

Temporary Procedural Protection of Innovator Rights in UAE Legislation: A Comparative Study

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Abstract

When an innovator's right is infringed, the length of time it takes to resort to the judiciary for a final ruling in the dispute leads to increased damage to the rights of the innovator and the possibility of losing evidence to prove the right. This requires the innovator to resort to temporary measures to protect the right subject to infringement. Preventive protection of the rights of the innovator is embodied in measures that innovators are required to take, such as precautionary seizure. It supports the protection of the rights of the innovator, provided that the appropriate security is deposited to compensate the person harmed by those measures if it becomes clear that the person requesting the reservation does not have the right to request temporary protection. This paper evaluates all aspects of the temporary procedural protection of innovator rights in Federal Law No. (11) of 2021 regarding the organization and protection of industrial property rights and comparative laws.

Keywords: Temporary procedural protection, inventor's right, industrial property, patent, utility certificate.

Introduction

Industrial property rights regulated by UAE law include patents, utility certificates, industrial drawings, and industrial models. An invention is intended to present something new to society that did not exist before or to be the result of an innovative idea or activity that goes beyond existing industrial art. UAE law defines the patent as “a bond of protection granted by the state for an invention”, and the utility certificate is the bond of protection granted in the name of the state for an invention that does not result from sufficient innovative activity to grant a patent for it. An industrial design is any innovative composition of lines or colors that gives each or both a special appearance that can be used as a product. Industrial or craftsman. An industrial model is any innovative three-dimensional shape that gives a special appearance that can be used as an industrial or craft product. Procedural protection aims to provide early protection for industrial property rights and protect them from infringement by others. This is done by giving the right to the owner of a patent, utility certificate, industrial drawing, or

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industrial model, to submit a request to the competent court to issue urgent temporary and precautionary measures, of a preventive and defensive nature, against anyone who infringes his rights to his patent, utility certificate, or industrial drawing or industrial model (Kock, 2023). This study focuses mainly on the procedural protection (temporary and precautionary) of industrial property rights (patents, utility certificates, industrial designs, and industrial models).

Research Questions

1. Does the temporary procedural protection adopted by Federal Law No. 11 of 2021 regarding the organization and protection of industrial property rights guarantee the cessation of continued infringement of patents during the litigation period and before a final judicial ruling is issued in the case?
2. Does the patent protection approved by UAE legislation effectively contribute to pushing innovators to continue the innovation process to support comprehensive sustainable development in the United Arab Emirates?

Research Methodology

This paper relies on the descriptive approach by describing cases of infringement to which patents are exposed, as well as the comparative analytical approach by analyzing the texts of UAE legislation “Federal Law No. (11) of 2021 regarding the regulation and protection of patents and industrial property rights” and comparing them with the provisions of the legislation. Issued in other countries, including Tunisia, the Kingdom of Saudi Arabia, and the Sultanate of Oman.

Taking temporary measures ensures preventive protection of the rights of the innovator

Federal Law No. (11) of 2021 regarding the organization and protection of industrial property rights regulates the temporary measures in Article (68) .

a. protecting the innovator by granting him the right to request temporary measures.

Temporary procedural protection is considered an independent form of judicial protection. Therefore, the ruling issued in a temporary lawsuit must be limited to granting temporary protection if its conditions are met, without prejudice to the original rights.

Conditions for accepting a request to issue temporary measures to protect the rights of the innovator.

For an innovator's request to issue temporary measures to protect his patent rights to be accepted, several conditions are required. The existence of a valid patent: temporary measures aim to prevent any infringement of the patent, by requesting the patent owner, or the person to whom the rights have been transferred, from the competent court to order temporary measures. Therefore, there is no escape from the existence of a valid patent so that the judiciary can extend its protection, or rather there must be a right or interest protected by the law. (Al-Turk, 2010).

The intended interest here, which is recognized by the law, is the legitimate interest that accrues to the innovator from requesting temporary procedural protection before the judiciary, and this interest may be material or moral (Mahmoud, 2004), and the legal interest is that which is recognized by the law and does not violate public order or good morals.

The condition of interest is nullified when the inventor waives legislative protection by waiving the right to a patent or utility certificate or by requesting either of them before granting, provided that this waiver is in writing and signed by both contracting parties before the competent authority. Likewise, inventions whose protection period has expired are not covered by legislative protection. Based on the provisions of Article (18) of Federal Law No. (11) of 2021 regarding the organization and protection of industrial property rights.

