

Patent protection in the laws of Iran and the emphasis of European Union on the TRIPS agreement

Proteção de patentes nas leis do Irã e a ênfase da União Europeia no acordo TRIPS

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Abstract

The patent right and the inventor's exploitation of his own thought and initiative represent a financial right which can be traded. However, as this right is immaterial and intangible, ownership cannot be claimed merely by possessing it physically. Instead, the rightful owner should be the first individual who achieved it through hard work and effort, enabling them to benefit from it exclusively and prevent imitators from utilizing the inventor's efforts freely and without exertion. Registering a patent in the inventor's name becomes crucial as it serves as proof that the holder is the original person who successfully conceived the invention, establishing their rightful ownership. Therefore, patents and other intangible assets play a vital role in establishing the ownership of inventors. The purpose of this article is to familiarize inventors with patent procedures and emphasize the importance of registering their patents to ensure protection. It also reviews and studies the patent protection systems in the laws of Iran and the European Union. The research concludes that in order to accept the TRIPS agreement and join the World Trade Organization, considerable efforts are required, which include aligning domestic laws concerning inventions with international regulations, such as those of the World Trade Organization. We need to cover the existing gaps in our laws to elevate our accession to the World Trade Organization (WTO) and to liberalize trade by eliminating trade barriers, ensuring there are no excuses for not joining the organization.

Keywords: patent rights; TRIPS Agreement; comparative analysis; Iranian laws; European Union.

Resumo

O direito de patente, a exploração do pensamento e da iniciativa do inventor representam um direito financeiro que pode ser negociado. Contudo, como este direito é imaterial e intangível, a propriedade não pode ser reivindicada apenas pela posse física. Em vez disso, o legítimo proprietário deve ser o primeiro indivíduo que o alcançou através de muito trabalho e esforço, permitindo-lhe beneficiar exclusivamente dele e evitando que os imitadores utilizem os esforços do inventor livremente e sem esforço. O registro de uma patente em nome do inventor torna-se crucial, pois serve como prova de que o titular é a pessoa original que concebeu a invenção com sucesso, estabelecendo sua propriedade legítima. Portanto, as patentes e outros activos intangíveis desempenham um papel vital no estabelecimento da propriedade dos inventores. O objetivo deste artigo é familiarizar os inventores com os procedimentos de patentes e enfatizar a importância do registro de suas patentes para garantir a proteção. Também analisa e estuda os sistemas de proteção de patentes nas leis do Irão e da União Europeia. A pesquisa conclui que para aceitar o acordo TRIPS e ingressar na Organização Mundial do Comércio são necessários esforços consideráveis, que incluem o alinhamento das leis nacionais relativas às invenções com regulamentações internacionais, como as da Organização Mundial do Comércio. Precisa-se cobrir as lacunas existentes nas nossas leis para promover a nossa adesão à Organização Mundial do Comércio (OMC) e para liberalizar o comércio, eliminando barreiras comerciais, garantindo que não haja desculpas para não aderir à organização.

Palavras-chaves: direitos de patente; Acordo TRIPS; análise comparativa; leis iranianas; União Europeia.

1 Introduction

The protection of patents in Iranian law has a history of seventy years. Although this area of legal knowledge has experienced significant developments over the past two decades, it has not fully conformed to the international legal framework. One of the most important transformations in this regard is the adoption of the TRIPS Agreement, which is binding for members of the World Trade Organization (WTO). While the Iranian legal system's patent protection may not align perfectly with the latest standards, considering that the TRIPS Agreement sets minimum criteria, this article demonstrates that there are no fundamental conflicts or contradictions between these two legal systems, making Iran's accession to TRIPS almost feasible from this perspective.

Todays, development and progress are inconceivable without recognizing intellectual property rights, including industrial property rights. Among these rights, patents, which result from a dual purpose of protecting individual rights (inventors) on one side and preserving society's interests on the other, hold a sensitive and distinctive position. As exclusivity is an integral part of identifying and validating patent rights, establishing support for such rights may face some doubts and skepticism due to the country's need for innovative technologies. To appropriately address these doubts and concerns, it is necessary to examine the status and position of patents in domestic and foreign laws (Bozorgi; Fathizadeh, 2003).

In this context, due to Iran's willingness and determination to join the World Trade Organization (WTO), considering the fact that the TRIPS Agreement is a binding document for WTO members on one hand, and the widespread and standardized regulations of this agreement at the international level that have given it a special position, on the other hand, and ultimately aligning the provisions of this agreement with previous international treaties, especially the Paris Convention - as the oldest international document in the field of patent protection, which also forms part of Iran's legal system. The provisions of this agreement will be subject to comparative study to identify the legal challenges ahead for Iran's patent system in the process of accession to the TRIPS Agreement.

2 Research Fundamentals

2.1 Patent Rights protection

The mission of law is nothing but the establishment of rights and justice. Therefore, the right to a patent, being a product of law, must be based on logic and reason. Otherwise, it would be arbitrary and futile, far from fairness and justice.

Moreover, since the right to a patent results in the convergence of individual and collective rights, it is highly sensitive and subject to multiple considerations (Habibiya; Shakeri, 1389).

The right to a patent has undergone numerous stages of evolution and progress since its inception and continues to evolve and advance. Although there have always been criticisms of this system, today, due to certain limitations, many of these criticisms have been alleviated. One of these limitations is, in fact, the temporary and limited nature of patent rights. Furthermore, before expiration, the duration of patent rights can be subject to special conditions known as compulsory licenses (which will be explained separately). It should be noted that the criticisms raised are not about the existence or absence of this system; rather, they are mostly related to the quality and mechanism of the patent system.

