granted shall be revoked if the copyright owner or their successors in title reproduce or translate, at the same price and under the same conditions, the relevant work to the same language where the translated content is similar to that of the licensed translated version and in the event they decide to make available to the public such versions at the prevailing market price in Tunisia.

Prior to license revocation, the licensee may still be able to put into circulation such copies or translations of the original work until they become out of stock.

Licenses cannot be granted with respect to such works taken out of circulation by the copyright owner or their successors in title.

**Art. 15:** Literary, scientific or artistic works can be recorded, copied or broadcasted if they communicate daily news regardless of the means used to the extent justified by the desired informative purpose.

**Art. 16:** Architectural works or works of figurative arts displayed permanently in a public venue may be copied for cinema or TV broadcasting purposes, provided their insertion in the film or TV broadcast is casual or secondary compared to the plot / main subject of such film or broadcast.

**Art. 17:** The works created by media production houses operating in Tunisia, through their own means and for their own shows, may be presented under a license from the original copyright owners. However, after one year, such production houses may no longer be able to present such works without a renewed license from the original copyright owners or OTDAV in default of any contract whereby the copyright owner transfers the right of exploitation of their work to the media production house. A copy of each recorded cultural program presented by such media production house must be maintained in the official archive at the Ministry of Culture. The list of informative broadcasts to be archived must be defined as per a decision of the Minister of Culture.

## REGISTERING AN ARTISTIC, LITERARY, MUSICAL OR CINEMATOGRAPHIC PRODUCT



Any person creating an artistic, literary, musical or cinematographic product has the absolute ownership right over such production without any formalities. Filing a registration application is optional and the act of registration shifts the onus of proof from the author to the infringing party.

ATTACHMENTS AND PLACE OF COMPLETION OF FORMALITIES	FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES
<p>In order to register a literary, scientific or artistic production, an application for registration must be filled in, signed and submitted to the OTDAV, along with a copy of the registered production.</p> <p>- The applicant must receive and safeguard a certificate of registration identified with a number and dated from the Bureau de l'Ordre (Bureau of control).</p>	<ul style="list-style-type: none"> <li>Submitting the documents before the registrar of the Office of the Intellectual Property</li> <li>Registering the application.</li> <li>Receiving a receipt of payment of fees.</li> </ul>	Without delay.	<p>Annuity:</p> <ul style="list-style-type: none"> <li>Literary, musical and artistic works: TND 30.</li> <li>Architectural works and drawings: TND 150.</li> <li>Computer programs: TND 150.</li> </ul> <p>Registration Renewal Annuity:</p> <ul style="list-style-type: none"> <li>Literary, musical and artistic works: TND 30.</li> <li>Architectural works and drawings: TND 150.</li> <li>Computer programs: TND 150.</li> </ul>
	<ul style="list-style-type: none"> <li>Receiving the registration certificate.</li> </ul>	30 days.	

## INFRINGEMENTS AND SANCTIONS



### INFRINGEMENTS

#### Art. 50 - new:

It is prohibited to import to Tunisia, in any way whatsoever, copies of any work as well as make, reproduce, distribute, export, sell or buy such copies if the same compromise the public order and morality and violate the provisions of the applicable law in a manner that infringes the copyright and neighboring rights under such law and the international conventions concerning copyrights and neighboring rights as ratified by Tunisia.

#### Art. 51 - new:

Any person infringing the copyright and neighboring rights provided for under this Law shall reimburse the owner of such rights for the moral and economic damages sustained. The amount of compensation shall be determined by the competent court.

- Any person selling works of plastic arts and manuscripts without payment of the fees set forth in Art. 25 of this Law to the owner of such works or their successors in title or representative;
- The publisher refusing to provide the author or their successors in title or representative with the supporting documents for their accounting records contrary to the provisions of Art. 29 of this Law;
- The producer of copies recorded on phonograms or video-grams refusing to provide the author or their successors in title or representative with the supporting documents for their accounting records contrary to the provisions of Art. 34 of this Law;
- Any person making copies recorded as phonograms or video-grams or otherwise of protected works for commercial purposes without any justifying contract with the author or the national authority in charge of the collective management of copyrights and neighboring rights or knowingly committing accounting fraud relevant to the proceeds of the recorded copies contrary to the provisions of Art. 35 of this Law;
- Anyone making recorded copies while knowingly failing to make any mention as provided for in Art. 36 of this Law on the phonograms/video-grams and recorded copies;

- Any producer of cinematographic or audiovisual works that did not conclude contracts with all the owners of such works intended for filmmaking or audiovisual production contrary to the provisions of Art. 35 of this Law;
- All operators and distributors of cinematographic or audiovisual works mentioned in Art. 42 of this Law who did not conclude contracts with the owners of such works or their successors in title/representative relevant to the payment of fees in return for copyright exploitation;
- Anyone using protected computer programs without the authorization of the author or their successors in title/representative contrary to the provisions of Art. 46 of this Law;
- Anyone importing, exporting, reproducing, selling, buying or promoting copies of protected works contrary to the provisions of Art. 50 of this Law;
- Anyone circumventing or attempting to circumvent control measures adopted to detect counterfeit products or products suspected as fake products;
- Anyone preventing the competent authorities designated under this Law, in any way whatsoever, from accessing the production or manufacturing units, warehouses, shops, distribution departments or transport means;
- Anyone refusing to submit the accounting, management, logistics or business records necessary for control purposes;
- Anyone providing false instructions or documents about the product.

## PRIMARY SANCTIONS

### Art. 52 - new:

Without prejudice to the sanctions set forth in separate texts of law, **shall be subject to a penalty of TND 1,000 up to TND 50,000** any operator or distributor of a protected work without the authorization provided for under articles 7, 9 -ter-, 13, 47-quater-, 47-sexies- and 47-nonies of this Law subject to the exceptions and restrictions under articles 10, 11, 12, 15, 16, 17, 47 -decies.

In the event of recidivism, the court shall double the penalty and sentence the infringing party to 1 month up to 1 year in prison or order one of the two sanctions.

## ANNEX 3- LEBANON IPR LEGAL FRAMEWORK

### PATENT - CHARACTERISTICS - PROTECTION TERM

Law No. 240/2000 of 08/07/2000



#### DEFINITION

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of achieving a specific work or offers a new technical solution to a problem.

The patent grants its owner and their successors the exclusive right to exploit the patented invention.

The rights are conferred on the patent owner and not the inventor as the latter may transfer their rights.

The patent is an assignable or transferrable deed.



#### PATENTABILITY CRITERIA (ART. 2)

The invention is patentable if it meets the following criteria:

- It is novel.
- It involves an inventive activity.
- It is industrially applicable.

If such criteria are no longer met, the patent becomes null and void by a court order. The patent is invalid if it is proven the invention is a part of a prior art, does not involve an inventive activity, or is industrially inapplicable. (Art. 31, Para. 1)

It is worth noting that the patent is given on the applicant's own responsibility. The Office of Intellectual Property is not liable, in any way, (1) for the validity, value or novelty of the invention, (2) for the satisfaction of the industrial application or inventive activity criteria, (3) or for the accuracy or reliability of the invention description. (Art. 16)



#### PATENTABLE INVENTIONS (ART. 2)

- New industrial product.
- New process resulting in a known industrial product or outcome.
- Every new application of a known industrial method or means.
- New collection of known methods or means.
- New microorganisms.
- Newly created or discovered plant varieties, provided they meet all the following criteria:

They must be different from similar species already known through a finely distinct, important and rarely changeable characteristic or several characteristics forming in total a new vegetable species.

They must be homogeneous with respect to their characteristics in whole.

They must be stable, meaning they must remain compatible to their first definition at the end of each production cycle.



#### TERM OF EXPLOITATION OF THE INVENTION OBJECT OF PATENT /PROTECTION VALIDITY

**20 years** from filing the patent application before the Office of Intellectual Property.

(Art. 5)



### REGISTERING A PATENT

Whoever creates an industrial invention has the exclusive right to exploit the same, provided they have filed a patent application, registered such invention and obtained a patent certificate from the Office of Intellectual Property.

