



RESEARCH ARTICLE

PATENTS IN LEBANON.

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Abstract

In this research we explained the meaning of invention, the owner of the rights of investment, the time of issuance of a patent, the reasons for patent's refusal, the duration of the exclusive right of investment, and the person entitled to the patent, its request and issuance. Furthermore, we exposed the rights deriving from the patent, its transfer, its ownership and termination, in addition to seizing the patent to PAY debts incurred by its owner(s), and the circumstances that may lead to terminate the patent. Afterwards, we showed the obligation of investing in an invention in Lebanon and its continuation by a compulsory permit or a governmental administrative permit and its reasons, with the procedure for giving it either to the government or to individuals who fulfill the conditions to implement the invention subject of the patent. Then, we showed the infractions that breach the rights of the patent owner and their penalties, whether essential or preventive. And last, we showed the role of the judicial system in protecting the patent.

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Introduction:-

Law No. 240 of 7/7/2000 organized patents in Lebanon. Since this law was designed to protect the rights of the patents holders, it was necessary to define these rights and the owners thereof, and to specify the conditions of their validity and thus protect them, as well as the rights arising from them and their transfer, fixation and fall, be it material or moral rights. The law also spoke about the continuous mandatory status of their investment, in addition to what is outside the scope of this protection, as well as the duration of such protection with its extent, and the penalties for those who violate it, plus the precautionary measures to prevent these violations.

Research methodology:-

We will address this issue from both legal and judicial aspects without going into details that prevent the achievement of our research's goal.

To explain the above, we have divided our research into three chapters:

Chapter 1: Definition of the invention, the one who has the right to invest in it, the investment's duration and the patent's right.

Chapter 2: Rights arising from the patent, the transfer and fall of the patent and the mandatory investment in Lebanon and its continuity .

Chapter 3: Violations, penalties and precautionary measures, besides the role of the judiciary in Patent protection.

Chapter1:-Definition of the invention, the person entitled to invest in it (owner of the right) , the investment's duration and the patent's right.

Definition of "invention"

An invention consists of every new intellectual production involving an innovative activity, if it differs from the previous used techniques¹, as long as not every ordinary person working in the same field can achieve it with the previous technique. It also must be something industrially applicable to be manufactured and used in any type of the said craft.

This definition is compatible with the required conditions for the invention to benefit from protection as defined by the World Intellectual Property Organization (OMPI/WIPO).

The person entitled to invest in the invention

Every invention may be the subject of a patent that protects the holder and grants him and his successors the exclusive right of investment².

Therefore, a patent is issued for each invention relating to:

1. A new industrial product.
2. A new manner leading to a known industrial product or a known industrial result.
3. Each new application of a known industrial method or means.
4. A new group of known methods or means.
5. New microorganisms.
6. New or discovered plant products if they meet the following conditions:
7. To differ from similar species previously known to have a significant, precise and low-volatility feature, or to have several features that collectively constitute a new plant species.
8. To be homogeneous as for the sum of their features.
9. To always remain stable i.e. to remain identical to their first definition at the end of each productive cycle.

G- The final or intermediate topography of a semiconductor³ that expresses the intellectual activity of the inventor which, unless it is common, can be subject to a deposit granted by the protection provided for by law.⁴

Duration of the exclusive investment right:-

The exclusive right to invest the invention whose patent was given shall be valid for twenty years from the date of filing the application submitted to the Intellectual Property Protection Authority after the patent applicant has paid a

¹– The state of the previous technique shall include all that was before the date of filing the patent application or the date of the claimed priority by the public at any place or time either by written or oral description or by any other method. For further details, see Article 2 of the Patent Law No. 240/2000 and Articles 89-94 of Resolution No. 2385/1924 (Commercial and Industrial Property) and Article 11 of the amended Paris Union Convention of 1883 and the article written by Dr. Ibrahim Yakhni and Dr. Mohammed Et-Tayeb Dweis entitled: "Patents: an index for the economies' Competitiveness" University of Ouargla, Algeria, Published in Wikipedia, the Free Encyclopedia under the Arabic article about patents.

<https://revues.univ-ouargla.dz/index.php/numero-04-2006/764-2013-0507-1>

²- Article No: 3 of the law numbered 2000/240 (Ibid)

Dr. Mghabghab Naim: Industrial property , patent commerce , Halabi publications, Bierut, in 2003, Page 161.