2.1.1 Natural law theory

In general, Natural law theory refers to a set of rights that are considered independent of the will of individuals or existing societies, and all individuals are expected to respect them. The concept of patent rights is also discussed based on natural law and the labor theory, which suggests that if a person puts effort and labor into studying or creating something, they should have ownership of the result of their efforts. Therefore, according to this theory, the product of someone's effort and labor, like an invention, should belong to the inventor.

However, there are criticisms and limitations to this theory when it comes to justifying patent rights. One issue is the difference in the value of efforts and the resulting product for different inventors. For example, it might not be acceptable to consider an inventor who makes a minor improvement to an existing invention as the sole owner of the entire resulting product. In this case, their right should only be limited to the value they added through their specific contribution.

Another challenge is the interdependence of inventions. Often, an invention builds upon previous inventions and involves more extensive efforts. If we follow this assumption, we would also need to consider the efforts of those who contributed to the existing knowledge, which can complicate the ownership claims significantly.

John Locke's labor theory of property, presented in his work "Second Treatise of Government" (1690), is often referenced when discussing natural law theory. Locke's theory acknowledges that appropriation should be sufficient and not lead to waste or excessive accumulation. Therefore, the question arises whether waste can be considered in relation to patent rights. In response, two conditions are mentioned: The invention is readily accessible to the public: In this case, the likelihood of waste is foreseeable and considerable. The invention becomes accessible to the public: Even if access to the invention is limited, there is still a possibility of waste if the conditions for access

become too restricted. Therefore, referring to this aspect from John Locke's point of view regarding natural rights does not seem to be without criticism. In addition to all the mentioned cases, there are other miscellaneous cases that weaken the reference to this theory. For example, it can be said that some inventions are outside the scope of patent rights. Also, the space and time limitation of the patent or independent inventors, that is, those who have not registered their invention or according to the existing general system of patent registration, if someone else succeeds in registering the same invention before them, the patent will not include them. As a result, these matters can be considered as a negative example in relation to the theory of natural law for justifying the right to patent. However, even if we overlook all the criticisms raised, it cannot be accepted that this right arises inherently. Of course, through the first approach, one can argue that the justification for personal use and possession of the invention is possible, but justifying and generalizing it to the right of invention would not be acceptable or meaningful today. Ultimately, at the very least, and with some leniency, it is possible to consider the natural law's general ownership rights to justify the recognition of ownership rights since a person's relationship to the right of invention is somewhat a property relationship. This could be used as a reason for justifying the right to patent based on natural law (Salehi Zahabi, 2007).

2.1.2 Theory of Distributive Justice

One of the theories proposed in justifying patent rights, which is more of a theoretical foundation and a proposed concept rather than a theoretical argument for justifying patent rights, is based on the Theory of Distributive Justice. Currently, patent rights do not adhere to such principles. However, there are numerous criticisms of this theory, and for the sake of brevity, we will only mention some important aspects of it here.

In line with the current system, the only recognized and established assumption for an invention is to grant the inventor an exclusive, temporary, and limited right. The Theory of Distributive Justice does not specifically determine the granting of such a right to the inventor; it only deems the inventor deserving of a reward. Therefore, other alternative proposals, such as wages, prizes, gratitude, and acknowledgment, come to mind, which are outside the patent system. Additionally, contrary to the existing criteria in this theory to observe the principle of proportionality, the patent system grants exclusive rights to any invention regardless of the effort and value it may possess.

2.1.3 Consequentialist theory

The consequentialist theory is the most prominent and persuasive argument concerning patent justification. Moreover, this theory played a crucial role in convincing developing countries to enhance their patent systems. As the name suggests, the

consequentialist theory evaluates the prospects and outcomes of the patent system, considering two distinct aspects, each of which we will examine separately.

2.1.4 Motivation and Incentive for Invention and Innovation

One of the most significant outcomes of patent rights, as we discussed regarding the overall purpose of intellectual property, is providing motivation and incentive for further inventions and innovations. It is evident that when an inventor or other individuals know that their efforts will be supported and protected in terms of time, cost, and results, they are encouraged to work with greater enthusiasm and drive, leading to more creations and inventions. Otherwise, the lack of motivation may result in a decline in innovation due to stagnation.

However, some criticism is directed at this theory and, in fact, at the mechanism of patent rights. It is undeniable that patent rights can promote more inventions and innovations (Sadeghi, 2008). Still, in some cases, due to the limitations imposed on an inventor's invention, it might hinder or minimize further advancements. Nevertheless, such criticism may arise unintentionally from the functions of this system or may only apply to a few cases. Additionally, as you will see in the following section, under certain conditions, this can be addressed through compulsory licensing. Therefore, the presence of such a system is evaluated as significantly better and more efficient based on the overall outcomes it brings forth compared to its absence.

2.1.5 Motivation and incentive to disclose information

The patent protection system is actually based on the transaction system 4, which means that the patent is granted to the inventor for disclosing information related to an invention, so that the society can benefit from it. This information not only includes the characteristics of an invention, but also includes explanations about the stages of its construction and production. As a result, the patent encourages the inventor to disclose the invention and related information, since he knows that it will be protected.

After the protection period expires, this information is also made public. They have also redefined the grant of patent rights through what is often referred to as a "social contract." This means that society grants the inventor a legal, temporary, and limited exclusive right, and in return, the inventor discloses information related to the invention. Therefore, without such a system, there is a possibility that inventions remain concealed, leading to the deprivation of all the benefits that can be obtained from an invention. Regarding the criticism of this theory, some consider it somewhat exaggerated. Firstly, the likelihood of permanently concealing information related to an invention is unlikely. Additionally, patent offices generally show less interest in the details and specifications of an invention and tend to grant patents more liberally.