#### ATTACHMENTS AND PLACE OF PROCESS COMPLETION

1. Application form signed by the applicant or their agent, including:
  - Name, nationality, address and profession of applicant.
  - Title of the invention.
  - Name and address of the agent if any.
  - Date of filing the first international patent application if any.
  
2. A special power of attorney if the applicant is represented by an agent (such a power of attorney must bear the company's stamp if the applicant is a company and must be duly notarized by the notary public and certified by Lebanese Consulate in the event of an international application).
  
3. Copy of the commercial register (if the applicant is a Lebanese company) - from the Palace of Justice.
  
4. Commercial circular (if the applicant is a Lebanese company) - from the Palace of Justice.
  
5. The following documents must be presented in two copies in a sealed envelope:
  - Description and abstract of the invention (in Arabic, French or English).
  - Claims highlighting the novelty and originality characteristics to be protected (in Arabic, French or English - the Arabic version in two copies).
  - Abstract of the invention in Arabic in four copies along with:
    - Drawings related to the invention for illustrative purposes.
    - List of attachments, including all attached documents without any exception with the corresponding number of pages.
    - The patent owner or their agent must sign all attached documents to the application.
  - Attestation from Israel Boycott Office (Foreign companies and non-Lebanese persons, including Egyptians and Jordanians).

FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES
<ul style="list-style-type: none"> <li>Documents must be submitted to the Office of Intellectual Property at the Ministry of Economy and Commerce.</li> <li>Registering the application.</li> </ul>	Without delay.	Fiscal stamp of LBP 1,000 on each of the following documents: <ul style="list-style-type: none"> <li>Application</li> <li>Copy of the registration certificate.</li> <li>Commercial circular.</li> </ul>
Office of Intellectual Property: <ul style="list-style-type: none"> <li>Obtaining the receipt of payment of the filing fees.</li> <li>The President of the Office shall prepare the minutes of filing. (A copy thereof can be obtained).</li> </ul>		Fiscal stamp: <ul style="list-style-type: none"> <li>Special power of attorney: LBP 5,000.</li> <li>General power of attorney: LBP 10,000</li> </ul> LBP 25,000 / copy.
Ministry of Finance: Paying the filing fees.	Without delay.	LBP 50,000 against a payment receipt + a construction tax of 10%.
Office of Intellectual Property: <ul style="list-style-type: none"> <li>Handing back the blue copy of the receipt to the competent department.</li> <li>Receiving the receipt of payment of the first annuity.</li> </ul>	Upon completing the application.	
Ministry of Finance: <ul style="list-style-type: none"> <li>Paying the first annuity.</li> <li>Obtaining the blue and yellow copies certified.</li> </ul>	Without delay.	LBP 100,000 + a construction tax of 10% .
Office of Intellectual Property: <ul style="list-style-type: none"> <li>Submitting the blue copy of the payment receipt with a copy thereof.</li> <li>Obtaining an attestation of the patent filing (x 2 copies) to be published in the official gazette.</li> </ul>	1 or 2 days.	
Official gazette: Paying the publication fees.		Depending on the official gazette Publication fees in the official gazette LBP 5,000. An average fee of LBP 1,000 / word for each line published.
Office of Intellectual Property: <ul style="list-style-type: none"> <li>Submitting a copy of the certified attestation published in the official gazette with the publication authorization and a copy of the publication</li> <li>Receiving the certificate with a copy of the following documents:               <ul style="list-style-type: none"> <li>Description and abstract of the invention</li> <li>Drawings for illustrative purposes (if any)</li> <li>List of claims</li> <li>Abstract of the invention in Arabic</li> <li>List of filed documents</li> </ul> </li> </ul>	Without delay	Fiscal stamp of LBP 100,000 on the certificate.

**NOTE:**

- An annuity is due on the first day of each year following the date of filing the patent application, amounting to the total annuity of the previous year + an amount of LBP 50,000.
- Certified copy of minutes of filing: 250,000 LBP.
- Certified copy of patent: 50,000 LBP.
- Registration of sale or transfer: 90,000 LBP.
- Photocopy of sale registration, hachuring sale, or certification of no such sale or hachuring with respect to a certificate of invention: 32,000 LBP.
- Surtax for late payment of annual instalment: 100,000 LBP.
- Publication in the Official Gazette: LBP 5,000/six word with other specific for formatting.





## INFRINGEMENTS AND SANCTIONS

(In conformity with Art. 40 until Art. 49)

INFRINGEMENTS	PRIMARY SANCTIONS	SECONDARY SANCTIONS
<p><b>Counterfeiting</b></p> <ul style="list-style-type: none"> <li>• With respect to a patent duly disclosed to the public, any patent infringement constitutes a counterfeit crime.</li> <li>• Whoever infringes knowingly a patent duly disclosed to the public.</li> <li>• Other than the producer of the counterfeit item, the person that knowingly displays, puts to sale, uses or possesses for usage or sale the counterfeit item.</li> <li>• The persons that participated or intervened in counterfeiting or incited a third party to do so.</li> </ul>	<ul style="list-style-type: none"> <li>• Shall be subject to a penalty of LBP 5 to LBP 50 million and a prison sentence of <b>3 months to 3 years</b> or to either of the two following sanctions.</li> <li>• The sanctions shall be doubled in the following events: <ul style="list-style-type: none"> <li>- In the event of recidivism.</li> <li>- If the perpetrator has a contractual relation with the patent owner. <ul style="list-style-type: none"> <li>• Paying compensation for the moral and material damages, loss of profits and profits earned by the perpetrator.</li> <li>• Seizing the items object of litigation, including the machinery and tools used by the perpetrator.</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Seizing and destroying such items, machinery and tools that damaged the patent or that were used by the perpetrator to infringe such patent.</li> <li>• Posting the sentence in such locations decided by the court and publishing the same in two local newspapers at the expense of the losing party.</li> <li>• Revoking the right of the convicted party to vote or elect as a member of the Board, chambers of commerce, associations, unions, cooperatives and labor arbitration councils for a term of <b>5 years</b> maximum.</li> </ul>
<p><b>Disclosure of trade secrets.</b></p> <p>Whoever knows of classified industry or trade-related information because of their position, job, profession or business as an artist and discloses the same without legitimate reasons or uses the same for their own benefit or for the benefit of a third party; provided that:</p> <ul style="list-style-type: none"> <li>• The information owner has legally accessed such information.</li> <li>• The industrial or trade value of such information is the result of their classified nature.</li> <li>• The owner of such information has taken the necessary precautions to maintain their confidentiality.</li> </ul>	<ul style="list-style-type: none"> <li>• Shall be subject to a penalty of LBP 5 to LBP 50 million and a prison sentence of <b>3 months to 3 years</b> or</li> <li>• Either of the two aforementioned sanctions.</li> </ul>	

## PROTECTING THE COPYRIGHT



### DEFINITION

The literary and artistic property is classified under two categories: copyright and neighboring rights. A copyright includes the literary works and artistic works. As for the neighboring rights of the copyright, they include rights similar thereto.



### PROTECTED WORKS (ART. 2 AND ART. 3)

- Literary, artistic, and scientific publications
- Verbal works such as seminars, parodies, speeches unless presented in public meetings and assemblies, preparatory sessions, and so on.
- Audiovisual works.
- Musical works.
- Theatrical works and musicals.
- Choreographic works and entertainments in dumb show.
- Works of drawing, painting, sculpture, engraving, decorative arts, textile and lithography.
- Architectural drawings and photos.
- Computer programs of any language, including their preparatory design material.
- Illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.
- Plastic artworks.
- Expressions of folklore (Art. 4) in addition to secondary works:
- Translations of literary and artistic works.
- Adaptations and other alterations of a literary or artistic work.
- Arrangements of music
- Compilations of work and data authorized by the copyright owner or their general or special agents/successors, provided the content selection or arrangement is creative.



