

PATENT PROTECTION IN THE SAUDI LAW

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Abstract

This research addresses a topic of utmost importance, which is "Patent Protection in the Saudi Law." This legal protection is crucial for safeguarding the rights of inventors and preventing any infringement by others. It also encourages inventors to exert more efforts to achieve societal progress, ensuring they are secure and confident that their patented inventions are protected. The principles of justice dictate that the inventor's right to exploit and benefit from their invention for a specified period should be protected, in return for the effort and financial resources they have invested in achieving it. Recognizing and protecting this right is an important incentive for fostering a spirit of research and innovation in society, encouraging the allocation of more resources to open the door for further innovations. Additionally, the disclosure of the invention after obtaining the patent allows other researchers to benefit from the inventor's achievements, thereby advancing scientific research and societal development.

The research has reached several conclusions, including:

A patent is a document that grants legal protection to an invention, serving as a certificate of ownership for the inventor, allowing them exclusive rights to exploit and benefit from the invention through legal means.

The legal protection provided by the Saudi legislator for patents consists of two types: criminal protection and civil protection.

The legislator intended the criminal protection established for patents in the patent law to deter anyone who infringes on a protected invention.

The legislator set conditions in the patent law to consider an act as an infringement on patent rights. The first condition is that a person other than the patent holder performs any act of exploiting the patent. The second condition is that the act occurs within the Kingdom. The third condition is that the act is carried out without the written, recorded consent of the patent holder. The patent law specifies criminal penalties for infringing on a protected invention, including fines, publication in the official gazette, and publication in the bulletin issued by the authority and in two daily newspapers at the expense of the convicted party. The law also allows the commercial court, at the plaintiff's request, to take urgent measures it deems necessary to prevent damage resulting from the infringement. These urgent measures may include seizing products produced by the defendant in violation of the plaintiff's rights, confiscating tools and equipment used in counterfeiting the protected invention, or destroying counterfeit products if they harm consumer health or safety. Other measures may also be taken.

Civil protection for patents entails the inventor receiving appropriate compensation for the damage suffered due to the infringement of their protected invention by unauthorized exploitation by others, provided that the damage is proven.

For civil liability to arise, the infringement on the patent must occur in one of the forms stipulated in Article 34 of the patent law, and the infringing act must be committed against a valid patent issued by the competent authorities in the Kingdom of Saudi Arabia. Additionally, the elements of a civil liability lawsuit must be present, including fault on the part of the defendant, damage suffered by the plaintiff, and a causal relationship between the fault and the damage.

Keywords: Patent - Criminal Protection - Civil Protection - Civil Liability - Saudi Law.

INTRODUCTION

Praise be to Allah, who has prescribed for His creation the law of truth and made Islam the final and eloquent law. He has outlined for His servants the path to happiness and stability in His book and decreed misery and hardship for those who turn away from His guidance. Allah says: "And whoever turns away from My remembrance - indeed, he will have a depressed life, and We will gather him on the Day of Resurrection blind." (Surah Taha, 20:124).

I bear witness that Muhammad is His servant and messenger, sent with the clear truth, the complete religion, the straight path, and the sound methodology. He established the principles of interaction among people on the basis of

truth, justice, and commendable cooperation built on righteousness and respect for rights and property. He was the best of those who adhered to His law, the most faithful to His covenant, and the exemplary figure for those who remained steadfast in obeying their Lord. May peace and blessings be upon him, his family, and all his companions.

Afterward,

There is no doubt that intellectual property rights have become a matter of significant international and global interest. Countries worldwide have issued laws and internal regulations to organize these rights within their territories, recognizing that human progress and well-being lie in the ability to achieve new innovations in technology and culture, which drive the wheel of progress and create new job opportunities and industries. The Kingdom of Saudi Arabia is among the most prominent countries that have paid great attention to these rights, organizing them meticulously to protect the rights of their owners and prevent any infringement by others. Therefore, the Kingdom has issued several regulations, the most important of which is the "Patent Law," which states in its first article: "The purpose of this law is to provide protection within the Kingdom for inventions..." (Article 1 of the Patent Law). The principles of justice require protecting the inventor's right to exploit and benefit from their invention in return for the effort and financial resources they have invested in achieving it. Recognizing and protecting this right is an important incentive for fostering a spirit of research and innovation in society, encouraging the allocation of more resources to open the door for further innovations. Additionally, the disclosure of the invention after obtaining the patent allows other researchers to benefit from the inventor's achievements, thereby advancing scientific research and societal development.

An inventor does not enjoy legal protection for their invention unless they follow specific procedures leading to the issuance of a patent. Not every invention is eligible for a patent, as certain conditions must be met, some of which are substantive and others procedural, for the invention to qualify for a patent.

While society's protection of a patented invention is a recognized principle, it is in the public interest that this protection is limited to a specific period. After this period expires, the protection ceases, and the exploitation of the invention becomes a public right, allowing anyone to benefit from it without compensation or facing any criminal penalty or liability. Therefore, all patent protection laws, whether local, regional, or international, aim to establish a fair balance between two interests: the interest of the innovator or inventor in obtaining their full rights, and the interest of the beneficiary in utilizing this innovation in a manner that satisfies their needs for a fee.