However, concerning the second issue, it must be noted that this criticism is more related to the method of granting patents by patent offices rather than directly targeting the theory itself. Nevertheless, the consequentialist theory, despite the criticisms it faces, remains one of the strongest theoretical justifications for the patent right (Sadeghi; Taromsari, 2010).

2.1.6 The Economic Perspective of Patent Rights

The economic justification of patent rights can be approached from two aspects: the economic benefits of patent rights and the economic rationale behind having patents. As mentioned earlier, patent rights act as incentives for new inventions and further innovations. It is evident that there is a positive correlation between these advancements and economic prosperity. Inventions consistently lead to increased social awareness and knowledge, laying the groundwork for economic well-being. Therefore, the economic benefits of patent rights can be seen as a guarantee of economic growth through quantitative or qualitative advancements resulting from the patent system. Furthermore, with a system that supports inventions, major investors will be more willing to invest in this domain with greater confidence. Without such a system, fewer individuals may be willing to take on the economic risks associated with investments in this field, leading to the loss of the positive impacts that would result from such ventures. On the other hand, it is possible to mention economic reasons related to patent rights. Inventions always represent the product of an inventor's effort, time, and expenses.

Inventions always lead to an increase in societal awareness and knowledge, creating opportunities for economic prosperity. Therefore, the economic justification of patent rights can be argued in a way that economic growth is ensured through the quantitative or qualitative growth of inventions resulting from the patent system. Additionally, with a system supporting inventions, major investors will be more willing to invest in this field with greater peace of mind. Without such a system, fewer individuals may be willing to accept the economic risks associated with investments in this area, leading to the loss of the positive impacts that would result from such ventures. Furthermore, economic reasons can be cited in relation to patent rights. Inventions always represent the outcome of an inventor's efforts, time, and expenses. Therefore, it is not fair for inventors to compete in a free market like regular participants since the minimum economic expectation is that the minimum incurred expenses should be compensated. Without such a system, the returns on these expenses may be jeopardized. Moreover, this system prevents unauthorized copying by profit-seeking individuals, which could cause financial harm to the inventor. If they engage in such activities, they can be held accountable through legal actions and fairly compensate for the financial losses suffered by the inventor. Furthermore, as mentioned before, the reward system instead of exclusive rights has its challenges,

and from an economic perspective, it can be argued that any system other than such a system and mechanism may not adequately compensate the expenses and time invested by the inventor. However, economically, there are also criticisms of the patent system. For example, since patent rights grant exclusive rights, this exclusivity can lead to unchecked price increases. But in response to this criticism, it must be noted that this criticism does not undermine the entire system. Firstly, inventors need to be entitled to recover their incurred expenses and profits from their work. Secondly, governments can take precautions and control the market to prevent unchecked price increases. Moreover, patent rights have a temporary and limited nature, and if necessary, through compulsory licensing under specific conditions and circumstances, the exclusivity can be terminated before the expiration date. In other words, measures can be taken to prevent price increases resulting from exclusivity and address the criticisms raised (Sabeti, 2008). Finally, another phenomenon that can be considered a form of economic abuse of patent rights is referred to as patent assertion entities. These entities, holding unused patent privileges, file complaints against large companies and corporations.

In fact, these entities encompass companies or even individuals who often acquire unused patent privileges from their owners without having incurred the effort and expenses in producing an invention. They then initiate lawsuits against large companies and corporations that have used these inventions in their products to some extent. This process either involves paying hefty and significantly high fines or results in the cessation of production, which can have significant negative economic impacts. Although there are laws and precautions in place to prevent the abuse of patent rights, this emerging phenomenon that can involve legitimate and substantial exploitation has not yet been adequately addressed.

2.1.7 Theory of Ownership

The perspective on ownership in governance and the extent of its authority has had a significant impact. Hence, Figgis has said that (when feudalism declined and ownership was merely transformed into the right of possession and control under Roman law), the situation of the king also underwent a similar transformation. Vincent, in his book “The Theories of Government,” in the section describing absolute government, has addressed the impact of the concept of ownership on the emergence of absolute government. He considers the theory of ownership as one of the characteristics of absolute government, so the concept of ownership during the feudal system moved away from its feudal meaning and became more aligned with the patriarchal rights under Roman law. According to the feudal notion of ownership, the rights, privileges, and duties of individuals and their positions were heavily dependent on ownership. Therefore, the king, who had the most rights, privileges, and duties, was considered to have the highest ownership and authority. One important result of this thinking was

that the king perceived himself as the owner of his country and, like a landowner, had rights, duties, and privileges. However, according to the patriarchal thought, which was especially prevalent in Roman law, the head of the family could manage his property well or waste it at will. However, such actions were not possible concerning public property. Nevertheless, rights over patriarchal ownership did exist. If the head of the family acted madly or in a wasteful manner, it was possible for a guardian (amini) to be appointed to manage the property.

2.1.8 Social Interests

Beyond the theoretical ideologies and intellectual schools of thought that have played a role in the creation of intellectual property, social interests have been a significant factor in this process. The numerous economic benefits stemming from the establishment of monopolies in exploitation and the creation of incentives among investors and knowledge owners have encouraged innovation and creativity in all aspects. Identifying and recognizing intellectual property rights has become essential in this context. However, this necessity becomes fundamental when the grounds for exploitation are present, and the country possesses the necessary industrial infrastructure and scientific capabilities. In the past, countries that were importers of knowledge often neglected to acknowledge intellectual property rights and even allowed scientific theft, sometimes encouraging it.