### PROTECTION APPLICABILITY (ART. 12 AND ART. 13)

#### CONCERNING WORKS

- If published for the first time in Lebanon.
- If published for the first time in any of the States acceding to either of the two following conventions: Berne Convention for the Protection of Literary and Artistic Works or WIPO Copyright Treaty.
- If published for the first time outside Lebanon and any of the States acceding to one of the aforesaid conventions **provided** such work is also published in Lebanon and in any of the States acceding to one of the aforesaid conventions during thirty days from the date of publication in the other State.

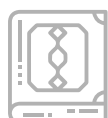
#### CONCERNING AUTHORS

- Lebanese authors regardless of the place of residence.
- Non-Lebanese authors provided they are nationals or residents of one of the States acceding to Berne Convention for the Protection of Literary and Artistic Works or WIPO Copyright Treaty.
- Authors who are citizens of any of the Arab League member States but not a State acceding to neither of the aforesaid conventions subject to reciprocity.
- Producers of audiovisual works that are headquartered or are residents in Lebanon or in any State acceding to Berne Convention for the Protection of Literary and Artistic Works or WIPO Copyright Treaty.

**PROTECTION TERM**

(FROM ART. 49 UNTIL ART. 53)

WORK	PROTECTION TERM
<b>Joint works.</b>	Throughout the life of the joint authors plus <b>50 years</b> following the decease of the last joint author applicable by the end of the year of the death of the latter.  If any of the joint authors dies without having any heirs, the other living joint authors or their heirs shall benefit from the share of the deceased unless there is an agreement to the contrary.
<b>Audiovisual works.</b>	<ul style="list-style-type: none"> <li>• <b>50 years</b> from the date of the first authorized publication of the work to the public starting from the end of the year of such publication.</li> <li>• In the event of non-publication, the 50-year period shall run effective from the end of the year in which the work is achieved.</li> </ul>
<b>Collective works.</b>	<ul style="list-style-type: none"> <li>• <b>50 years</b> from the date of the first authorized publication of the work to the public starting from the end of the year of such publication.</li> <li>• In the event of non-publication, the 50-year period shall run effective from the end of the year in which the work is achieved.</li> </ul>
<b>Material rights:</b> <ul style="list-style-type: none"> <li>• If the work is published under the author's real name.</li> <li>• If the work is published anonymously or under an assumed name.</li> </ul>	<ul style="list-style-type: none"> <li>• Throughout the life of the author plus 50 years applicable by the end of the year of death.</li> <li>• <b>50 years</b> from the date of the first authorized publication of the work to the public starting from the end of the year of such publication.</li> </ul>
<b>Moral rights.</b>	Lifetime, perpetual protection (Transferable to third parties as per a testament or by virtue of inheritance laws).
<b>Publications under the name of a legal person.</b>	<b>50 years</b> as of the end of the publication.
<b>Posthumous publications.</b>	<b>50 years</b> as of the end of the publication.

**RIGHTS CONFERRED ON THE COPYRIGHT OWNER****MATERIAL RIGHTS**

Right to authorize or prohibit any of the following actions:

- Reproducing, printing, recording or copying the work using all available means.
- Translating, quoting, amending, altering, summarizing or adapting the work into another language or arranging the musical composition.
- Selling, distributing or renting the work.
- Importing copies of the work made abroad.
- Performing the work.

It is worth noting that the material rights of the author are transferable, whether partially or totally.

**MORAL RIGHTS**

Right to publish the work and decide of the publication mode and means.

- Right to claim the authorship of a specific work and to mention the author's name on each copy of the original work each time the work is publicly used.
- Right to use a pen name or remain anonymous.
- Prevent any alteration, update, amendment to the work in a way jeopardizing the dignity, reputation or fame of the author or their artistic, literary or scientific status.
- Right to withdraw from waiver agreements or to dispose of the material rights even following the publication if such withdrawal is necessary to maintain the reputation and persona of the author due to changes in their beliefs or circumstances, provided the author indemnifies the third party against the damages resulting from the said withdrawal:

The author's moral rights are inalienable.

The moral rights of the author cannot be seized.

The moral rights of the author may be transferred to a third party as per a testament or by virtue of inheritance laws.



## NEIGHBORING RIGHTS

PROTECTION APPLICABILITY	RIGHTS OF HOLDERS OF NEIGHBORING RIGHTS	PROTECTION TERM
<ul style="list-style-type: none"> <li>• If the producer of the phonogram is Lebanese or national of a contracting State to the Rome Convention (Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations) signed on October 26, 1961.</li> <li>• If the first fixation of the sound is made in any contracting State to the 1961 Rome Convention.</li> <li>• If the phonogram is first published in any contracting State to the 1961 Rome Convention.</li> <li>• If the sound recording is first published in a State not acceding to the Rome Convention and published afterwards, within 30 days of the first publication</li> </ul>	<p>Right to authorize or prohibit any of the following actions:</p> <ul style="list-style-type: none"> <li>• Copying directly and indirectly their phonograms.</li> <li>• Renting their phonograms for commercial purposes.</li> </ul>	<p>50 years as of the end of the year of the first fixation onto a material object.</p>
<ul style="list-style-type: none"> <li>• If the establishment or company is headquartered in Lebanon or in any State acceding to the 1961 Rome Convention.</li> <li>• If the broadcast is transmitted from transmitters situated on the Lebanese territory or on the territory of any State acceding to the 1961 Rome Convention.</li> </ul>	<p>Right to authorize or prohibit any of the following actions:</p> <ul style="list-style-type: none"> <li>• Rebroadcasting their broadcasts in any way.</li> <li>• Communicating to the public their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.</li> <li>• Fixating their broadcasts onto material objects for commercial purposes.</li> <li>• Reproducing unauthorized fixations of their television and radio broadcasts.</li> </ul>	<p>50 years as of the end of the year of broadcast.</p>
<ul style="list-style-type: none"> <li>• If the performance takes place in Lebanon or in any State acceding to the 1961 Rome Convention.</li> <li>• If the performance is incorporated in a phonogram which is protected under Art. 36 of this Law.</li> <li>• If the unfixed performance, not being incorporated in a phonogram, is carried by a broadcast protected under Art. 38 of this Convention.</li> </ul>	<p>Right to authorize or prohibit any of the following actions:</p> <ul style="list-style-type: none"> <li>• Broadcasting or communicating to the public their unfixed performance unless such broadcast or communication rebroadcasts a performance the broadcast of which was already authorized.</li> <li>• Incorporating or recording their unfixed performance in or on a material object.</li> <li>• Reproducing, selling and renting phonograms that include the unauthorized fixation of their performance.</li> <li>• Throughout their life, performers may claim the authorship of their performance and may prohibit any alteration or amendment thereto.</li> </ul>	<p>50 years as of the end of the year of delivering the performance.</p>
	<p>Right to authorize or prevent the reproduction of such works by reprography or for commercial purposes.</p>	<p>50 years as of the end of the year of publication.</p>

## EXCEPTIONS TO THE PROTECTION

(FROM ART. 23 UNTIL ART. 34 AND ART. 47)

**Without the consent of the copyright owner and without indemnity thereto, the following actions are authorized to any natural person:**

**a. Reproduce, record or make a single copy of any work protected under this Law, providing the following criteria are met:**

- Such actions are for their personal or private use.
- The work has been legally published.

Note: The reproduction or copy of the original within a company or any other work environment shall not be considered for a personal and private use.

Such exception is not applied if the reproduction, record or copy harms the other rights and interests of the copyright owner.

In particular, the following actions are prohibited:

- Execute an architectural work in the form of a complete or partial construction.
- Reproduce, record or copy any work of which a limited number of original copies are published.
- Photocopy the entire or a large part of a book.
- Record or transfer any type of data compilations.
- Record or copy computer programs unless such record or copy is made by the person authorized by the copyright owner in order for them to use the program and for the sole purpose of making a single copy for use in the event of loss or damage of the original copy.