Given the importance of legal protection for patents in safeguarding the rights of their owners and preventing any infringement by others, and to encourage inventors to exert more efforts to achieve societal progress while ensuring their patented inventions are secure from any threats, this research has chosen this topic for study.

Research Plan:

This research addresses the topic through an introduction, a preamble, two chapters, and a conclusion, as follows:

Introduction: The importance of the research topic and its plan.

Preamble: Defining patents and explaining their characteristics and legal nature.

This includes two sections:

1. Definition of a patent.
2. Characteristics of a patent and its legal nature.

Chapter One: Criminal Protection of Patents.

This includes three sections:

1. Conditions for considering an act as an infringement on patent rights.
2. Forms of patent infringement.
3. Criminal penalties for patent infringement and the competent court for hearing patent infringement cases.

Chapter Two: Civil Protection of Patents.

This includes two sections:

1. Parties to a civil liability lawsuit for patent infringement.
2. Conditions for civil protection of patents.

Conclusion: The research findings.

Finally, I ask Allah for guidance, success, and assistance. He is the best Lord and the best Helper.

"And my success is not but through Allah. Upon Him I have relied, and to Him I return."

(Surah Hud, 11:88).

Preamble

Definition of a Patent

And Explanation of Its Characteristics and Legal Nature

This preamble includes the definition of a patent, its characteristics, and its legal nature, through two sections:

1. Definition of a patent.
2. Characteristics of a patent and its legal nature.

Section One Definition of a Patent

The term "patent" originates from the Latin word "Patere," meaning "open to public inspection" (Al-Khouli, p. 87). Jurists have provided numerous definitions for a patent, including:

- Dr. Mahmoud Samir Al-Sharqawi defined it as: "The official document issued by the state to the inventor, recognizing their right to what they have invented, allowing them to exploit the invention for a specified period." (Al-Sharqawi, p. 531).
- Dr. Ali Jamal Al-Din Awad defined it as: "A certificate granted by the state to the inventor, giving them the right to exclusively exploit and benefit from their invention for a specified period under certain conditions." (Awad, p. 103).
- Dr. Samiha Al-Qalyubi defined it as: "The certificate granted by the state to the inventor, giving them the right to exclusively exploit their invention materially for a specified period under certain conditions." (Al-Qalyubi, p. 55).
- Dr. Salah Al-Din Zain defined it as: "The document issued by the state to the inventor, recognizing their right to what they have invented or discovered." (Zain Al-Din, p. 30).
- Dr. Muhammad Hussam Lotfy defined it as: "An official certificate granted by the competent authority for any invention that is industrially applicable, provided that the invention is new and represents a creative step, meaning it surpasses the existing art at the time of granting the patent." (Lotfy, p. 8, paraphrased).
- Dr. Hamdallah Muhammad Hamdallah defined it as: "An official certificate or deed granted by the government (the administrative authority or the state) to a person (the inventor or the owner of the invention), giving them the exclusive right to exploit their invention financially (industrially or commercially) for a specified period under certain conditions. The patent holder can also assert legal protection for the invention against everyone, as a result of possessing the patent certificate or deed, which represents the right to the invention." (Hamdallah, p. 19, paraphrased). Article 2 of the Patent Law defines it as: "The document granted by the authority for a subject of protection, which may be a patent, a design certificate, a plant patent, or an industrial model certificate." (Article 2 of the Patent Law, paraphrased).

The World Intellectual Property Organization (WIPO) defines it as: "An exclusive right granted for an invention, which is a product or a process that provides a new way of doing something or offers a new technical solution to a problem. It provides the patent owner with protection for their invention for a limited period, typically 20 years. This protection means that the invention cannot be commercially made, used, distributed, or sold without the patent owner's consent." (WIPO's official website: www.wipo.org).

From these definitions, we can conclude that a patent is a document that grants legal protection to an invention, serving as a certificate of ownership for the inventor, allowing them exclusive rights to exploit and benefit from the invention through legal means. In other words, a patent grants legal protection to an invention, certifying that the invention meets the conditions required by the law. Therefore, not every invention is eligible for a patent, as certain substantive and procedural conditions must be met for the invention to qualify for a patent. (Makhlouf, p. 15, 16, paraphrased).

Thus, a patent grants its owner the right to exclusively exploit the invention throughout the protection period specified by the law, through the means defined for such exploitation. It is clear that an invention differs from a patent (Makhlouf, p. 15), as an invention, as defined in Article 2 of the Patent Law, is: "The idea reached by the inventor that results in a solution to a specific problem in the field of technology." In contrast, a patent is the document issued by the competent administrative authority in the state to the inventor, recognizing their right to what they have invented or discovered. The administrative authority authorized to grant patents in the Kingdom of Saudi Arabia is the Saudi Authority for Intellectual Property. (Al-Qurashi, p. 14, paraphrased).