Yet, when they themselves became exporters of knowledge, they started to support intellectual property rights. This pragmatic approach in the ideology of benefit authenticity demonstrates its effectiveness. This matter has been explored in the theory of benefit authenticity as one of the foundations of intellectual property.

2.2 Patent rights in Iranian law

Based on articles 28 and 29 of the regulations of the law of 1310, after receiving the declaration, the Branch of Registration of Trademarks and Inventions examined the correctness of the preliminary formalities, and then entered the declaration in the request book for the second version, which has the same specifications as the original version. After signing and sealing the registration office with the date, hour, day, month, year, it will be returned to the applicant in all letters from the date of receipt of the statement to the office of the patent branch administrator within 15 days of the statement and attachments. It is studied in terms of compliance with the provisions of the law and the articles of the present regulation.

If defects are found in the statement or attachments, the applicant will be notified in writing and a deadline of 2 months if the applicant is a resident of Iran or 6 months if the applicant is a resident of abroad. And in the case of a justified excuse,

the Trademarks and Inventions Registration Branch threatens the said deadline only once. If the applicant does not correct the deficiencies within the stipulated time or if the declaration does not comply with the provisions of the law, the Trademarks and Inventions Registration Branch will cancel the incomplete declaration and notify the applicant in writing.

The applicant can appeal against the declarations to the Tehran General Court by observing the deadline stipulated in the law (Mir Hosseini, 2007) as stipulated in the articles 30 and 31 of the regulations. If the declaration is found to be correct and legal, the invention will be registered in a special office, and after registration, the patent certificate will be given to the owner of the patent or his representative, according to Article 36 of Law 1310. The patent certificate will not be used in any way for the invention to be new or genuine. Moreover, the patent certificate does not imply that the applicant or their representative is the true inventor, or that the description or the drawing of the invention is accurate. Therefore, the interested parties can file a lawsuit in the Tehran General Court and prove the opposite, and it is stated in Article 37 that any interested party can refer to the Tehran General Court and request the issuance of a decision to invalidate the patent.

2.3 Patent status in the country

Iran's Trademarks and Inventions Registration Law was approved in 1310. Due to the number of weaknesses, this law shows the antiquity of this category in Iran. But in all the past years, this law has not been able to bring any of the above-mentioned two benefits to the countries. Patenting in Iran is only viewed from the point of view of scientific fame for the inventor. Unauthorized use of his invention has been noticed, patented inventions have helped a lot in the growth and development of industries, besides this, the concept of patenting has also been weak.

In such a way that many managers, experts and technical researchers do not have a preliminary familiarity with this concept.

Maybe some of the technologies whose licenses are purchased from other countries for paying exorbitant fees have actually passed the period of legal protection and commercial use of them with the same information disclosed during registration and of course without the need to pay any fees. It is possible, so in general, it seems that the category of the old patent year in Iran is still in such stages and maybe an incubator is needed for its birth (Mir Shamsi, 2012).

2.4 The method of patenting in Iran

Patent applicants in Iran should refer to the country's Document and property registration organization, General Industrial Property Administration and file a case.

Any natural or legal person who claims to invent a new industrial product or discovers a new device or discovers a way and method to obtain a result or an artificial product and receives a patent certificate. In Iran, patent registration is done by declaration, the fact that the registration is declarative means that the Companies and Industrial Property Registration Office can register it without examining the submitted plan regarding the newness of the invention, and the only condition is that a person or a company has not registered this invention in Iran before.

Of course, it should be noted that the patent certificate in Iran does not in any way certify the usability, novelty, or genuineness of the invention. The things that cannot be registered in Iran are: 1-Financial plans 2-Inventions that are against public order and public decency. 3- Medicinal formulas and compounds in all stages of patenting in Iran, the presence of the applicant is not required, Moreover, a legal attorney can also prepare and complete the necessary documents; in this case, the application letter, along with the original power of attorney and a copy certified as true to the original, should be attached to the declaration (Baqeri, 2012).

2.5 The exclusive rights of the patent holder

The exclusive rights resulting from the patent are granted against the duties that the patent holder undertakes - production and exploitation of the invention - full disclosure of the invention - payment of legal fees - the stipulated rights can be based on a category divided into material rights and intellectual rights, in other words, when we refer to the patent holder's exclusive rights as rights that have economic value and can be converted into money, the economic and material aspects of the patent holder's rights are considered. However, where the rights in question cannot be converted into money, the meaning of rights is moral and spiritual, which will be discussed below.

2.5.1 Intellectual rights

The rights which are related to the personality of the patent holder are called intellectual and moral rights. According to the presented definition, in addition to material rights, the inventor has intellectual rights, a clear example of which is the inclusion of the inventor's name in the title of the invention. It means that the inventor will have the right to put his name on the invention and he also has the right to choose the name for his invention.

It is worth mentioning that the stipulated rights are permanent, non-transferable.

The aforementioned right was first recognized by Article 4 of the Paris Convention approved in 1883, which forms part of our laws in this field and is also a part of the TRIPS Agreement, although this right is not explicitly mentioned in the TRIPS Agreement, according to the first paragraph of Article 2 of the TRIPS agreement, this right will be invoked.

In Iranian law, the Act on Registration of Industrial Property Rights, enacted in 2007, Article 5, Clause (v), refers to this right. According to this article, the name of the inventor will be mentioned in the patent certificate unless they request in writing from the Industrial Property Office that their name not be disclosed. Any declaration or commitment of the inventor that the name of another person is listed as the inventor has no legal effect.