What is meant by assault is a physical assault on the patent, such as someone who uses some products and claims to have obtained a patent for them, where his action represents a direct and explicit assault on the innovator's right to ownership of the patent. Just as the infringement on the rights of the inventor of the patent may be material and tangible, or it may be merely an attempt represented by preparatory procedures undertaken by a person, which, if completed, would constitute a complete infringement on the rights of the inventor of the patent. In this case, the patent owner has the right to resort to the judiciary by requesting that appropriate temporary measures be taken (Omry, 2017).

The Capacity

The lawsuit to be accepted in general, it must be proven that the plaintiff and defendant have the capacity in it, which is expressed as a personal, direct interest. The lawsuit is not accepted unless the plaintiff claims a right, a legitimate financial interest, or a legal position for himself. There may be multiple plaintiffs, as is the case in a joint invention, and in this case, the claim is established for any of these inventors, or their successors. The principle is that the patent owner alone

has the right to request interim measures and no one else, which means that the creditor of the patent owner does not have the right to request such measures even if he has an enforceable ruling. If the court determines that the above conditions are met, it must order appropriate temporary measures to protect the rights of the inventor of the infringed patent.

b. The authority responsible for taking temporary measures to protect the rights of the innovator

The TRIPs Agreement included the Agreement on Trade-Related Aspects of Intellectual Property Rights Abbreviation for (Agreement on Trade-Related Aspects of Intellectual Property Rights), in Article 50 stipulates” Judicial authorities have the power to order immediate and effective provisional measures”, the competent authority is determined to issue the decision to take temporary measures, considering that the judicial authority is the competent authority to issue the decision to take any of the temporary and immediate measures against the infringer of the rights of the patent owner (El-Saghir, 2007). Because taking temporary measures may lead to very serious effects on the person being taken against him, and therefore issuing the decision to take any of these measures should be entrusted to the judicial authority, but granting this authority to the executive authority may open the door to arbitrariness and issuing decisions to take temporary measures arbitrarily or maliciously.

According to the text of Article (68) of Federal Law No. (11) of 2021 regarding the organization and protection of industrial property rights, the competent authority to take temporary measures have been determined by the judicial authority, which is the court. This is consistent with the approach of the TRIPS Agreement (Kawtharani, 2012) and is consistent with most Arab legislation, according to what is stipulated in Article 33 of the Jordanian Patent Law, Article 35 of the Egyptian Intellectual Property Rights Protection Law, and Article 58 of the Algerian Patent Law.

While the Saudi legislator differs on this, Article 34 of the Saudi patent system stipulates that “the committee may take urgent measures as it deems necessary to avoid damages resulting from infringement.” The Saudi legislator granted this jurisdiction to the committee instead of the court, and Article 35 of the same system clarifies how the committee is formed, the number of its members, the rank of each of them, and how to nominate them which stipulates that: “A -committee shall consist of three regulars and two technicians, none of whom shall have a rank lower than twelfth. B - The city president shall nominate the members. C - A decision shall be issued by the Council of Ministers to form

the committee for three years, renewable once.” The decision determines who among the regulars will chair the committee.”

Here a question arises regarding countries whose legislation has designated judicial authorities as those with jurisdiction to take temporary measures to protect the rights of patent innovators. What is the judiciary competent to temporarily protect the rights of patent innovators?

Temporary protection has multiple forms and varies according to the circumstances of each case. Among these temporary measures are what is issued by the urgent judiciary, and some are issued by the court competent to hear the case in the form of orders on petitions, whether before filing the case or during its hearing. (Al-Feki, 2021.)

Resorting to urgent court cases in intellectual property cases in general, and patents in particular, is an effective method, as if all the machines and tools used to infringe the rights of the patent inventor are seized, and the evidence related to the infringement is preserved, the patent owner will be able to prove his right.

Article 27 of the UAE Civil Procedure Law No. 42 of 2022 stipulates:

1. One of its judges shall be assigned to the headquarters of the court of first instance to rule temporarily, without prejudice to the principle of the right in urgent matters for which there is a fear that time will be lost.”
2. The trial court has jurisdiction to consider these issues if they are submitted to it in a consequential manner.”

The litigation procedures established in ordinary litigation procedures also apply to urgent judicial matters.