**b. Reproduce or make a limited number of copies of computer programs by the nonprofit public libraries, educational institutions, colleges, and universities providing the following criteria are met:**

- Such parties possess at least one original copy of such programs to be made available to students for free; and
- The Ministry of Education, the Ministry of Culture and Higher Education and the Ministry of Technical and Vocational Education issue implementing decisions relevant thereto. (On July 1, 2002, Decision No. 16/2002 was issued in this regard). The student may reproduce or make a single copy for their personal use.

**c. Use a limited part of the work legally published in order to provide a review thereon, or support a point of view or for quotation or educational purposes, providing the following criteria are met:**

- The section used must not exceed the required and commonly approved size in such events.
- The name of the author and source must always be mentioned if the work bears the author's name.

**d. Reproduce or copy articles published in newspapers and magazines or extracts of a work, providing the following criteria are met:**

- Such action is strictly for educational purposes to the extent necessary to serve the said purpose.
- The name of the author or authors and the publisher must be mentioned with every copy or reproduction of the article or work if the said names are mentioned in the original work.

**e. Reproduce or make an additional copy by nonprofit public libraries, providing the following criteria are met:**

Such parties possess at least one original copy in order to maintain that additional copy to be used only if the original is damaged or lost.

**f. Reproduce, make or record a copy of the audiovisual work with a particular artistic value, mainly if the copyright owner refuses unfairly to authorize such copy:**

Pursuant to the decision of the Minister of Education and Higher Education for the purpose of maintaining the Ministry's archives.

**g. Reproduce, copy or record any work to be used in legal or administrative proceedings** to the extent necessary for such proceedings.

**h. The media may use extracts of the works seen or heard of during the ongoing developments in the course of reporting such events in the media, provided that:**

- This is done to the extent permissible to media as agreed upon.
- The name of the author and the source are mentioned.

**i. The media may publish pictures of architectural works, visual artistic works, photographic works or works of applied arts, provided that:**

Such works are made available in places open to the public.

**j. Display or perform a work in public during the following occasions:**

- Official ceremonies within the limits required for such ceremonies.
- Within the range of activities carried out by educational institutions during which teachers or students use the work, provided that the audience is limited to the teachers, students, students' parents and persons directly involved in the activities of the said educational institution.

**k. Display an artistic work in museums or in exhibitions organized inside museums, provided that:**

- The museum owns the material object that contains the work.
- Such display is not prejudicial to the legal interests of the author.

**l. Reproduce or make a copy of the artistic work in order to be published in catalogs intended to promote the sale of the work, provided that:**

- Such reproduction or copy is not prejudicial to the legal interests of the author.



#### **REGISTERING AN ARTISTIC, LITERARY, MUSICAL OR CINEMATOGRAPHIC PRODUCT**

Any person creating an artistic, literary, musical or cinematographic product has the absolute ownership right over such production without any formalities. Filing a registration application is optional and the act of registration shifts the onus of proof from the author to the infringing party.

#### **ATTACHMENTS AND PLACE OF PROCESS COMPLETION**

1. Application form signed by the applicant or their agent, including:
  - Title and nature of work, phonogram, performance, or broadcast.
  - Name, capacity and address of the author or owners of the neighboring rights.
  - Type of deed on which the applicant relies to apply for the registration if the applicant is other than the author or owners of the neighboring rights.
  - Name and address of the authorized person in charge of the material achievement of the work (printer, molder, and so on.).
2. If the applicant is a person other than the author or owner of the neighboring right, a copy or a summary of the document on the basis of which the registration application is filed (power of attorney, assignment, contract or agreement...).
3. Three copies of the work or the object of the neighboring right.  
In respect to pictures, sculptures and other works having only one original, copies thereof shall be replaced with a photographic reproduction.
4. A copy of the commercial register if the applicant is a Lebanese company (not necessarily certified) - from the Ministry of Justice.
5. A copy of the commercial circular if the applicant is a Lebanese company - from the Ministry of Justice.

FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES
<ul style="list-style-type: none"> <li>Submitting the documents before the registrar of the Office of the Intellectual Property.</li> <li>Registering the application.</li> <li>Keeping the number and date to follow up the application.</li> <li>Receiving the payment receipt.</li> </ul>	Without delay.	<ul style="list-style-type: none"> <li>Fiscal stamp of LBP 1,000 on each of the following documents:               <ul style="list-style-type: none"> <li>Application form</li> <li>Copy of the registration certificate.</li> <li>Copy of the commercial circular</li> <li>Each copy of the production.</li> </ul> </li> <li>Fiscal stamp on the power of attorney:               <ul style="list-style-type: none"> <li>General: LBP 10,000</li> <li>Special: LBP 5,000.</li> </ul> </li> </ul>
Ministry of Finance: <ul style="list-style-type: none"> <li>Receiving the payment receipt.</li> <li>Receiving the yellow and blue certified copies thereof.</li> </ul>	Without delay.	<ul style="list-style-type: none"> <li>Printed work: LBP 50,000.</li> <li>Motion picture, video film or phonogram: LBP 175,000.</li> <li>Daily or periodic publication (for one year): LBP 75,000.</li> <li>Picture, drawing, map, post card, photograph or daily or periodic publication (1 copy): LBP 25,000.</li> <li>Any other material: LBP 50,000.</li> <li>Registering a contract on filing the application before the Office: LBP 50,000 + a construction tax of 10%.</li> </ul>
Office of Intellectual Property: <ul style="list-style-type: none"> <li>Submitting the blue copy of the payment receipt with a copy thereof</li> <li>Obtaining an attestation of the registration certificate of the literary production (x 2 copies) to be published in the official gazette</li> </ul>	One day or without delay.	
Official gazette: <ul style="list-style-type: none"> <li>Receiving a copy of the certified attestation with the publication authorization and a copy thereof</li> </ul>	Without delay	Depending on the official gazette  Publication fees in the official gazette LBP 5,000. An average fee of LBP 1,000 / word for each line published.
Office of Intellectual Property: <ul style="list-style-type: none"> <li>Receiving the original of the attestation.</li> <li>Receiving a copy of the production to be certified by the Office.</li> </ul>	One day or without delay.	Fiscal stamp: LBP 100,000.
Ministry of Finance: <ul style="list-style-type: none"> <li>Paying the fees related to the certified true copy of the registration certificate (The applicant may request a copy of the certificate).</li> </ul>		LBP 25,000 + a construction tax of 10%.
Office of Intellectual Property: <ul style="list-style-type: none"> <li>Returning the receipt to the Office.</li> <li>Obtaining the copy.</li> </ul>	Without delay.	Fiscal stamp: LBP 1000.



## INFRINGEMENTS AND SANCTIONS

### INFRINGEMENTS

- Any person that fraudulently puts or instructs another person to put a false name on a literary or artistic work.
- Any person that fraudulently imitates the signature or the logo of the author with the intent to mislead the buyer.
- Any person that knowingly imitates a literary or artistic work.
- Any person that knowingly sells, possesses, offers for sale or makes available an imitated or a plagiarized work.
- Any person that knowingly and with intent to make a profit, infringes or attempts to infringe any copyright or neighboring right under this Law.
- Any person that manufactures or imports for purposes of sale or rental, offers for sale or rental, possesses for the purpose of sale or rental, sells, installs or rents any device, equipment or machine manufactured in whole or in part to receive illicitly any radio or television broadcast or transmission destined to that section of the public that receives the said broadcast or transmission against subscription fees.
- Any person that arranges or facilitates for third parties the reception of the transmission or broadcast referred above.

**\* It shall be strictly prohibited to import, consign to a warehouse or a free zone, or transit phonograms or works that are imitations of the original phonograms or works enjoying legal protection in Lebanon. Such phonograms and works shall be seized wherever they are found.**

### PRIMARY SANCTIONS

- Shall be subject to a prison sentence from 1 month to 3 years and a penalty of LBP 5 million to LBP 50 million or either of the two following sanctions.