Based on this, it can be said that a patent represents the reward given to the inventor by society in return for disclosing the secret of their invention and for the effort they have exerted to achieve it, encouraging them to exert more efforts to achieve societal progress. This reward is represented in the right to exclusively exploit the invention or assign it to others throughout the protection period. It is an absolute right for the inventor against the community. The protection of the invention is achieved by punishing anyone who exploits the invention in any form without the consent of the patent owner. (Al-Qurashi, p. 14; Al-Qalyubi, p. 56; Al-Jilani, p. 266, paraphrased).

Section Two Characteristics of a Patent and Its Legal Nature

First: Characteristics of a Patent:

A patent is characterized by a set of legal features, including that it is an intangible right, a temporary right, and that it is transferable and subject to seizure. These characteristics are explained below:

1. A Patent is an Intangible Right:

The most important characteristic of a patent is that it is an intangible right, meaning it gives its owner the moral right to attribute the creative idea to themselves. This right is non-transferable and non-tradable. While a patent grants its owner financial rights through the industrial exploitation of their invention, it is closer to intangible rights.

The Saudi legislator has recognized the inventor's moral or intangible right by attributing the invention to them alone (Makhlouf, p. 19; Sidqi, Al-Ghashami, p. 122, paraphrased). Article 5(e) of the Patent Law states: "The person who has reached the subject of protection has the right to mention their name in that capacity in the protection document."

2. A Patent is a Temporary Right:

A patent is also characterized by being a temporary right, as it grants its owner a specific period to exploit the invention. Article 91(a) of the Patent Law sets this period at twenty years from the date of filing the application. After this period expires, the protection ceases, and the invention becomes available to the public, meaning it becomes public property.

At that point, anyone can benefit from the invention without compensation or facing any criminal penalty or liability. (Makhlouf, p. 19; Al-Qalyubi, p. 56; Sidqi, Al-Ghashami, p. 122; Al-Qurashi, p. 14, paraphrased).

The reason for making a patent a temporary right is to allow society to benefit from an invention that has proven its industrial importance, especially after the inventor has exploited it for a sufficient period, which is the legal protection period. It is unreasonable to grant the inventor eternal protection for their invention, so it is necessary to balance the inventor's right with the public interest by making the patent temporary. Additionally, the novelty condition, which is essential for any invention, will not last forever, as the invention loses this element over time due to the rapid and continuous development in all aspects of life. (Makhlouf, p. 19; Sidqi, Al-Ghashami, p. 122; Abdallah, p. 123, paraphrased).

It should be noted that what expires is the right to exploit the invention, allowing society to benefit from it. However, the right to attribute the invention to the inventor remains linked to them, as it is a personal right inherent to them. It does not expire by prescription and does not die with the death of its owner or even their heirs. (Makhlouf, p. 19, paraphrased).

3. Transferability of the Patent:

A patent is also characterized by its transferability, as its owner can dispose of it through various legal transactions, such as selling, licensing, assigning, or mortgaging it. The right to exploit the patent also passes to the heirs upon the inventor's death, according to Article 5(a) of the Patent Law (Makhlouf, p. 20; Al-Qalyubi, p. 63; Sidqi, Al-Ghashami, p. 123; Al-Qurashi, p. 16, paraphrased), which states: "The protection document is a private right for the person in whose name it was issued, and this right is transferred by inheritance, as well as for consideration or without consideration."

4. Seizability of the Patent:

A patent is also characterized by its seizability as an asset, as it enters the debtor's (patent owner's) financial estate. Its financial value lies in the exploitation of the subject of protection covered by the patent. Therefore, the patent owner's creditors can request its seizure according to the rules of seizure of movable property in the debtor's possession or seizure of the debtor's property in the hands of third parties, as the case may be. Any creditor of the patent owner can request the seizure of the patent, either as a precautionary or executionary measure, to recover their debt from its value. (Makhlouf, p. 20; Al-Qalyubi, p. 63; Sidqi, Al-Ghashami, p. 123; Article 23 and subsequent articles of the Execution Law).

Second: The Legal Nature of a Patent:

The legal nature of a patent has sparked extensive jurisprudential debate among legal scholars. Some argue that a patent is a contract between the administration and the inventor, whereby the inventor is obligated to disclose the secret of their invention to society so that it can be industrially exploited after the patent period expires, in return for society granting the inventor the right to exclusively exploit and financially benefit from the invention for a specified period. (Abbas, p. 8; Sinot Dos, p. 78; and also the role of public authority, p. 222, paraphrased).

Others argue that a patent is a creative act that establishes the inventor's right to exclusively exploit their invention against everyone for a specified period. In other words, a patent is not a declaratory or revealing act of the inventor's ownership right but rather a creative act that establishes the right.

Before obtaining a patent, the inventor does not enjoy legal protection or the right to exclusively exploit the invention, and the inventor is not considered the owner of an industrial property right but merely the holder of a trade secret if they keep the invention to themselves. (Shafiq, 1/895; Radwan, p. 244).

On the other hand, some argue that a patent is a declaratory and establishing act of the inventor's right to the invention, and once it is issued correctly, it creates a right for the patent owner to exclusively exploit the invention and enjoy the legal protection conferred by the law on the patent. This is the creative effect of the patent. (Hamdallah, p. 20, paraphrased).