From the foregoing, comparative laws have guaranteed the patentee the right to obtain the necessary temporary measures to protect his right to the patent, such as precautionary seizure, stopping infringement, or preserving evidence related to the infringement, by resorting to the urgent judiciary, or the state judiciary. Who orders interim measures by orders on petitions.

c: The scope of validity of the temporary procedural protection of the rights of the innovator

Most comparative laws(e.g. Article 4 of the Omani Industrial Property Rights Law, Chapter 101 of the Tunisian Patent Law, and Article 5 of the Jordanian Patent Law) take the principle of equality between national and foreign patent rights holders in enjoying and protecting these rights, or make this equality dependent on some conditions, namely: adhering to the principle of reciprocity, or that the foreigner be a resident of the country seeking protection from its jurisdiction, or that He has a real place of business, or has a real and effective

center of activity in one of the countries, or entities in the World Trade Organization, or whoever receives reciprocal treatment from the country in the right to apply for a patent (Khalil, 2015).

The UAE legislation adopted the principle of equality, or national treatment, as it did not distinguish between citizens and foreigners in enjoying and protecting patent rights. According to the text of Article (3) of Federal Law No. (11) of 2021 regarding the organization and protection of industrial property rights, the foreigner has the rights of a citizen that This law authorizes her, if he holds the citizenship of a country that treats the state on a reciprocal basis.

It should be noted that the principle of equality, or national treatment, is one of the basic and most famous principles established by international agreements concerned with intellectual property rights in general, and patents in particular, such as the article (2) of Paris Convention for the Protection of Industrial Property of 1883, and the TRIPS agreement included, in the first paragraph of Article 3, the obligation of each member country to grant citizens of other member countries treatment no less than the treatment it grants to its own citizens regarding intellectual property protection, it becomes clear that the right to innovation arises upon its registration.

However, this does not mean that the law does not protect the interest of the innovator before the date of issuance of the patent or utility certificate (Al-Ibrahim, Civil Protection of Patents and Trade Secrets, 2016). Rather, the legal protection of the patent and utility certificate begins before that and as of the date of submitting the application. The basis is that during this stage the innovator has a financial interest, even if it does not amount to a right, and this is confirmed by Article 18/1 of Federal Law No. (11) of 2021 regarding the organization and protection of industrial property rights.

The above article, in its first paragraph, specifies the period of legal protection for a patent at twenty years and for a utility certificate at ten years, and this text is consistent with the provisions of Article 33 of the TRIPS Agreement.

Temporary procedures as a preventive protection of the rights of the innovator

Temporary procedural protection for the rights of the innovator is a protection that prevents attacks on the rights of the innovator and patents and prevents the aggravation of damages without extending to issuing a final ruling on the disputed right.

A: Precautionary seizure procedures support the protection of the rights of the innovator.

Precautionary seizure is one of the most important precautionary measures, as it is a means placed by the legislator in the hands of the owner to achieve the preservation of his infringed right, as this measure falls at the forefront of the temporary and precautionary measures to protect intellectual property rights in general, and all other temporary measures support this procedure and revolve within its orbit (Abduljabar, 2018).

Precautionary seizure is defined as seizing movable property, placing it under the hands of the judiciary, and preventing the seized person from disposing of it or smuggling it because that would harm the rights of the seizers, and until the dispute related to the basis of the right ends by confirming it, or lifting it (Al-Damour, 2013). Given the seriousness of the precautionary seizure against the person against whom it is taken, the law requires that certain procedures be followed, and with a financial guarantee, to impose it. This is what I will discuss below in two points: The first is issuing court permission to impose a precautionary seizure, While the second is Depositing a security is a basis for protection.

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The second: Depositing the security amount is a basis for protection, in comparison between the provisions of precautionary seizure contained in the Code of Civil Procedure and the provisions of Law No. (11) of 2021 shows similarities in the following aspects:

First: In terms of purpose, each of them is a preventive measure aimed at preventing the disposal of the properties subject to seizure, whatever this property may be (Al-Ibrahim, Civil Protection of Patents and Trade Secrets, A Comparative Study, 2012).

Second: They cannot be imposed except at the request of the person concerned. The court may not order precautionary detention on its own.

Third: The judge issuing the order for precautionary seizure has discretionary authority to impose them. He may issue the order, or refrain from issuing it, based

on what he sees fit regarding the circumstances of the incident before him. The judge can also cancel the seizure if he is convinced that the seizure is invalid for any reason whatsoever .

Fourth: To impose a precautionary seizure, it is necessary to provide a guarantee from the person requesting the seizure.