In the event of recidivism, the sanction shall be doubled.

- Paying fair compensation to the right holder for the material or moral injury and damage incurred; the value of which to be decided by the court.
- Seizing the items object of litigation, including the machinery and tools used by the perpetrator.
- Ordering the closure of the premises, the commercial establishment or the radio or television station that infringes copyright for a period varying from one week to one month.
- Ordering the destruction of all unauthorized copies and all the equipment and the devices used to produce such copies.

### SECONDARY SANCTIONS

- Posting the sentence in such locations decided by the court and publishing the same in two local newspapers at the expense of the losing party.
- If the convicted party represents a newspaper, magazine or TV/ radio broadcasting station, the sentence must be at all times published in the said newspaper, magazine or TV/radio broadcasting station in addition to the aforesaid newspapers.



## INDUSTRIAL DRAWINGS AND MODELS

DECISION NO. 2385 OF 01/17/192



### DEFINITION OF AN INDUSTRIAL DESIGN OR MODEL (ART.2)

An industrial drawing or model constitutes the ornamental or aesthetic aspect of an article. An industrial design may consist of three dimensional features, such as the shape of an article, or two-dimensional features, such as patterns, lines or color.

The industrial drawing or model must not depend on a function in order to be protected in accordance with most of the national laws. In other terms, the industrial drawing or model has an aesthetic nature mainly. The protection is not extended to the technical elements of the article to which such protection applies.



### CRITERIA OF THE REGISTRABLE INDUSTRIAL DESIGN OR MODEL (ART. 49)

An application for registration can be filed for the industrial drawing or model can upon satisfying the following criteria of novelty and originality.



### FORMS OF INDUSTRIAL DRAWINGS AND MODELS (ART. 50)

Industrial drawings and models are applied to a wide variety of products of industry and handicraft items, including technology or medical equipment and tools, watches and jewelry, and other luxury goods, in addition to home appliances, vehicle frames, buildings, textile designs and leisure goods.



### PROTECTION TERM (ART. 62)

**25 years** starting from the date of the first filing. The owner of the right or owners of the neighboring rights may request the extension of the filing deadline for an additional **25 years**.



### REGISTERING AN INDUSTRIAL DRAWING OR MODEL

Any inventor of an industrial drawing or model has the right to use such drawing or design, including selling the same, providing the drawing or model has been duly filed and registered and a registration certificate has been obtained from the Office of Intellectual Property.

### ATTACHMENTS AND PLACE OF PROCESS COMPLETION

The applicant may submit, either in person or through their legal representative, an industrial drawing or model registration application to the Office (based on the form approved by the Ministry). The application must include the following attachments:

- A detailed description of the architectural design of the drawing or model to be protected with the dimensions relevant thereto in two copies signed by the applicant or their legal representative.
- Illustrative drawings related to the drawing or model to be protected in two copies signed by the applicant or their legal representative.
- Copy of the commercial register (if the applicant is a Lebanese commercial establishment or company) - from the Palace of Justice.
- Copy of the commercial circular (if the applicant is a Lebanese company) - from the Palace of Justice.
- A power of attorney duly certified (if the application is submitted by a legal representative).
- Attestation from Israel Boycott Office (Foreign companies and non-Lebanese persons, including Egyptians and Jordanians).

FORMALITIES	DURATION OF COMPLETION	PAYABLE FEES
<b>Office of Intellectual Property:</b> <ul style="list-style-type: none"> <li>Submitting the documents before the registrar of the Office of the Intellectual Property.</li> <li>Registering the application.</li> <li>Keeping the number and date to follow up the application.</li> <li>Receiving the order of payment of the registration fee and publication fee.</li> </ul>	2 days.	<ul style="list-style-type: none"> <li>Fiscal stamp of LBP 1,000 on each of the following documents: <ul style="list-style-type: none"> <li>- Application form.</li> <li>- Copy of the registration certificate.</li> <li>- Copy of the commercial circular.</li> </ul> </li> <li>Fiscal stamp: <ul style="list-style-type: none"> <li>- On the special power of attorney: LBP 5,000.</li> <li>- On the general power of attorney: LBP 10,000.</li> </ul> </li> </ul>
<b>Ministry of Finance or Bank:</b> <ul style="list-style-type: none"> <li>Settlement of the payment order.</li> <li>Obtaining the green and yellow certified copies thereof.</li> </ul>	Without delay.	LBP 200,000 <ul style="list-style-type: none"> <li>LBP 9,000 / form + a construction tax of 10%.</li> <li>Publication fees in the official gazette LBP 5,000. An average fee of LBP 1,000 / word for each line published.</li> </ul>
<b>Office of Intellectual Property:</b> <ul style="list-style-type: none"> <li>Submitting the green copy of the payment receipt relevant to the registration and publication fees.</li> <li>Receiving the original of the certificate along with a copy of the description and the drawing/model to be protected.</li> </ul>	3 days.	Fiscal stamp of LBP 100,000.
<b>Official gazette:</b> Receiving a copy of the certified attestation published in the official gazette with the publication authorization.	Without delay.	Depending on the official gazette.
<b>Office of Intellectual Property:</b> <ul style="list-style-type: none"> <li>Submitting a copy of the certified attestation published in the official gazette with the publication authorization and a copy of the publication.</li> <li>Receiving the original of the attestation.</li> </ul>		Fiscal stamp: LBP 100,000.

**FEES:**

- Each additional hundred or fraction of a hundred drawings or samples: 100,000 LBP
- Each additional drawing or sample deposited as part of the first hundred: 9,000 LBP
- Each additional drawing or sample deposited as part of the second hundred: 4,800 LBP
- Each additional drawing or sample deposited as part of the third hundred: 3,200 LBP
- Opening or classifying deposited drawings and samples: 3,200 LBP.
- Application to open drawings or samples during the first 5 years after deposit: 200,000 LBP.
- Additional fee for each of the first fifty drawings or samples: 17,000LBP.
- Additional fee for each drawing or sample over fifty: 9,000 LBP.
- Application to open or classify a deposit at the termination of the second five-year term following the first deposit: 200,000 LBP.
- Additional fee for each drawing or sample: 50,000 LBP.
- Extensions of deposits; Application for extension of deposit for an additional 25 years: 300,000 LBP.
- Additional fee for each drawing: 100,000LBP.
- Photocopy of each drawing or sample deposited 32,000.
- Publication in the Official Gazette: LBP 5,000/six word with other specific for formatting.



## INFRINGEMENTS AND SANCTIONS

INFRINGEMENTS	PRIMARY SANCTIONS	SECONDARY SANCTIONS
<ul style="list-style-type: none"> <li>Any damage knowingly incurred upon the rights protected under this Decision with respect to industrial drawings and models.</li> <li>If the perpetrator is or was an assistant in any capacity whatsoever to the person whose rights are infringed.</li> </ul>	<ul style="list-style-type: none"> <li>Shall be subject to a penalty of LBP 25 to LBP 250.</li> <li>Shall be subject mandatorily to a prison sentence of 2 months to 5 months.</li> </ul>	<ol style="list-style-type: none"> <li>Even in the event of acquittal, the following actions must always be taken:               <ul style="list-style-type: none"> <li>Order the seizure of the items that damaged or were used to infringe the rights protected under this Decision.</li> <li>Order the destruction of trademark, logos, signs and indications violating this Decision.</li> </ul> </li> <li>In default of any mandatory trademark               <ul style="list-style-type: none"> <li>The court shall decide to affix such trademark to the product subject to the mandatory trademark provision or to seize and sell the product to the benefit of the injured party or as a payable penalty.</li> </ul> </li> <li>Even in the event of acquittal:               <ul style="list-style-type: none"> <li>The court may rule the payment of indemnity to the injured party.</li> </ul> </li> <li>Every judgment rendered with respect to any offense or matter related to unfair competition:               <ul style="list-style-type: none"> <li>Ruling the disqualification of the convicted party from being elected as a member of the chambers of commerce, associations, R&amp;D committees, unions, cooperatives and in general any elected assembly.</li> <li>Posting the sentence in such locations decided by the court and publishing the same in two local newspapers, one Arabic and the other French, appointed by the court rendering the initial judgment.</li> </ul> </li> </ol>
<ul style="list-style-type: none"> <li>If the act is related to a pharmaceutical product.</li> </ul>	<ul style="list-style-type: none"> <li>The penalty decided upon shall not be less than LBP 50,000.</li> </ul>	
	<p>In the event of recidivism, the sanction mandatorily imposed shall not be less than LBP 250 and not higher than LBP 500 in addition to a prison sentence from 2 months to 2 years.</p>	