There are also those who argue that a patent is a unilateral legal act. This legal act takes the form of an administrative decision issued by the administrative authority granting the patent (protection document) to the inventor. The law obliges the administrative authority to grant the patent to the inventor for their invention once the required procedures and conditions are met. If these conditions are not met, the administrative authority must reject the patent application. (Al-Qalyubi, p. 29, paraphrased).

We support this latter view because it aligns with the provisions of the Saudi Patent Law, as a patent is nothing more than a unilateral legal act in the form of an administrative decision granting the patent, issued by the Saudi Authority for Intellectual Property. This decision is recorded in an official document containing the inventor's name and the invention's name, and the patent owner has the right to enjoy all the rights granted by the law in the Kingdom of Saudi Arabia to the owner of this document.

This characterization is supported by the fact that the competent authority in the Kingdom—the Saudi Authority for Intellectual Property—when granting the protection document containing specific data after verifying that the formal and substantive conditions stipulated by the law are met, allows others to challenge this decision to grant the document within a specified period based on specific grounds. The inventor themselves can also challenge the authority's decision if their patent application is rejected. (Makhlouf, p. 32, 42; Al-Qurashi, p. 61, paraphrased).

Regardless of the debate over the legal nature of a patent, laws and regulations governing patents have recognized the inventor's rights over their invention and protected them from infringement (Zain Al-Din, p. 31, paraphrased). Patent protection consists of two types: criminal protection and civil protection.

Chapter One Criminal Protection of Patents

Criminal protection of patents refers to the punishment of anyone who infringes on a patent by performing any act of exploitation specified in the patent law without the consent of the patent owner, through the penalties stipulated by the law, to achieve deterrence against anyone who infringes on a protected invention.

Studying the criminal protection of patents requires examining the conditions that must be met for liability to arise for the infringer, the forms of patent infringement, the penalties set by the legislator for infringing on patent rights, and the urgent measures the legislator has allowed to prevent damages resulting from patent infringement. Additionally, the competent court for hearing patent infringement cases and appealing decisions related to them will be discussed. (Al-Qurashi, p. 93, paraphrased). This will be addressed through three sections:

1. Conditions for considering an act as an infringement on patent rights.
2. Forms of patent infringement.
3. Criminal penalties for patent infringement and the competent court for hearing patent infringement cases.

Section One Conditions for Considering an Act as an Infringement on Patent Rights

The legislator has set conditions in the patent law to consider an act as an infringement on patent rights. Article 34 states: "An infringement is considered to occur when any act of exploitation specified in the provisions for each subject of protection is performed by any person in the Kingdom without the written, recorded consent of the protection document owner in the administration (Saudi Authority for Intellectual Property)." (Article 34 of the Patent Law, paraphrased).

From this article, we can deduce these conditions:

1. **The first condition:** A person other than the patent owner performs any act of exploiting the patent.
2. **The second condition:** The act occurs within the Kingdom.
3. **The third condition:** The act is carried out without the written, recorded consent of the patent owner.

These conditions will be explained in detail below.

First Condition: A Person Other Than the Patent Owner Performs Any Act of Exploiting the Patent:

For criminal liability to arise against the infringer, they must have performed an act that the law considers an exploitation of the invention. Article 34 of the Patent Law enumerates the forms of infringement on a protected invention, which will be discussed in the second section of this chapter. (Al-Qurashi, p. 93, 94, paraphrased).

Second Condition: The Infringement Occurs Within the Kingdom:

For the patent owner to pursue the infringer, the infringing act must have occurred within the Kingdom of Saudi Arabia (Al-Qurashi, p. 49; Sidqi, Al-Ghashami, p. 146, 147, paraphrased). All intellectual property rights are subject to the principle of territoriality, meaning that the patent owner only enjoys protection in the country where the protection was requested and obtained. This principle means that if a patent is obtained in one country, the patent owner is protected in that country. If they wish to protect their invention in multiple countries, they must obtain protection in each country separately.

Therefore, if a person infringes on a patent outside the Kingdom, they cannot be held liable before the competent authorities in the Kingdom, as the act did not occur within the Kingdom. Similarly, a patent owner registered in the Kingdom cannot request the competent authorities in the Kingdom to stop an infringement that occurred outside the Kingdom. (Al-Qurashi, p. 94, paraphrased).

Third Condition: The Act of Exploiting the Patent is Performed Without the Consent of the Patent Owner:

This condition requires that the act of exploiting the patent, as specified in Article 34 of the Patent Law, is performed without the written, recorded consent of the patent owner in the Saudi Authority for Intellectual Property. (Al-Qurashi, p. 93, 94; Sidqi, Al-Ghashami, p. 146, 147, paraphrased).

Section Two

Forms of Patent Infringement

The forms of patent infringement specified in the Patent Law can be summarized as follows:

1. Manufacturing, selling, offering for sale, using, storing, or importing a product protected by a patent without the patent owner's consent.
2. Using an industrial process (method of manufacture) protected by a patent without the patent owner's consent.
3. Manufacturing a product obtained directly through an industrial process protected by a patent without the patent owner's consent, or selling, offering for sale, using, storing, or importing such a product.