³ -For more details about the definition and importance of this product and how to connect it to electricity and the industries it enters in, the most important of them are: Pocket Radios, solar cells that produce electricity in satellites, etc. See the website

http://www.marefa.org/%D8%B4%D8%A8%D9%87_%D9%85%D9%88%D

⁴ -For more details on the conditions and how to obtain the patent, who the invention's owner is, when this protection is prevented and who is entitled to the patent, as well as the required procedures to issue the patent, to revoke it and the one that shall own it in the event that more than one person was involved in one invention, see, Articles 62-66 and Chap. 2 of Law No. 240/2000 (Ibid) and Dr. Taha (Ibid) pp. 687-697

fee of fifty thousand Lebanese pounds. The financial receipt's date depends on that of the application's filing .⁵

Therefore, the tax code has treated these patents' holders or beneficiaries by an exceptional tax treatment, allowing them to recover their cost in equal installments during the period of their protection by deducting them from the taxable income in Lebanon.⁶

The one who has the right to acquire the patent

The one who has the right to acquire the patent may be the worker (employee) or the employer. The employment contract and the means used to reach this invention shall determine the right owner herein⁷.

The use of the patent shall be completely the employer's if the invention that was done as a result of an employment contract with the employee included an innovative task.

The use of the patent shall be incomplete if the invention happened as a coincidence during the employee's execution of his work tasks while he was using and benefiting from the possibilities provided to him by the employer. If the employer is entitled to benefit from this patent, he must pay the worker a fair price following an agreement between both parties. The worker shall have the right to resort to the judiciary to obtain his right if any disagreement happened.

Chapter 2:-Rights arising from the patent, the transfer and fall of the invention and the mandatory investment in Lebanon and its continuity.

Rights arising from the patent and its products:-

The patent holder shall have the exclusive right to invest in his invention by himself or through third parties.⁸

It should be noted here that if the subject matter of the patent was an industrial method, the protection granted by the patent shall cover the products obtained directly by that latter.⁹

Transfer, fixation and fall of patent rights:

The rights arising from the patent application or the patent shall be transferred in whole or in part, for a fee or free of charge. These rights may also be subject to exclusive or non-exclusive investment license or mortgage contracts, and thus the patent may be mortgaged to pay its holders' debts. Patents can also be transferred through inheritance or a will.

It should be noted that any agreement dealing with the application for the patent itself must be noted down in writing, or it will otherwise be considered null and void. This agreement shall not apply to third parties except from the date of its registration in the patent register at the Intellectual Property Protection Department.

The registration of the waiver may be removed based on the parties' agreement or in implementation of a judicial decision which is not subject to any appeal or objection¹⁰.

Patent revocation

The patent shall be revoked by a judicial resolution in specific cases. It should be noted here that if the revocation reasons affect only the patent in part, the revocation shall only apply to those applications.

In view of the mandatory investment of the invention and its continuity in Lebanon, the legislator created the compulsory license to invest the invention in cases and conditions that he specified, as well as how to assign them to

⁵ -Articles 5 and 10 of Law No. 240/2000. (Ibid)

⁶ - For more details on this subject, see: Dr. Suissi, Fatima: Income Tax: Tripoli-Lebanon, Dar Al-Mona, 1st edition, (2000), pp. 208 et seq.

⁷ - Article No: 6 of the law numbered : 2000/240

⁸ -For more details, see Articles 20 and 21 of Law No. 240/2000. (Ibid)

⁹ -Since the law defines the most common rights of the patent holder and not all of them, this means that if it is found that there are rights that should be protected other than those mentioned by law, they may be protected by the courts if their conditions are met or by amending the law.

¹⁰ - Articles No: 22, 23, 28, of the law numbered 2000/240 (Ibid) Dr. Mghabghab 2003 – Pages 201/197

other parties under various conditions and reasons that can be broadly interpreted. He also created the governing administrative license for investment and specified how to grant it to persons or to the state.¹¹

Finally, it should be noted:

1. That the compulsory license shall not be exclusive and must be given to more than one person or entity.
2. That the patent holder or the licensee may, if new circumstances justify it, review the judiciary to amend or terminate the license terms.
3. That the Court may, at the request of each interested party, ascertain the continuity of the circumstances in which the license was originally granted.

Chapter 3:-Penalties and precautionary measures and the role of the judiciary in Patent protection.

What are the punishable violations

Any infringement of the rights of the published patent shall be deemed to constitute an offense of counterfeiting.¹² However, the presentation, marketing, use, or possession of a counterfeited product for use or marketing by a person other than the manufacturer of the counterfeited product shall not be considered a liability for the one who does so unless aware that it is counterfeited.¹³

What are the penalties for such violations

Anyone who has knowingly infringed the rights of the published patent holder shall be liable to a fine of between five million and fifty million Lebanese pounds and to imprisonment from three months to three years or one of those two penalties.

This means,

That in order to punish the offender with one of the above-mentioned penalties, he must be aware that he is infringing the rights of the published patent holder as required by law.

The penalty is not limited to those infringing the rights of the patent holder, but also to persons who have participated, instigated or interfered in the offense of counterfeiting, as well as those who, by virtue of their status, occupation, profession or art, knowing of confidential or industrial information, Used it for their or another entity's benefit.

It should be noted here that using the invention for personal, non-commercial or industrial purposes or for scientific research purposes is not considered something punishable by law.