## TRADEMARKS: FORMS - OWNERSHIP - USE

DECISION NO. 2385 OF 01/17/1924

### DEFINITION OF A TRADEMARK - TRADEMARK FORMS AND CHARACTERISTICS (ART. 69 & ART. 70)

- A trademark is a sign capable of distinguishing the goods or services of one person or enterprise from those of other persons or enterprises.
- A trademark is typically any distinguishing name, logo, symbol, seal, raised (holographic) letters/traits/designs, small drawings, figures and in general, any sign that is intended to help the customer, trader or manufacturer distinguish between goods/products and identify the origin and source of the goods, industrial, commercial, agricultural or forest products, or minerals.
- A trademark is in essence optional and may be a personal or common mark.



### PROHIBITIONS RELATED TO THE TRADEMARK (ART. 71)

- A trademark must not include any national or international emblems.
- A trademark must not mention any word, sign or symbol denoting revolution or contrary to the public order and morality.



### TRADEMARK OWNERSHIP (ART. 72 AND ART. 74)

- The ownership of a trademark cannot be claimed unless such trademark has been already registered before the Office of Intellectual Property.
- The ownership of a registered trademark that the applicant has enjoyed for a five-year term following the date of filing the registration application cannot be denied after the expiry of such term unless the plaintiff submits written evidence that the applicant knew, upon filing the registration application, such trademark had been used.

### USE OF THE TRADEMARK BEFORE FILING A REGISTRATION APPLICATION (ART. 75)

- The plaintiff that submits written evidence upon the expiry of the five-year term following the date of filing the registration application about having used the trademark freely and continuously before the said date shall maintain the right to use the trademark for 15 years from the filing date.

The right to use the trademark can be transferred upon transferring the commercial establishment.



In order to safeguard their right, the right owner may file an unfair competition claim.

## REGISTERING THE TRADEMARK

Every person, establishment or company has the right to use the trademark and obtain a registration certificate from the Office of Intellectual Property

PAYABLE FEES	DURATION OF COMPLETION	FORMALITIES
<ul style="list-style-type: none"> <li>Fiscal stamp of LBP 1,000 on each of the following documents:               <ul style="list-style-type: none"> <li>- Application form.</li> <li>- Copy of the registration certificate.</li> <li>- Copy of the commercial circular.</li> </ul> </li> <li>Fiscal stamp:               <ul style="list-style-type: none"> <li>- Special power of attorney: LBP 5,000.</li> <li>- General power of attorney: LBP 10,000.</li> </ul> </li> </ul>	3 days.	<ul style="list-style-type: none"> <li>Submitting the documents before the registrar of the Office of the Intellectual Property.</li> <li>Registering the application.</li> <li>Keeping the number and date to follow up the application.</li> <li>Conducting a prior art search to verify the trademark has not been registered.</li> <li>If it appears the trademark has been already registered, the applicant must be notified to this effect. If the applicant insists on such registration on their own responsibility, they shall sign an acknowledgment of liability in this regard.</li> <li>In the event of rejection, the applicant shall be notified.</li> </ul>
N/A	1 day.	<ul style="list-style-type: none"> <li>Receiving the order of payment of the registration fee.</li> </ul>
LBP 275,000 x number of classes (the type, item or good bearing the trademark) for 15 years.	Without delay.	<b>Ministry of Finance:</b> <ul style="list-style-type: none"> <li>Receiving the payment receipt</li> <li>Receiving the yellow and blue certified copies thereof.</li> </ul>
N/A	2 days.	<b>Office of Intellectual Property:</b> <ul style="list-style-type: none"> <li>Submitting the blue copy of the payment receipt with a copy thereof.</li> <li>Obtaining an attestation of the trademark filing (x 2 copies) to be published in the official gazette.</li> </ul>
LBP 5,000 An average fee of LBP 1,000 / word per line published. Around LBP 200,000 / line.	Without delay.	<b>Official gazette:</b> <ul style="list-style-type: none"> <li>Receiving a copy of the certified attestation published in the official gazette with the publication authorization.</li> </ul>
Fiscal stamp on the certificate of LBP 100,000.	Without delay or 1 day.	<b>Office of Intellectual Property:</b> <ul style="list-style-type: none"> <li>Submitting a copy of the certified attestation published in the official gazette with the publication authorization and two copies of the publication enclosed therewith.</li> <li>Receiving the original of the attestation.</li> </ul>

## ATTACHMENTS AND PLACE OF PROCESS COMPLETION

1. An application for trademark registration signed by the applicant (as per the form approved by the Ministry).
2. A video of the trademark.
3. An image of the trademark (x3 copies).
4. A printed authorization made in 3 copies in the form approved by the Ministry and bearing an image of the trademark in the footer.
5. Copy of the commercial register not certified (if the applicant is a Lebanese establishment or company) - from the Palace of Justice.
6. Copy of the commercial circular not certified (if the applicant is a Lebanese company) - from the Palace of Justice.
7. A power of attorney duly certified (if the application is filed through the legal agent), mentioning the name of the trademark and type of goods or services object of the trademark.

Attestation from Israel Boycott Office (Foreign companies and non-Lebanese persons, including Egyptians and Jordanians).

It is noteworthy that anyone seeking to carry out an industrial activity in Lebanon under an international trademark registered in Lebanon must submit to the Lebanese Ministry of Economy an authorization, waiver or license from the original owner of the trademark to be certified by the Chamber of Commerce and Industry and the Lebanese Consulate in the country of origin. Such a deed must explicitly authorize the applicant to launch such an industrial branch and exploit the registered trademark.

The trademark to be affixed to the products of such branch that will be based in Lebanon must be also explicitly indicated in the aforesaid authorization, waiver or license.

The following expression "Lebanese branch" must be indicated on the package of each item made in Lebanon in accordance with the aforesaid conditions, in addition to the name of the original international manufacturer and the trademark used thereon.

-Art. 1 and Art. 2 of the Decision No. 83 issued on 01/29/1960 related to the conditions and terms of establishing a Lebanese industrial activity under an international trademark registered in Lebanon.

<http://www.legallaw.ul.edu.lb/Law.aspx?lawId=201968>

#### **NOTE:**

The protection runs effective from the day and time of returning the payment receipt to the Office of Intellectual Property upon settlement. The civil servant at the Office must then indicate on such receipt the date and time of receipt submission.