For patent infringement to occur, the two usual elements of a crime must be present: the material element and the mental element. (Al-Qurashi, p. 49, 95, paraphrased).

First: The Material Element:

The material element is the act that constitutes the body of the crime (Makhlouf, p. 88, paraphrased). It is achieved by performing any of the aforementioned acts related to an invention covered by a patent, and the act must be performed without the patent owner's consent.

The primary crime in this context is the manufacture of the patented product without the patent owner's consent. Liability arises whether the person manufactured the product for themselves or for others. The manufactured product must be identical or similar to the patented product, with no substantial differences between the patented product and the counterfeit product. Manufacturing a product similar to the patented product may raise difficulties in determining the extent of similarity that triggers liability. To determine this, the similarities, not the differences, should be considered. Minor modifications made by the infringer to the manufactured products are irrelevant as long as the essential elements of the original invention are present in the counterfeit product. Merely declaring that a person has manufactured the patented product is insufficient to establish liability unless they have actually manufactured the product. It goes without saying that the patent must be valid at the time of manufacture; no crime is committed if the patent has entered the public domain due to the expiration of the protection period, non-payment of annual renewal fees, or a decision to invalidate the patent. The Patent Law does not require the intent of commercial exploitation when manufacturing the product; the material act alone triggers the perpetrator's liability, regardless of the motive behind the manufacturing, as long as it is done without the patent owner's consent, except for the exploitation of the invention in non-commercial scientific research. (Al-Qurashi, p. 96, paraphrased).

The Patent Law also criminalizes the sale of a product that involves patent infringement and extends criminalization to offering it for sale. The law further criminalizes the use, storage, or importation of a product that involves patent infringement. Importing or storing a product protected by a patent without the patent owner's consent is considered an infringement, whether the importation or storage is for the purpose of sale, offering for sale, or use.

Patent infringement can also occur through the use of an industrial process protected by a patent to manufacture products without the patent owner's consent. In this case, crime is not committed against the product but against the method and process used to produce the products. The protection in this case is not for the products manufactured using the patented process but for the industrial process itself. However, since the products were manufactured using the patented process, it is not permissible to sell, offer for sale, use, store, or import these products. (Ziyad Al-Qurashi, p. 96, paraphrased).

If the subject of the allegedly infringed patent is an industrial process for manufacturing a product, the defendant must prove that the identical product was not manufactured using this process without the patent owner's consent, if one of the following two conditions is met:

1. The product obtained through the patented industrial process is new.
2. There is a strong likelihood that the identical product was manufactured using the patented industrial process, and the patent owner could not determine the actual method used despite reasonable efforts. (Article 48 of the Patent Law).

Second: The Mental Element:

The mental element is the criminal intent, which is the perpetrator's intention to commit one of the aforementioned acts (Makhlouf, p. 88, paraphrased). The Patent Law does not require specific criminal intent for this type of crime, as it only requires the infringer's intent to harm and damage the patent owner. This means that the required criminal intent is general, not specific.

The mental element is achieved by fulfilling two conditions: knowledge and intent. The first condition, knowledge, is that the person who performed any of the infringing acts knew that the right they infringed upon was protected by a patent. Knowledge is presumed for everyone through the publication of the patent in the bulletin issued by the Saudi Authority for Intellectual Property (Al-Qurashi, p. 96, paraphrased), as the publication and announcement of the patent are legally binding against everyone, forming a conclusive legal presumption of the infringer's knowledge (Makhlouf, p. 88, paraphrased). The second condition is the infringer's intent to commit the act criminalized by the law, and the infringer's intent must be free from any defect; that is, the person who committed the crime must not have been coerced into performing the act or be of diminished or no legal capacity. (Al-Qurashi, p. 96, 97, paraphrased).

Section Three Criminal Penalties for Patent Infringement and the Competent Court for Hearing Patent Infringement Cases

First: Criminal Penalties for Patent Infringement:

The Patent Law specifies criminal penalties for infringing on a patent (i.e., a protected invention), including fines, imprisonment, publication in the official gazette, and publication in the bulletin issued by the authority and in two daily newspapers at the expense of the convicted party. The law also allows the competent court to take urgent measures it deems necessary to prevent damages resulting from patent infringement. These will be discussed as follows:

1. **Fine:** Article 34 of the Patent Law states that the commercial court may impose a fine on the patent infringer not exceeding one hundred thousand riyals, with the maximum fine doubled in case of recidivism. (Article 34 of the Patent Law, paraphrased).

It is noted that the legislator has allowed the commercial court to increase the maximum penalty for patent infringement crimes (i.e., infringement of a protected invention).

2. **Imprisonment:** This penalty may be imposed if the court deems that the infringement warrants this deprivation of liberty, such as counterfeiting the invention, selling products bearing the patent, or falsely claiming to have obtained the patent. A more severe penalty may be imposed if stipulated in any other law. (Al-Qurashi, p. 96, 97; Makhlof, p. 88, 89; Article 34 of the Patent Law, paraphrased).