Precautionary seizure in the executive regulations of the previous Civil Procedure Law differs from the precautionary seizure adopted by the Law for the Regulation and Protection of Industrial Property Rights in several aspects: First: in terms of conditions, since the precautionary seizure contained in the regulatory regulations of the previous Federal Civil Procedure Law, it is necessary for its effect to fulfil the conditions stated in Paragraphs 3 and 4 of Article 111 of the regulations stipulate that the creditor has the right to impose a precautionary seizure without this necessitating his fear of losing the guarantee of his rights, which are: if the creditor holds an official document for a debt due for payment and is not subject to a condition or if he has an undue judgment in his hand. Entry into force when the debt fixed therein is of a certain amount, while the precautionary seizure required to protect the rights of the innovator is that he has the status of the owner of the protection document or the person to whom all or some of the industrial property rights stipulated in Federal Law No. (11) of 2021 regarding the organization and protection of property rights have been transferred. Industrial law, as stated in Article (68) thereof, for its occurrence it is necessary that there be an act of infringement on the patent or any illegal act in contravention of the provisions of this law or the contracts or licenses granted in accordance with its provisions, as it is not required that there be a fixed and confirmed debt relationship between the person requesting the seizure and the seized party.

Accordingly, it is sufficient for the provisional seizure to occur if there is an infringement on the rights of the inventor of the patent, even if it has not been proven that the person requesting the seizure (the innovator) has the right to demand compensation from the infringer.

Second: In terms of the subject matter: The subject matter of the seizure mentioned in the Civil Procedure Code must be property owned by the debtor. It is not permissible to seize the property of others. As for the seizure established to protect the rights of the inventor of the patent, it is not required that the subject matter of the seizure be owned by the debtor (Hamadi Zoubir, 2018), for example For example, it is permissible to seize the tools that were used to infringe the rights of the inventor of the patent, and they are often not owned by the debtor, such as the factory that produces goods whose production constitutes an infringement of the patent (Jonathan S.Masur, 2023).

Third: In terms of effects, the outcome of the seizure mentioned in the Civil Procedure Code is to turn into an executive seizure, selling the debtor's money, whatever this money is, at a public auction against his will, and exercising the right of the seizing creditor, after the conditions required by the law are met. As for the precautionary seizure decided to protect the rights of the innovator Patent, it aims to preserve evidence of infringement of the patent and prove the incident of infringement, as this seizure does not lead to the sale of the property subject to seizure in the end.

B. Depositing security is a basis for protection

When the inventor of a patent requests a precautionary seizure, he must provide a guarantee that is proportionate, or sufficient, to compensate the defendant if it is proven that he is not right in his claim (Chapter 86 of the Tunisian Patent Law). The estimate of the guarantee is subject to the authority of the court and is estimated not only based on the seized goods but on the extent of what befalls the defendant. There are also moral damages because confiscating goods is a dangerous matter that leads to the disruption of labour and production, which will ultimately cause damage to the industry, in addition to moral damages that affect the reputation of the factory, or its owner. Trade is based on speed and trust, so this guarantee guarantees the defendant the preservation of... His right to compensation if it is awarded to him, because of the plaintiff's claim being malicious, and the precautionary seizure being taken is not based on honesty, but rather to undermine the commercial reputation of the product, the guarantee aims to remove the harmful effects of the seizure procedure if it later becomes clear that there is no right to it, and if That is the content of the guarantee, and what it aims to achieve. Its value is not determined by what is equivalent to reparation for the damage that may befall the defendant, but rather by what is sufficient to remove all effects resulting from the seizure. (Doss 'The Role of the Public Authority in the Field of Patents, A Comparative Study, 1983).

C. Protecting the innovator by stopping infringement or preventing threats or harm to the rights of the innovator.

Whereas the UAE legislator has stipulated the introduction of stopping infringement in Article 52/2 of the Industrial Property Rights Law. It should be noted that the procedure to stop infringement may be a next step taken by the patent owner after requesting proof of the infringement of his right. The basis for accepting proof of the fact of infringement is the fear of potential harm represented by denying the fact of infringement claimed by the innovator when considering the substantive case (Muhammad Gamal al-Din al-Ahwani, 2011).

The inventor of the patent may also, when the fact of infringement of his right is proven, request the court to issue an order to conduct a detailed description of the reality of the situation and the circumstances of the infringement. This requires making a detailed report on the incident of infringement and the circumstances of its occurrence and identifying the products, goods, or counterfeit goods that are the subject of the infringement. Their number, type, and shape, as well as a statement of the objects and tools that were used to infringe the rights of the innovator, so that the subject court can, based on the details mentioned in the incident of infringement, estimate the value of the compensation due to the injured party (Muhammad, 2014).