#### **FEES:**

##### **INDIVIDUAL TRADEMARKS**

- For 15 years: 250,000 LBP
- For 30 years: 500,000 LBP
- For 45 years: 750,000 LBP
- For 60 years: 1,000,000 LBP
- Renewal of filing every 15 years: 250,000 LBP

##### **COLLECTIVE TRADEMARKS**

- For 40 years: 250,000 LBP
- For 45 years: 280,000 LBP
- For 60 years: 340,000 LBP
- Renewed filings every 15 years: 520,000 LBP
- Registration of transfer of trademark ownership: 90,000 LBP
- Surtax for late registration of transfer of trademark ownership: 50,000 LBP (for each 2month period)
- Other copies or certificates: 32,000 LBP
- Publication in the Official Gazette LBP 5,000/six word with other specific

## INFRINGEMENTS AND SANCTIONS

INFRINGEMENTS	PRIMARY SANCTIONS	SECONDARY SANCTIONS
<p><b>Trademark Counterfeiting:</b></p> <ul style="list-style-type: none"> <li>Any person indicating an unregistered trademark as registered.</li> <li>Any person knowingly imitating or using the registered trademark without the authorization of the trademark owner, even if they add to the trademark other expressions or words such as a type, item, hyphenated name... in order to deceive the buyer.</li> <li>Any person affixing to their products or goods of any type a trademark owned by a third party.</li> <li>Any person that knowingly sells or offers to sell, with fraudulent intent, a product bearing a counterfeit trademark or a mark imitating the original.</li> <li>Any person that delivers a product other than the one ordered under a specific trademark.</li> </ul>	<ul style="list-style-type: none"> <li>Shall be subject to a penalty of LBP 50 to LBP 500 and a prison sentence of 3 months to 3 years or to either of the two aforementioned sanctions.</li> </ul>	<p>1- Even in the event of acquittal, the following actions must be always taken:</p> <ul style="list-style-type: none"> <li>Order the seizure of the items that damaged or were used to infringe the rights protected under this Decision.</li> <li>Order the destruction of trademark, logos, signs and indications violating this Decision.</li> </ul> <p>2- In default of any mandatory trademark</p>
<p><b>Producing or selling a counterfeit trademark with fraudulent intent:</b></p> <ul style="list-style-type: none"> <li>Any person producing or using a trademark similar to but not a copy of another one with fraudulent intent in order to deceive the buyer.</li> <li>Any person using a trademark bearing indications intended for defrauding the buyer of the required product type.</li> <li>Any person that knowingly sells or offers to sell a product under a trademark similar to another with fraudulent intent or affixing indications thereto intended for defrauding the buyer of the product type.</li> </ul>	<ul style="list-style-type: none"> <li>Shall be subject to a penalty of LBP 50 to LBP 250 and a prison sentence of 2 months to 2 years or to either of the two aforementioned sanctions.</li> </ul>	<ul style="list-style-type: none"> <li>The court shall decide to affix such trademark to the product subject to the mandatory trademark provision or to seize and sell the product to the benefit of the injured party or as a payable penalty.</li> </ul> <p>3- Even in the event of acquittal:</p> <ul style="list-style-type: none"> <li>The court may rule the payment of indemnity to the injured party.</li> </ul>
<p><b>Illegal Trademark:</b></p> <ul style="list-style-type: none"> <li>Any person that fails to affix to their products a mandatory trademark under the law.</li> <li>Any person that sells or offers to sell a product without the mandatory trademark for such type of products.</li> <li>Any person that includes in their trademark symbols proscribed under Art. 71 of the Law.</li> <li>Any person violating Art. 69 of this Decision providing for the optional trademark unless there is a text of law to the contrary.</li> </ul>	<ul style="list-style-type: none"> <li>Shall be subject to a penalty of LBP 50 to LBP 500 and a prison sentence of 2 months to 2 years or to either of the two aforementioned sanctions.</li> </ul>	<p>4- Every judgment rendered with respect to any offense or matter related to unfair competition:</p> <ul style="list-style-type: none"> <li>Ruling the disqualification of the convicted party from being elected as a member of the chambers of commerce, associations, R&amp;D committees, unions, cooperatives and in general any elected assembly.</li> </ul>
<p><b>Misappropriation of trademark</b></p> <p>The penal code forbids the misappropriation of or any attempt to misuse the trademark of a third party under a penalty of LBP 100,000 to LBP 1,000,000 and a prison sentence of 3 months to 3 years or either of the two aforesaid sanctions (Art. 716 of the Lebanese penal code).</p>	<ul style="list-style-type: none"> <li>Shall be subject to a penalty of LBP 50 to LBP 500 and a prison sentence of 3 months to 3 years or to either of the two aforementioned sanctions.</li> </ul>	<ul style="list-style-type: none"> <li>Posting the sentence in such locations decided by the court and publishing the same in two local newspapers, one in Arabic and the other in French, as appointed by the court rendering the initial judgment.</li> </ul>
	<p>In the event of recidivism, the sanction imposed must not be:</p> <ul style="list-style-type: none"> <li>Less than the maximum limit under these articles and</li> <li>Not higher than the maximum limit in addition to a prison sentence of 2 months to 5 years.</li> </ul>	

## CASES OF IP BEFORE LEBANESE COURTS

### EXAMPLE

#### 1. IN THE CASE OF THE COUNTERFEIT PACKAGE OF THE COFFEE MATE PRODUCT

- Nestlé Co. brought a complaint to the Public Prosecutor at the Court of Appeal in South Lebanon against the defendant about the criminal counterfeiting of the original package of Coffee Mate products adopted by the plaintiff and the sale and distribution of the counterfeit products.
- The Public Prosecutor filed a lawsuit before the individual judge of the criminal court in Saida with respect to the criminal counterfeiting and sale of counterfeit products as well as infringing the rights related to a duly registered trademark owned by a third party.
- The defendant claimed that he was an appointed distributor by the Lebanese-based manufacturer, owner of “Coffee Creamer”, a trademark duly registered in Syria and other countries. The defendant also certified that the distributed product and the product of the plaintiff have some similarities, which the defendant believes to be something normal and not suspicious. In addition, the defendant alleged having distributed the product object of the claim prior to the date of filing and registering the trademark owned by the plaintiff.
- Having examined the case file, the judge concluded that the package of the City Creamer product bore a striking similarity with Coffee Mate’s owned by the plaintiff, thus causing great confusion among consumers. The judge also decided such an act constituted deliberate counterfeiting by the defendant, even if the latter was not the manufacturer. It appeared to the judge that the defendant failed to submit conclusive evidence that the date of registration in Syria of the package of the product distributed by the same preceded the date of registration of the package of the plaintiff’s product at the Ministry of Economy and Commerce in Lebanon.
- Accordingly, the judge ruled under Order No. 852/2013 that the defendant was guilty of the charges under Art. 702 and Art. 714 of the Penal Code (Registered trademark counterfeiting and unfair competition); Art. 105 and Art. 106 of Law No. 2385/24 (Trademark counterfeiting and production and sale of counterfeit goods with fraudulent intent); and Art. 85 of Law No. 75/99 (Counterfeiting or offering to sell a literary or artistic work ...) and pronounced the maximum punishment in accordance with Art. 181 of the Penal Code providing for a prison sentence of 3 months and a penalty of LBP 7,000,000 while sticking to the penalty as an alternative to imprisonment under Art. 254 of the Penal Code.

The judge also compelled the defendant to withdraw, at their expense, all products distributed under City Creamer trademark, which are a reproduction of the package of Coffee Mate products produced and distributed by the plaintiff and forbade to distribute such counterfeit products without the authorization of the plaintiff. The judge also bound the defendant to pay LBP 25 million in compensation to the plaintiff.

The individual judge of the criminal court in Saida, President Maher Zain, Order No. 852/2013, IP Lebanon Highlights, Sader & Associates, July 2014, Issue no. 4, extract from the website <https://www.saderlaw.com/iphilights/IP-Lebanon-Highlights-Arabic-2014.pdf>

### EXAMPLE

#### 2. PIRACY OF “GHADI” MOVIE BY GEORGE KHABBAZ

- The Talkies S.A.L filed a lawsuit against persons unknown before the Public Prosecutor in its capacity as the producer of “Ghadi” motion picture.
- On 12/23/2013, the case was referred to the Cybercrime and Intellectual Property Bureau of the Judicial Police Department.
- In light of the investigations conducted, a number of illegal DVD copies of the pirated movie were seized and shop owners selling such illegal copies were interrogated and ended up revealing the sources of such DVDs. The perpetrators of such criminal acts were also interrogated, confessing that one of them owned the DVD ripping software and tools to reproduce illegal copies of pirated DVDs while the other took charge of printing the film poster of the illegal copies. The DVD ripping software and tools along with a number of printed copies of the film poster were seized in the perpetrators’ shops. The interrogations also revealed the perpetrators had obtained the original copy of the movie from a third party entrusted with the delivery of the film to one of the movie theaters.