3. **Publication:** Article 34 of the Patent Law states that if the commercial court decides to impose a fine not exceeding one hundred thousand riyals for patent infringement crimes, the court's decision must be published in the official gazette, the bulletin issued by the authority, and two daily newspapers at the expense of the convicted party. This provision does not affect any more severe penalty stipulated in any other law. (Article 34 of the Patent Law, paraphrased).

The purpose of publication in the official gazette and two newspapers is to create a deterrent effect on the person convicted of patent infringement by publicly shaming them. It also serves as a deterrent to anyone who might consider infringing on a patent. (Al-Qurashi, p. 97, paraphrased).

4. **Urgent Measures:** Article 34 of the Patent Law states that the commercial court may take urgent measures it deems necessary to prevent damage resulting from infringement (Article 34 of the Patent Law, paraphrased). Urgent measures are taken at the plaintiff's request to the competent judicial authority. If the court decides to take urgent measures against the defendant, it may order precautionary and preservative measures against the defendant, provided that the plaintiff provides the guarantees the court deems necessary to secure the defendant's rights in case the lawsuit is not proven. (Al-Qurashi, p. 97, paraphrased). Article 59 of the Executive Regulations explicitly states: "The court may, upon the submission of the lawsuit, order precautionary and preservative measures against the defendant, provided that the plaintiff provides the guarantees the court deems necessary to secure the defendant's rights in case the lawsuit is not proven." (Article 59 of the Executive Regulations of the Patent Law, paraphrased).

The Patent Law and its Executive Regulations do not specify the nature of the urgent measures the court may take. However, urgent measures may include preparing reports to inventory and describe the tools and equipment used in the infringement, seizing products the defendant may have produced in violation of the plaintiff's rights (Al-Qurashi, p. 97, 98, paraphrased). The court has discretionary authority to decide whether to impose the seizure or not. These measures may be taken before filing a criminal or civil lawsuit, in which case the lawsuit must be filed within a specified period from the date of seizure, or the measures will be invalidated. They may also be taken during the lawsuit (Zaidan, p. 130, paraphrased). These measures may also take the form of accessory penalties, such as confiscating the tools and equipment used in counterfeiting the protected invention to prevent their future use in committing the crime again. They may also include the destruction of counterfeit products if they harm consumer health or safety (Makhlof, p. 88, 89, paraphrased). The defendant may claim compensation from the plaintiff for any damage suffered if the plaintiff's claim is proven false. (Al-Qurashi, p. 89; Zaidan, p. 130, paraphrased).

Second: The Competent Court for Hearing Patent Infringement Cases:

The Supreme Judicial Council has decided to transfer the jurisdiction of hearing criminal and civil lawsuits stipulated in Article 2/36 of the Patent Law from the Patent Infringement Committee to the commercial courts effective from 1/6/1441 AH. (Al-Qurashi, p. 98).

The Supreme Judicial Council's Circular No1418/T dated 21/5/1441 AH states:

1. The jurisdiction of hearing civil and criminal lawsuits arising from the application of (the Copyright Law, the Patent Law, Integrated Circuit Layout Designs, Plant Varieties, and Industrial Models) is transferred to the general judiciary effective from 1/6/1441 AH.

2. These cases will be heard by commercial circuits composed of three judges in commercial courts and general courts.

It is also worth noting that after the Supreme Judicial Council's decision, administrative decisions issued by the Saudi Authority for Intellectual Property regarding appeals against decisions to accept or reject patent registration are now appealable before the commercial court. The Board of Grievances no longer has any legal role in these matters, as these decisions were previously subject to the Board of Grievances' oversight. (Najib, p. 391, paraphrased).

Chapter Two Civil Protection of Patents

The legal protection established by Patent Law is not limited to criminal protection, which aims to achieve general deterrence against anyone who infringes on a patented invention. It also includes civil protection, which entails the inventor receiving appropriate compensation for the damage suffered due to the infringement of their protected invention by unauthorized exploitation by others.

Civil protection of patents (i.e., a protected invention) refers to the general protection granted to all rights, regardless of their nature, which includes the inventor's right to claim compensation when their invention is infringed upon by unauthorized exploitation by others (Makhlof, p. 76, 88; Dr. Hamdallah, p. 86; Zaidan, p. 128, paraphrased). Any harm to others obligates the perpetrator to compensate, as stipulated in the general rules of civil liability in the Civil Transactions Law. Therefore, the patent owner has the right to claim compensation from the infringer for the damage

resulting from the infringement, provided that the damage is proven (Zaidan, p. 128, 129, paraphrased). Article 47 of the Patent Law states: "The patent owner has the right to file a lawsuit before the committee against any person who infringes on their invention by exploiting it without their consent within the Kingdom..." (Article 47 of the Patent Law).

This article establishes civil protection for the patent owner by granting them the right to file a lawsuit against any person—natural or legal—in the Kingdom who infringes on their invention (Makhlouf, p. 68, paraphrased), by performing any act of exploitation specified in the provisions for each subject of protection without the written, recorded consent of the protection document owner in the authority. The court, based on the request of the document owner and any interested party, will prevent the infringement and award the necessary compensation. (Article 34 of the Patent Law; Al-Qurashi, p. 98, paraphrased).