2.5.2 Material rights

The material rights of the patent holder are the set of rights that are assigned to the inventor as a result of the patent, and can be converted to money, can be transferred in whole or in part, and are ultimately limited to a limited period of time. In the Paris Convention, material rights exclusivity arising from patents is not expressly provided for. But the TRIPS Agreement has mentioned this issue in its Article 28. In the laws of Iran, in 1386, in article 15, the Supreme Court of Iran mentioned about the above-mentioned rights (the rights arising from the patent certificate are as follows) (Tajabadi; Falahi, 2013).

- a. Fraternity's interest in a patent registered by persons other than the patent owner is subject to the owner's consent.
- b. The exploitation of the patented invention will be as follows:
 - c. 1- If the invention is about a product:
 - d. First - manufacturing, importing, exporting, offering for sale, washing and using the product.
 - e. Second - storage with the intention of offering for sale, or use of the product.
 - f. 2- If the subject of the patent is a process:
 - g. First- using the second process.
 - h. Second- Doing any of the items listed in part 1 of paragraph A of this article regarding the goods that are obtained directly through this process.

2.6 Patent Rights in the European Union

Currently, there are three ways to protect inventions and innovations in Europe. The first method is submitting a declaration to the national patent office of each individual country seeking protection. The applicant must comply with the legal procedures of those countries. National registration is the oldest method of protecting inventions and comes with its own advantages and limitations. This approach is suitable for individuals or companies seeking protection in specific countries that offer support. However, it may not be useful for some institutions or industries, such as small and medium-sized companies, since they may lack the capability to compete

in multiple countries. Additionally, the geographical scope of protection is limited, resulting in restricted access to the European market for these companies.

The second method is international patent application through the Patent Cooperation Treaty (PCT). In this method, the inventor submits their application to an international authority, such as the World Intellectual Property Organization (WIPO) or a national patent office of a PCT member country. By submitting one application, including the PCT request, the inventor can seek protection in 148 countries, including all member states of the European Union. According to Article 14 of the PCT, after the application is submitted, the relevant international authority conducts a search for related prior art and provides a written opinion on the patentability of the invention. This search report, along with the written opinion, is annexed to the international application and sent to the designated countries for further processing. Currently, the most common way to obtain patent protection in Europe is through the European Patent Office. This office, which was established under the European Patent Convention in 1977, is responsible for examining patent applications and issuing certificates based on the articles of the convention. (Zahedi, 2016).

European office certificates are enforceable in 3 member countries of the convention, 28 of which are members of the European Union. In addition to the regional nature of this method, its main difference with the method of submitting an international declaration is that it is based on a cooperation treaty. The patent application is merely “preliminary” and the final decision about its registrability rests with the National Office.

Therefore, the European Patent Office is a centralized body for receiving declarations, which issues certificates on behalf of the member states, of course, the certificate is (validated) by the national patent office where the inventor intends to protect the invention. This process usually includes paying the fee to make the certificate valid in the relevant countries, as well as translating it into the official language of the said countries.

2.7 Problems in the current system and the need to establish a new mechanism

The current system of protection of inventions in Europe is facing special limitations and difficulties in the field of removing obstacles to the commercialization of inventions. The possibility of registration in multiple countries is not provided for many industries and companies. England 2014:921 Applicants to obtain patent protection in multiple countries or by filing an international application can save costs to some extent.

However, due to the fact that in this method the request for protection of the invention remains at the stage of the declaration and the rest of the steps are carried out in the same way as the national registration method, its limitation also follows

the method of submitting the international declaration. Another critical issue is the absence of a single mechanism to deal with claims related to the registration certificate.

It should be noted that this method will not lead to the granting of an international patent certificate, the applicant must follow up on his application in the selected national or regional office to receive the certificate of further examination and final registration. As mentioned, these lawsuits, which often include the request for revocation of the certificate or the claim of rights deficiency due to it, must be raised individually in the target countries. Such a situation brings several problems. (Zahedi, 2016).

According to the laws and regulations regarding patent registration in various countries, it is possible that different opinions may be issued in European countries. There is no specific mechanism in place to create uniformity among these countries concerning disputes arising from patent certificates. Therefore, even though these disputes may have a common origin (a certificate issued by the European Patent Office), the practical means of protection for inventions in Europe can be different, and applicants may face challenges.

Moreover, initiating a lawsuit related to a patent certificate in different countries requires the payment of legal fees, and the procedural structure for handling these disputes varies between countries. The diverse procedural systems in different countries can lead to difficulties and complexities in protecting patents in Europe.

This situation is not favorable for companies that are thinking of marketing and commercializing their inventions in Europe and it causes insufficiency and disruption in the patent system in Europe. Consistent support for inventions and innovations is one of the key components in encouraging companies to invest in entering the market.

2.7.1 Comprehensive Trademark Regulations of the European Union (CTMR)

It allows the registration of trademarks of the member states and thus grants broad protection at the level of the European Union. These marks, which are registered in the Office of Designs and Trademarks of the European Union, can be protected under the trademark laws of all member states in Europe except three Benelux countries, which have collectively provided for a common trademark system, other members have their own trademark rights.

The registration and acquisition of trademark rights under this system is the same in all European Union. In this system, if there is a conflicting right at the level of the Union or one of the member states, the trademark cannot be registered, since the European Union and its members are members of the World Trade Organization. The comprehensive trademark regulations of the European Union have been prepared and approved in compliance with the conditions contained in the TRIPS regulations.