Accordingly, the illegal copies of the movie were withdrawn from the market; a quantity seized by the Internal Security Forces and the rest bought by the producer. Larger shops also handed over the illegal copies to the competent authority.



## EXAMPLE

**3. IN THE CASE OF FAIRUZ V. MADONNA**

- The American pop star Madonna referred to the sampling technique in her Erotica song to include the voice of Fairuz in her Christian chant “Today, He is crucified” in the background while Madonna hummed “All over me”.
- Fairuz’s religious chant was released in 1962 while Erotica was released in 1992.
- In 1993, the lawyer of Fairuz filed a claim against Madonna for having sampled Fairuz’s religious song without the authorization of the original singer.
- The claim was settled amicably without taking the case to the court as Madonna’s lawyer settled 2.5 million dollars in compensation.
- Subsequently, “Erotica” song and the album containing the song were banned in Lebanon.

## EXAMPLE

**4. JUDGMENT OF THE CRIMINAL COURT IN JDEIDET EL-METN RENDERED IN APRIL 2005**

- Two computer companies filed a claim against the dealers upon confirming their involvement in the sale and marketing of many unlicensed computer programs for commercial purposes.
- The court ordered that both defendants be subject to a 3-month prison sentence and a penalty of LBP 7,000,000 on the charge of selling and promoting the sale of illegal computer programs.

Criminal court in Jdeidet El Matn, judgment rendered in April 2005, cybercrimes in the light of the Lebanese law and jurisprudence, argument of Justice Fawzi Khamis, extract from the website. [https://www.unescwa.org/sites/www.unescwa.org/files/events/files/event\\_detail\\_id\\_2040\\_d11a.pdf](https://www.unescwa.org/sites/www.unescwa.org/files/events/files/event_detail_id_2040_d11a.pdf)

## EXAMPLE

**5. REPRODUCING AND SELLING PIRATED DVD COPIES WITH IMPUNITY**

Although Law No. 75/99 on the Protection of Literary and Artistic Property includes updated and important provisions, there remain several gaps related to the efficient implementation of this law, namely in terms of the prosecution measures after having filed the claim of the plaintiff against the defendant; in which case, the Public Prosecutor, regulatory authorities and judicial police rarely seize the pirated copies infringing both the copyrights and original works of the illegal reproductions on DVDs.

The sale of illegal copies of pirated DVDs protected under the copyright law, namely movies and music albums, has become widespread across the Lebanese territory. Yet, the competent authorities fail to take the necessary efficient precautions to curb such a phenomenon or to impose controls thereon in order to limit and fight the circulation of pirated DVDs.

Hence the role of the Public Prosecutor at the Court of Appeal and Office of Intellectual Property in launching regular prosecution campaigns and filing a criminal action against the perpetrators of infractions and offenses. This shall automatically cause the judicial police, namely the Cybercrime and Intellectual Property Bureau to be more diligent in seizing and confiscating pirated copies on the instructions of the Public Prosecutor at the Court of Appeal. The Bureau may either file the action against the infractions committed as prescribed under the Law on IP right infringement [1] or issue an order or authorization to the judicial police to identify, make an inventory and take a sample of such suspicious items [2].

In addition to the role of the Bureau ([3] judicial police) in acting automatically against the confessed crimes [4], including knowingly counterfeiting a literary or artistic work; knowingly selling, offering to sell, or circulating a counterfeit or plagiarized work; or knowingly infringing or attempting to infringe any of the copyrights or neighboring rights [5].

Reproducing and selling pirated DVD copies with impunity has caused Lebanon to hold a lower rank on the list of countries fighting piracy and to join the Watch List in the absence of strict protection measures against the outrageous IP right infringements across its territory.

## EXAMPLE

**6. COURT ORDER IN THE CASE OF LITERARY PROPERTY AND INTELLECTUAL PROPERTY**

Mrs. Anahid Doniguan used to provide Dar Al Hayat S.A.R.L with food recipes that she authored and had already published in a cookbook under her name (Anahid's Gourmet Cookbook). Dar Al Hayat then decided to publish such recipes in Laha magazine and never once mentioned the name of the author, Mrs. Anahid. The publishing house also published such recipes online without notifying or getting the approval of Mrs. Anahid.

Following such events, Mrs. Anahid filed a lawsuit against Dar Al Hayat, requesting from the court to put an end to further copyright infringements and to indemnify the plaintiff for damages caused to the sales volume that dropped down after having published her recipes online.

The court considered that such recipes enjoyed legal protection as the cookbook, where such recipes had been published, is subject to the protection provided for under Law No. 75/99 on the Protection of Literary and Artistic Property. The court also decided that in the absence of any written agreement between the plaintiff and defendant authorizing the online publishing of the recipes, such an act would then constitute a literary property and IPR infringement. As to the printed publications not mentioning the author's name, the court condemned such an act as infringement of the author's moral rights. Finally, the court of appeal ruled that the respondent would pay compensation to the appellant and compelled the respondent to end any further infringement of the rights of the appellant by deleting all the recipes of the appellant from the website.

Court of appeal in Beirut, civil division, President Khaled Zawde and legal counsels Joumana Khairalla and Marie Abou Mrad, Decision No. 584, on 05/10/2016, Al Adel 2016, issue No. 3, P. 1444

## EXAMPLE

**7. COURT DECISION IN THE CASE OF INDUSTRIAL DRAWINGS AND MODELS**

"In conformity with Art. 50 of Decision No. 2385, fashion designs are considered in accordance with the Lebanese legislation as industrial drawings and models subject to registration that cannot be protected if not registered before the competent authorities in conformity with Art. 48 and subsequent articles of the Decision No. 2385 and Art. 701 of the Penal Code. If the defendant sells illegitimately fashion wear whose designs are copied from models signed by House of Christian Dior Paris, they shall be subject to the sanctions under Art. 714 of the Penal Code and Art. 10 of the Paris Convention in conformity with Decision No. 152 dated July 19, 1939. This is because such an act seeks deliberately to confuse and divert the clients away from the original designer to the benefit of the Beirut-based shop of the infringer, which is illegally exploiting Christian Dior models and designs to attract clients to its shop."

Examining magistrate in Beirut, decision rendered on 03/05/1957, published in the compilations of business jurisprudence, Vol. 1, P. 241.

## EXAMPLE

**8. COURT DECISION IN THE CASE OF PATENT**

"Accordingly, the argument of the extinction of the patent right in conformity with Art. 46 of Decision No. 2385 is unacceptable as the invention object of exploitation has not been used for two consecutive years following the registration of such invention in Lebanon. In fact, the aforesaid extinction is rejected tacitly as the result of Lebanon's accession to Paris Convention in its amended version." "Art. 4 of Paris Convention in its amended version, which grants each person that has duly filed a patent application in one of the EU countries a priority right for a twelve-month period following the date of the first filing in the other countries, does not provide for any revocation. The article simply grants the inventor the priority right for a specific period and lifts off their shoulders the burden of revocation resulting from the works carried out in the country where the first filing occurred, such as publishing or exploiting the invention... from the date of first registration until the date of second registration in conformity with Art. 44 of Decision No. 2385 with respect to our national legislation."

"The patent certificate represents in itself a deed validating the invention. Hence, the burden of proof is on the plaintiff claiming the invalidity of such invention under the pretext of prior art or prior publication. The proof must include documents with explicit and clear content that cannot be refuted regarding the prior art or prior publication. In the event of any doubts in this regard, the interpretation must be in the interest of the patent owner."

"Based on knowledge and jurisprudence, the patent validity does not depend at all on the originality, importance or scope of the invention. The main focus must be on the new outcome only, regardless of the simplicity of concept that lead to the outcome."

Court of first instance in Beirut, judgment No. 462, rendered on 10/12/1968, Al Mustashar, compilation of jurisprudence of Justice Dr. Afif Chamseddine, published by Dar Al-Kitab Al-Electroni Al-Lubnani.



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