We have previously mentioned the forms of acts that constitute infringement on the patent owner's rights. Based on Article 34 of the Patent Law, performing any act of exploiting a patent in the Kingdom without the patent owner's consent gives rise to civil liability in addition to criminal liability. This chapter will address the provisions of civil liability arising from patent infringement through two sections:

1. Parties to a civil liability lawsuit for patent infringement.
2. Conditions for civil protection of patents.

Section One Parties to a Civil Liability Lawsuit for Patent Infringement

A. The Plaintiff:

The plaintiff in this lawsuit is the owner of the invention. The owner of the patent may be the patent owner or the licensee who has been granted a voluntary (contractual) or compulsory license to exploit the patent. The legislator has confirmed that the right to file a civil lawsuit belongs to the document owner and any interested party. Article 34 explicitly states: "An infringement on the subject of protection is considered to occur when any act of exploitation specified in the provisions for each subject of protection is performed by any person in the Kingdom without the written, recorded consent of the protection document owner in the administration. The court—based on the request of the document owner and any interested party—will prevent the infringement and award compensation." (Article 34 of the Patent Law, paraphrased).

Granting the right to file a civil lawsuit to any interested party is logical, as infringement on a protected invention affects their rights as a voluntary or compulsory license. The Patent Law does not require the licensee to notify the patent owner when filing a compensation lawsuit against the infringer.

B. The Defendant:

The defendant in this lawsuit is the person who performed any act of exploiting the patent in the Kingdom without the patent owner's consent. The infringer may be a natural or legal person. If the infringer is a legal person, the lawsuit is filed directly against them, not against the company's director or board chairman. (Al-Qurashi, p. 98, paraphrased).

Section Two

Conditions for Civil Protection of Patents

For civil liability to arise, the infringement on the patent must occur in one of the forms previously mentioned, and the infringing act must be committed against a valid patent issued by the competent authorities in the Kingdom of Saudi Arabia. Additionally, the elements of a civil liability lawsuit must be present.

First: The Invention Subject to Infringement Must Have a Patent:

For the exploitation of an invention to constitute an infringement, the infringing act must be one of the acts specified earlier, and it must be committed against an invention that has obtained a valid patent issued by the competent administrative authority in the Kingdom. The legislator has granted protection to inventions that have obtained a patent, not to inventions that have not yet been granted a patent, such as inventions under study. This is inferred from Article 34, which states that the court awards compensation based on the request of the document owner and any interested party (Article 34 of the Patent Law, paraphrased). It is understood that only the person who has been issued the protection document, i.e., the patent, is considered the document owner. (Al-Qurashi, p. 98, paraphrased).

Second: The Elements of a Civil Liability Lawsuit Must Be Present:

The elements of a civil liability lawsuit for patent infringement must be present for civil liability to arise against the infringer. These elements are fault on the part of the defendant, damage suffered by the plaintiff, and a causal relationship between the fault and the damage. (Younis, p. 137; Al-Qurashi, p. 99; Makhlouf, p. 78, paraphrased).

First Element: Fault: Fault in a civil liability lawsuit is established when the invention is infringed upon by performing any act of exploiting the patent in the Kingdom without the prior consent of the right holder. (Al-Qurashi, p. 99; Makhlouf, p. 78, paraphrased).

If the fault element is absent, there is no infringement on the patented invention (Makhlouf, p. 78, paraphrased). The legislator has specified certain cases where the fault element is absent because they fall outside the scope of commercial and industrial exploitation, including:

1. **First Case:** The use of the invention by others for non-commercial scientific research purposes. (Article 47/b of the Patent Law).

Allowing such acts helps in creating better sciences or arts that ultimately benefit society, aligning with the encouragement of scientific research, which often builds on the work of others. (Sidqi, Al-Ghashami, p. 142, paraphrased).

2. **Second Case:** The use of the patented means on ships belonging to other countries of the Paris Union, whether in the ship's body, machinery, equipment, or any part thereof, when these ships temporarily or accidentally enter the Kingdom's waters, provided that the use of all these means is limited to the ship's needs. (Article 51/1 of the Executive Regulations of the Patent Law, paraphrased).

3. **Third Case:** The use of the patented devices in the manufacture or operation of aircraft or land vehicles or their spare parts belonging to another country of the Paris Union when these vehicles enter the Kingdom temporarily or accidentally (emergency). (Article 51/2 of the Executive Regulations of the Patent Law, paraphrased).

4. **Fourth Case:** This is a self-evident case related to acts concerning the product covered by the patent after it has been officially placed on the market. (Al-Qurashi, p. 99; Makhlouf, p. 78, paraphrased).

Second Element: Damage: The presence of fault alone is insufficient to establish a civil liability lawsuit; the fault must result in damage to the patent owner. In other words, the infringement on the invention must cause harm to the patent owner. The plaintiff must prove this damage (Al-Qurashi, p. 99, 100; Hamdallah, p. 87, paraphrased). The damage may take several forms, such as some of the patent owner's customers switching to the infringer or the plaintiff losing a portion of their market share. This constitutes material damage, such as the loss of customers or financial loss. If the damage has already occurred, there is no difficulty. However, the damage may be potential; potential damage refers to the likelihood of its occurrence being so high that it is worthy of consideration, such as damage to the invention's reputation. The infringer's intent to cause harm is not required for liability to arise. However, the absence of bad faith, while not preventing liability, may result in the denial of material compensation. (Al-Qurashi, p. 99, 100, paraphrased).