Registration is achieved through these regulations or through the submission of a declaration directly in the city of Oheim, Alicante Province, Spain or through the international office located in each member country.

Objection to the registration of a trademark in Oheim is handled in a quasi-judicial body, and the decision issued by this body can be appealed in the first stage in the public court and in the second stage in the European Court of Justice. Trademark registration under this system can be done conveniently and at a low cost and provides support throughout the European Union. With the realization of the registration, the owner of the trademark has exclusive rights at the level of the Union, and the protection extends to the entire territory of the European Union.

In relation to well-known trademarks, it should be noted that these marks cannot be registered by a third party, even concerning dissimilar goods and services. Additionally, trademarks cannot be registered for goods and services unrelated to those for which the mark is well-known if the use of the mark results in unfair advantage or if it damages the distinctive character or reputation of the well-known mark. However, it is important to clarify that the mark doesn't necessarily need to be famous.

Regarding the regulations in the Rome Convention, Article 8, paragraph (1), of the national law of the country where the infringement has taken place is considered applicable for the violation of intellectual property rights. Paragraph (2) of the same article provides a different rule concerning Community intellectual property rights in the European Union, it means the law of the country where the request for protection has been made will be applicable to infringement issues related to those rights.

In the provisions of Rome II, paragraph (1), article (8), the law of the country where the protection is requested is considered to govern the violation of intellectual property rights. The second paragraph of that article has provided a different rule regarding the comprehensive intellectual property rights of the European Union. In this paragraph, the law governing the violation of intellectual property rights is considered to be the law of the country where the violation occurred, that is, the law of the place of infringement for comprehensive intellectual property rights and the law of the place of request for protection for other intellectual property rights. (Sadeghi, 2004).

Now the question is, what is the difference between these two rules? It seems that the main difference between these two concepts is that the law of the country in which the request is made has a wider executive range because it is not only based on the violation of rights, but it regulates the law that governs other aspects related to intellectual property rights, such as creating credibility and aspects Finance determines it.

Article (8) of Rome II is exclusively related to non-contractual obligations arising from the infringement of intellectual property rights. The advantage of this legal rule in the country where the request for protection is made lies in determining the location where the infringement occurred. In cases where infringements have taken place in multiple jurisdictions, identifying the place of infringement can be quite challenging, especially if the concept of infringement and its constituting elements differ across relevant legal domains, because the scope of intellectual property rights spans the unified community of the entire European continent.

Therefore, the enforcement of the law in the country where the infringement took place is equivalent to enforcing the law in the country where the request for protection is made.

However, this conclusion in cases of cross-border infringements can lead to the enforcement of multiple countries' laws, and implementing this rule in such cases means enforcing the laws of the 27 member states of the European Union.

The regulations of the unified European community in Article 1 (2) stipulate that a trademark is valid throughout the European Union, and any infringement that occurs within any part of the Union can be identified and pursued.

Infringement lawsuits are raised and dealt with in the trademark courts of the community. These courts were created by each member in their own country to deal with comprehensive trademark lawsuits.

The judgment issued by them can be challenged in the European Court of Justice. Also, the interpretation of the comprehensive provisions of the European Union is one of the duties of this court, and as a result, the courts of first instance and appeals must refer the issues related to the interpretation to the European Court of Justice.

In addition, the courts can also apply the guarantee of implementation specified in the law for the occurrence of violation.

2.7.2 Brussels regulations

In the European Union, the issue of international jurisdiction is governed by the rules of Brussels. The Brussels I Regulation is a very successful document that facilitates cross-border proceedings through an effective system of judicial cooperation based on jurisdictional rules, coordination of parallel proceedings and publication of judgments. The system of judicial cooperation established in the regulations has been successfully adopted to change the organizational environment (from interstate cooperation to European integration) and to solve the new challenges of modern business life.

Brussels regulations play a very important role in coordinating judicial cooperation between member states, and its achievements in facilitating cross-border proceedings cannot be ignored.

These regulations apply to persons residing in one of the member states of the European Union. The purpose of these regulations is to increase the performance of European internal trade (Azizi Moradpour, 2011).

It must be acknowledged that general international law has had little effect on the implementation of the principle of territoriality of trademarks. In the Brussels Convention, proceedings regarding registered intellectual property rights can be conducted exclusively in the country of origin.

The exclusive jurisdiction of the courts of the country of registration, which is

stated in Article 22/4 of these regulations, originates from the principle of territoriality of intellectual property rights.

Although this exclusive jurisdiction is limited to claims of registration, validity and creation of rights, it is valid on the territorial principle. The words of Article 22/4 are not consistent with each other in different language versions, and for the interpretation of the regulations, the English version is considered the guide version.

In the languages of the member states that concluded the Brussels Convention in 1968, exclusive jurisdiction has been delegated to the courts of the country of registration related to proceedings regarding the registration, creation and validity of intellectual property rights.

Clause (4) of Article (22) of the Brussels Regulation on Intellectual Property is only related to the registration or validity of the intellectual property right. This article stipulates: The following courts have exclusive jurisdiction regardless of the defendant's residence:

In lawsuits related to the registration or validity of patents, trademarks, designs or other similar rights that require filing or registration, the courts of the member state that has that right in accordance with its own regulations or in accordance with the conditions contained in an approved document Union or an international convention, have jurisdiction.

Further, Article (25) stipulates: In cases where the court of a member state is hearing a lawsuit related to a matter that is under the exclusive jurisdiction of another member state, based on Article (22), that court must declare lack of jurisdiction.

Therefore, according to Clause (4) of Article (22), lawsuits related to the registration, creation and validity of registered property rights can only be brought before the courts of the country where the rights in question are registered.