D. Protecting the innovator by preserving evidence related to the infringement of patent rights.

This procedure is intended to preserve the evidence used by the infringer in violating the rights of the inventor of the patent and to prevent him from hiding it so that the right holder does not miss the opportunity to present that evidence against the infringer to facilitate proof of infringement against the infringer (Al-Dabousi, 2021). The judge of urgent matters, or the judge of orders, has jurisdiction. Petitions must consider this request, and the situation to be proven must be subject to change more or less from time to time, and it must be subject to disappearance due to time or nature, or there is a fear that all or some of its effects will be lost when the dispute is brought before the ordinary judiciary, as The subject judge may consider a request to preserve evidence related to the infringement submitted to him by the patent owner when filing his civil or criminal case, or during its consideration, provided that his request is accompanied by a guarantee estimated by the subject judge according to what the case requires. It is clear from the above, as well as from the text of Article 52, that provisional measures are urgent measures taken by the court aimed at preventing the infringement, reducing the amount of damage, or preserving evidence related to the infringement.

In my opinion, the legislator, in this case, should have required the right holder to provide serious and convincing evidence that the infringement has occurred or is about to occur, and he must also provide sufficient guarantee or insurance that the right holder can estimate. The court, to prevent malice and arbitrariness in such cases, and in this case, the court must notify the concerned parties of these procedures as soon as possible after their issuance.

I also believe that the defendant has the right to request reconsideration of the temporary measure order within a reasonable period from the date on which he was informed of the matter, and the court allows the concerned parties to listen in

preparation for deciding on the request. A text must also be added obligating the plaintiff to file the lawsuit related to the root of the matter, which is the infringement, within the period specified by the court in the temporary measure order. Otherwise, the court will cancel the temporary order based on the defendant's request, as the measure is not a final ruling on the infringement, but rather a temporary solution until it is lifted. Substantive claim. If the court decides to cancel the temporary measure or decides to reject the original lawsuit because there is no existing or potential infringement, it will oblige the plaintiff to compensate the defendant in proportion to the damage he suffered due to the implementation of the temporary measure order (Muhammad, 2014).

Conclusion

The United Arab Emirates realized the importance of patent rights, so it worked to provide legal protection for the inventor of the patent, by issuing laws to provide that protection, as well as joining the relevant international agreements and organizations. The UAE legislation introduced temporary procedural protection for the innovator, through Some temporary measures, such as precautionary seizure, stopping the infringement, or preserving evidence related to the infringement, by resorting to the urgent judiciary, or the state judiciary, which orders temporary measures through orders on petitions.

The inventor's right, including the patent, is considered a moral property right. Because the patent is embodied in the instrument issued by the competent administrative authority and represents the right of the inventor, and therefore it is intangible property that may be disposed of in all types of transactions, such as sale, mortgage, gift, and will, and it is a right that is legally and legally protected from all forms of infringement upon it. The innovator obtaining a patent grants him several rights, some of which are moral rights, such as the right to attribute the invention to the inventor, and the right to obtain a patent. On the other hand, they are material rights, such as the right to dispose of, the right to legal protection, and the right to exclusivity.

Recommendations:

- Creating specialized chambers in the field of industrial property rights in courts, given the importance of these rights and their connection to technical fields that may not be within the knowledge of all judges.
- Defining the actions that constitute an infringement on the patent creator's right clearly and clearly; This is so that the criminal acts are as clear as the punishment is clear and specific.

- Amending the third paragraph of Article (52) of Federal Law No. (11) of 2021 regarding the organization and protection of industrial property rights in a way that requires the plaintiff who owns the right to provide serious and convincing evidence that the infringement is occurring, or is imminent, and he must also provide a guarantee, or Sufficient insurance estimated by the court, in order to prevent maliciousness and arbitrariness in such cases. In this case, the court must notify the concerned parties of such measures as soon as possible after their issuance (Rahman, 2020).
- Adding a paragraph to Article (52) of the above federal law, according to which the defendant has the right to request reconsideration of the temporary measure order within a reasonable period from the date he was informed of the order, and the court gives the concerned parties an opportunity to listen in preparation for deciding on the request.
- Adding a new article or additional paragraph to the paragraphs of Article (52) of the above Federal Law by obligating the plaintiff requesting the temporary measure to file the lawsuit related to the origin of the matter, which is the infringement, within the period specified by the court in the temporary measure order. Otherwise, the court will cancel the temporary order based on the plaintiff's request. Accordingly, since the measure is not a final ruling on infringement, but rather a temporary solution until the substantive lawsuit is filed, and if the court decides to cancel the temporary measure or decides on the merits of the original lawsuit to reject it on the basis that there is no existing or potential infringement, it will rule obligating the plaintiff to compensate the plaintiff. It is proportional to the damage he suffered because of the implementation of the temporary measure order (Rahman, Protection of Industrial Property Rights, 2020).

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