The role of the judiciary in patents protection

When reviewing some of the various provisions issued for this topic, we have obtained the following results:

* The patent certificate shall be considered to be based on the validity and origin of the patent, putting the burden of proving its invalidity on the person claiming it, as well as interpreting the doubt in favor of the patent holder. The validity of the patent shall be vested only in the new result, regardless of the simplicity of the idea resulting thereof,

¹¹ -Articles 30-38 of Law No. 240/2000 and Dr. Taha(Ibid)pp. 694-696 and pp. 700-702 and Dr. Mghabghab, pp. 202-206

¹² -For more details about the offense of counterfeiting, the penalties imposed on those who commit it, the conditions of their application, the counterfeiters and non-counterfeiters on which the penalty shall be applied, the cases where counterfeiting is not a punishable offense, cases of a double penalty, compensating the patent holder, as well as secondary penalties and precautionary measures to prevent the counterfeiting from happening, See: Articles 40-58 of Law No. 240/2000. (Ibid)

¹³ -For more details on the forms of counterfeiting and those who shall be prosecuted upon it, see Dr. Mghabbeh (Ibid) pp. 213-272, and Dr. Al-Homsi, Ali Nadeem: Protection of Industrial Property from Counterfeiting and Fraud, a Comparative Study: Majid, University Institution for Studies, Publishing and Distribution Beirut, 1st Ed, 2010, pp. 330-331. Nashmi, Ajil: Moral rights of programs and the provisions of their copying. Research published in the Scientific Journal of the European Council for Fatwa and Research, Ireland, issue no. 1, 2002, pp. 207. and Dr. Dweidar, Hani: The Scope of the technology Secret Knowledge Monopoly, New University Press House, Alexandria, ND, pp. 86.

which is not bound at all by the activity of the invention nor of its importance or extent.

To expedite the enforcement of the judgment:

The judgment's enforcement was accelerated despite its appeal.¹⁴

In order to facilitate the defense of the patent holders' rights, the judiciary considered that the jurisdiction to adjudicate disputes related to inventions registered in Lebanon belongs to the Lebanese courts despite the existence of foreign provisions that dealt with the issue.¹⁵

To ensure the protection of the dispute's two parties, the judiciary was restricted to the articles of the Penal Code about the availability of the criminal elements to judge the existence of the patent infringement offense. That is why it asks for two conditions:

That the defendants (aggressors) damage the rights of the patent holder.

That this be based on the knowledge of the bidder and the seller (the defendants)¹⁶.

Whereas they did not prove a lack of knowledge, and whereas the sale of blinds based on a patented system harms the patent holder or his representative:

The court estimated the damages caused to the defendants at five million Lebanese pounds.

To ensure the validity and protection of inventions from fraud, the court ruled invalidating the defendant's register because of the lack of certain conditions for the patent's subject, namely the novelty element required by the legislator in Article 2 of Law No. 240/2000 to be protected in accordance with article 31/240/2000..¹⁷

Conclusion:-

It is clear from the above that the invention is nothing but an innovative intellectual production that is industrially applicable if it can be manufactured and used in any kind of workmanship.

In order to protect this invention and its products, the legislator created a patent for every invention, protecting it and granting its holder and his successors an exclusive right to invest for a period of twenty years. This allows them to recover the patent's cost during this period by deducting it from the taxable income in Lebanon.

To prevent the patent holder's intransigence and hiding the invention's benefits from the community, the legislator forced him to invest his invention in Lebanon and ensure its continuation, and therefore the legislator created a forced leave to let others invest in the invention in case the patent holder failed to do so.

In order to deter others from infringing the patent holders' rights by counterfeiting, the legislator put a severe punishment on the counterfeiters and expanded it to include those who participated or instigated or intervened in the crime of counterfeiting and anyone who disclosed information about the invention for no legitimate reason or used it for his own benefit.

The judiciary has completed this protection, so in order for the victim to protect his right as quickly as possible, it issued the self-executing sentences despite their possibility to be appealed. To facilitate the defense of the patent holders' rights, it has been decided that the jurisdiction be done by the Lebanese courts. To secure these rights, the judiciary complies with the Penal Code. To protect inventions from counterfeiting, the registration of the invention is canceled if the novelty element is lost.

¹⁴ -Resolution No. 462 dated 12/10/68, published in Hatem, Vol. 114 pp. 55.

¹⁵ -For more details, see:

Sader, Ralph Joseph: Reference in IntellectualPropertyJurisdictions - HumanRights Publications, Beirut (2006), pp. 569 et seq., Basic Resolution No. 3323/2001 of 30/3/2004.

¹⁶ - Sader, (Ibid)pp. 567 et seq.,Resolution no. 73/2001 of 31/03/2003

¹⁷-Sader, (Ibid)pp. 576 et seq.,Resolution no. 11/3629/97 of 14/01/2003.

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