This article gives exclusive jurisdiction to these courts. In addition, regardless of how intellectual property rights are registered or filed, exclusive jurisdiction rules apply.

Therefore, this provision applies if the litigation is related to the registration or filing of an intellectual property right that has been registered in a third country. The Brussels Convention I (0) was revised by the European Union Directive No. 2001/44 regarding the competence and recognition of the enforcement of decisions in the field of civil and commercial affairs adopted in 2001, known as the Brussels Convention II, and although most of its provisions are similar to the Brussels Convention I, today, among the European member states, Convention II is mandatory (Mirshamsi, 2016).

2.7.3 TRIPS agreement

The territorial principle has been accepted in the TRIPS agreement by referring to the Paris Convention and accepting its provisions (TRIPS explicitly incorporates the main provisions of the Paris Convention, including its national treatment provision,

its rule of priority and its substantive protections, as part of TRIPS. It adds a full state-of-the-nation clause, clarifies requirements for trade protection, and expands the substantive rights that each member must grant).

The TRIPS Agreement establishes sufficient standards and effective and appropriate methods for global implementation, while also taking into account the differences in domestic legal systems. In other words, the purpose of effective and appropriate implementation methods is to ensure seamless recourse and a way to prevent both literary pirates and counterfeiters from exploiting any loopholes, particularly in the context of the TRIPS Agreement. TRIPS aims to regulate the transfer of goods and imperfect copies effectively, putting a stop to such practices across international borders.

TRIPS obliges all members of the World Trade Organization to register and publish trademarks for goods and services and provide the possibility for third parties to raise objections. Violation of trademarks under TRIPS is based on international standards and may include cases where a trademark is misleading or where it is similar to another trademark used for identical goods or services.

The TRIPS Agreement, titled “Agreement on Trade-Related Aspects of Intellectual Property Rights,” encompasses various aspects of industrial property rights, including trademarks. For example, the principle of national treatment mentioned in Article 4 of the TRIPS Agreement can be applicable to all types of intellectual property rights. Additionally, according to Article 2 of the TRIPS Agreement, adherence to Articles 1 to 12 of the Paris Convention, as well as Article 19 of the Paris Convention, is also required for member countries.

Article 4 of the TRIPS Agreement is based on the principle of complete and unconditional most-favored-nation treatment, which states that any advantages, benefits, privileges, or support granted by a member to the intellectual property rights of another member shall be immediately and unconditionally extended to the intellectual property rights of all other members. This is a complementary principle to the national treatment principle, meaning that governments must not discriminate against their trading partners when granting privileges (Zahedi, 2014).

According to this principle, in order to strengthen the principle of free trade, governments must extend any trade privileges granted to specific countries to all trading partners who are members of the World Trade Organization. This ensures a level playing field for all countries involved.

The national treatment principle is explicitly stated in Article 3, paragraph 1 of the TRIPS Agreement with the condition that its members must also be members of the Paris Convention. Besides, TRIPS has established other standards for the protection of trademarks. This paragraph stipulates that:

Each member will adopt a procedure for enforcement against the infringement of intellectual property rights that is no less favorable than the procedure it has for

its own nationals, subject to the exceptions provided in the Paris Convention, Berne Convention, Rome Convention, or the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

In essence, according to this legal provision, rights granted to foreigners should not be less favorable than the rights granted to the nationals, plus Article 44 of the TRIPS agreement gives judicial authorities the power to prevent the entry of infringing goods into their territory through the prohibition of their importation through commercial channels. Article 2 and Article 45 of the agreement also discuss the provisions for remedies for infringement and the payment of damages.

Since the membership in the World Trade Organization depends on the acceptance of the TRIPS Agreement and the adaptation of the internal laws of each member to the standards of that agreement, therefore, all the protections that each member country provides to the owners of marks, including: marks that are not registered to residents of that country, which means that the same protection will be provided. These facilities and privileges, in addition to validating the principle of territoriality of intellectual property rights, also guarantee its extraterritorial protection. In a way, it can be said that all TRIPS members are committed to the same protection that they have given to their nationals or to the marks registered there in order to protect their intellectual property rights.

The TRIPS agreement recognizes and provides protection to foreign trademark owners. Therefore, a trademark holder is not concerned about infringement issues, as they can be assured that any violation in any member country of the World Trade Organization will be legally supported and pursued by that country.

While the determination of governing laws in this regard is not negated, it should be noted that the creation, validity, registration, and duration of these rights remain within the jurisdiction of the country where the trademark is established, created, and registered.

In addition to the Paris Convention, the TRIPS agreement, and some bilateral agreements concerning trademarks, provide protection to well-known trademarks.

According to the TRIPS agreement, the same protection given to domestic trademarks is extended to foreign trademarks. This ensures that the interests of foreign trademark owners are guaranteed in the markets of other countries.

While endorsing the protection of well-known marks, Clause (2) of Article (16) of the TRIPS Agreement extends the scope of these marks to service marks and considers the protection mentioned in Article (6) of the Paris Convention to include the protection of service marks as well.

Clause (3) of Article (16) of the TRIPS Agreement has expanded the scope of the repeated Article (6) of the Paris Convention on the prohibition of the use of a well-known mark on dissimilar goods.

National systems of invention: as we knew, the laws of the countries in relation to the industrial property rights are generally related and close to each other, also these laws supervise the actions that take place in the territory of the countries.

Therefore, industrial property rights such as patents are protected only in the country where the competent authority has registered the related invention. Accordingly, if the owner of the patent decides to seek protection for it in different countries, this protection can be only obtained by acquiring these rights in the desired countries (Zahedi, 2016).