Third Element: Causal Relationship: The causal relationship means that the damage is a direct result of the infringement on the patented invention (Makhlouf, p. 78, paraphrased). In other words, there must be a direct link between the act of infringing on the invention and the damage suffered by the patent owner.

This condition is logical, as it is unreasonable to hold someone liable for damage not caused by their actions. If the damage arises from an external cause, liability is negated due to the absence of a causal relationship between the fault and the damage. The plaintiff must prove this condition before the court (Al-Qurashi, p. 100; Hamdallah, p. 87, paraphrased). Therefore, if it is proven that the damage suffered by the inventor was not caused by the infringement on their invention, the lawsuit will be dismissed. (Makhlouf, p. 78, paraphrased).

Proving the causal relationship between the fault and the damage is not always easy. It may be straightforward when the damage has already occurred, but it becomes more challenging in other cases, leaving it to the court's discretion. (Makhlouf, p. 78, 79, paraphrased).

When these conditions are met, the plaintiff is entitled to compensation for the damage suffered. However, it should be noted that Saudi courts do not compensate for potential damage or for the loss of a benefit that was certain to be realized. The benefit that was certain to be realized refers to the money awarded to someone who was deprived of a legitimate interest or benefit that was certain to be obtained. (Al-Qurashi, p. 98, 99, paraphrased).

CONCLUSION

After completing this research with the help and guidance of Allah, I present the conclusions reached through this study as follows:

- A patent is a document that grants legal protection to an invention, serving as a certificate of ownership for the inventor, allowing them exclusive rights to exploit and benefit from the invention through legal means.
- A patent is characterized by a set of legal features, including that it is an intangible right, a temporary right, and that it is transferable and subject to seizure.
- The legal nature of a patent has sparked extensive jurisprudential debate among legal scholars. The view that aligns with the provisions of the Saudi Patent Law is that a patent is a unilateral legal act in the form of an administrative decision granting the patent, issued by the Saudi Authority for Intellectual Property. This decision is recorded in an official document containing the inventor's name and the invention's name, and the patent owner has the right to enjoy all the rights granted by the law in the Kingdom of Saudi Arabia to the owner of this document.
- The legal protection provided by the Saudi legislator for patents consists of two types: criminal protection and civil protection.
- The legislator intended the criminal protection established for patents in the patent law to deter anyone who infringes on a protected invention.
- The legislator set conditions in the patent law to consider an act as an infringement on patent rights. The first condition is that a person other than the patent holder performs any act of exploiting the patent. The second condition is that the act occurs within the Kingdom. The third condition is that the act is carried out without the written, recorded consent of the patent holder.

- The forms of patent infringement specified in the Patent Law include: 1) manufacturing, selling, offering for sale, using, storing, or importing a product protected by a patent without the patent owner's consent; 2) using an industrial process (method of manufacture) protected by a patent without the patent owner's consent; 3) manufacturing a product obtained directly through an industrial process protected by a patent without the patent owner's consent, or selling, offering for sale, using, storing, or importing such a product.
- For patent infringement to occur, the two usual elements of a crime must be present: the material element, which is the act that constitutes the body of the crime, and the mental element, which is the perpetrator's intention to commit one of the acts specified in Article 34 of the Patent Law.
- The Patent Law specifies the criminal penalties for infringing on a protected invention, including fines, publication in the official gazette, and publication in the bulletin issued by the authority and in two daily newspapers at the expense of the convicted party. The law also allows the commercial court, at the plaintiff's request, to take urgent measures it deems necessary to prevent damage resulting from the infringement. These urgent measures may include seizing products produced by the defendant in violation of the plaintiff's rights, confiscating tools and equipment used in counterfeiting the protected invention, or destroying counterfeit products if they harm consumer health or safety. Other measures may also be taken.
- The commercial courts are the competent courts for hearing criminal and civil patent infringement cases, effective from 1/6/1441 AH.
- Civil protection for patents entails the inventor receiving appropriate compensation for the damage suffered due to the infringement of their protected invention by unauthorized exploitation by others, provided that the damage is proven.
- The plaintiff in a civil liability lawsuit for patent infringement is the owner of the invention. The owner of the patent may be the patent owner or the licensee who has been granted a voluntary or compulsory license to exploit the patent. The defendant is the person who performed any act of exploiting the patent in the Kingdom without the patent owner's consent.
- For civil liability to arise, the infringement on the patent must occur in one of the forms stipulated in Article 34 of the Patent Law, and the infringing act must be committed against a valid patent issued by the competent authorities in the Kingdom of Saudi Arabia. Additionally, the elements of a civil liability lawsuit must be present, including fault on the part of the defendant, damage suffered by the plaintiff, and a causal relationship between the fault and the damage.

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