2.7.4 The fundamental principles of the TRIPS Agreement

Similar to other agreements of the World Trade Organization, the principle of non-discrimination is an important and fundamental aspect of the TRIPS Agreement, which is implemented through the principle of national treatment and the principle of most-favored-nation treatment. Observing the principle of national treatment, which means that a country must treat foreign nationals in trade the same way it treats its own nationals, is significant. This ensures that companies interested in seeking protection in the markets of other countries can receive the same level and extent of protection that the nationals of that country enjoy. (for example, the period of protection and its scope) the full principle of Most-Favored-Nation means the principle by which the same treatment should be applied to the nationals of all trading partner countries that are members of the World Trade Organization) is also included in the agreement and it can be seen that the agreement TRIPS ensures that all countries can obtain an equal level of protection for their intellectual property in any market compared to other companies.

Therefore, if a country places specific interests in establishing institutions of one of the members of the World Trade Organization (WTO), then according to the principle of “Most-Favored Nation” as stipulated in the TRIPS Agreement, that country must grant the same intellectual property-related benefits to companies of all WTO member states. However, it should be noted that regional trade agreements are considered an exception to the principle of “Most-Favored Nation.”

The TRIPS Agreement commonly referred to as “Trade-Related Aspects of Intellectual Property Rights” sets minimum standards for the protection of intellectual property rights. This means that WTO member countries and the TRIPS Agreement have the flexibility to determine the appropriate methods for implementing the regulations of the agreement within their legal systems. They can choose to provide more extensive protection than what is specified in the agreement if they wish to do so. For example, the agreement sets a minimum duration of protection for literary and artistic works, which is 50 years from the death of the author. However, many countries have chosen to provide a longer duration of protection, such as 70 years after the death of the author (Zahedi, 2017).

3 Research Methodology

In terms of its nature and purpose, this research classified as a documentary and applied research, and in terms of the nature and method of information analysis, it is descriptive and analytical. The data and information for this research have been collected through library research from various sources, including books, articles, theses, and relevant specialized websites. Finally, the gathered data and information have been analyzed in a logical and argumentative manner.

4 Conclusion

1. If inventors do not register their invention, they may face risks such as infringement of their rights or violation of their intellectual property. Therefore, to prevent such occurrences, it is better for the inventor to register their invention to safeguard against these potential risks.
2. An invention made by an inventor must possess three characteristics: novelty, inventiveness, and industrial applicability. If any of these conditions are not met, the invention is not eligible for registration. Even if it is registered, individuals or legal entities can request its invalidation through the appropriate legal channels because it lacks one of the mentioned above essential features.
 - ♦ Registering an invention for its owner has numerous benefits, some of which are as follows:
 - ♦ 1. If the owner of the invention has incurred expenses for research and development, registering the invention and obtaining exclusive rights from it will lead to the reimbursement of these costs and a higher return on investment.
 - ♦ 2. By registering the invention and obtaining the relevant patent, the owner, whether an individual or a legal entity, can license others to use and exploit it. This allows the owner to receive royalties and generate additional income.
 - ♦ 3. Access to new markets becomes possible with the issuance of the patent and granting permission to others by the owners for exploiting the invention. This provides a basis for protection of the invention, even in foreign markets, and so on.
 - ♦ 4. The rights of an invention can be extinguished through various means, including abandonment, failure to pay annual fees, expiration of the patent's validity period, or invalidation of the patent.

3. In case of a patent infringement, there are enforcement guarantees available, such as civil enforcement guarantees that include remedies like compensation for damages and losses, as well as requesting the court to issue an injunction. Additionally, there are criminal enforcement guarantees, which involve penalties and fines, to uphold the general public interest. However, to be subject to criminal penalties, the offender must knowingly and deliberately commit acts that violate the exclusive rights of the patent holder. The compensation for damages may include imprisonment and monetary fines, aligned with the severity of punishments applied to similar crimes. Other means of compensation for damages can include confiscation and destruction of goods involved in the infringement.

Suggestions

However, in order to address the deficiencies in the concept of patent rights, the following suggestions are recommended:

1. The laws and regulations related to patent rights in Iran should be updated to be on par with, or even ahead of, the pace of scientific and technological advancements in the field. Outdated laws have no place in today's world of technology.
2. The existence of outdated laws enables potential abusers and counterfeiters in the field of patents to easily bypass and exploit the loopholes in these outdated regulations to achieve their unlawful objectives. This calls for the establishment of modern and up-to-date laws to prevent such actions.
3. Establishing modern and up-to-date laws is beneficial, but more importantly, these laws must be effectively enforced. In some instances, we witness the lack of enforcement of these modern laws, leading to opportunities for abuse and fraud. Therefore, it is crucial to ensure proper implementation of these laws in Iran.
4. We should move towards internationalizing or harmonizing our laws regarding the subject of patent rights by aligning our domestic laws with the regulations of the World Trade Organization (WTO) and the agreements under the Trade-Related Aspects of Intellectual Property Rights (TRIPS). By doing so, our laws would gain international recognition, making it easier for us to become a permanent member of the World Trade Organization and have our laws more easily conform to the regulations of the WTO and the acceptance of the TRIPS agreement.

In general, considering the aforementioned points will lead to a better alignment of Iran's domestic laws with the World Trade Organization regulations and the

acceptance of the TRIPS agreement. These actions will ultimately result in a brighter future for Iran's progress and increasing alignment of domestic laws with international standards, thereby enhancing knowledge in the field of patent registration within Iran's legal system.

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