

## **Egypt's Industry Has its View**

### **On the Intellectual Property Law and Trademarks which Should be Taken into Account before it is Too Late**

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Treaty on Intellectual Property Rights is deemed one of the most dangerous agreements emerging from "Uruguay" round. The intellectual property problem emerged as a result of the illegal imitation followed by some countries to make use of the renowned trademarks of foreign products to export the locally manufactured commodities to the global markets.

These practices take part in multiple sectors most notably textiles, clothes, machines, semiconductors, computer software, chemical industries, pharmacy compounds, recorders and others.

So it was necessary to protect those who originated this (intellectual) product and enable them to invest the output of their intellectual and creative efforts for a certain period of time and simultaneously protect the consumer from the attempts of counterfeit.

## **Stance of Developing and Industrialized Countries on the Treaty**

The developing countries' viewpoint tends to embrace the idea that the intellectual property is common property for all humans that should be made available for reasonable prices whether regarding its use or possession.

They adopt this view in order to achieve development away from the monopolist applications especially as the developing countries do not have anything constituting a threat to the industrialized states in any way.

Most of the developing countries, though having raw materials, are lacking technology necessary for investing them in economic activities and creating job opportunities for their sons through the appropriate use of these materials and maximizing their value.

So, they see the continued export of these materials in cheap prices is unfair and is in the interest of those enjoying advanced technology who raise the value of these materials re-exported to the poor countries once again for high prices.

Therefore, these countries feel this is a raw deal and prejudice though they are in fact partners to development.

As for the major industrialized countries topped by the US, they see it is necessary to work on investing the applied system of protecting the western technology by exploiting it for the longest possible period and prohibiting its use except under the conditions they specify. This has sparked a big clash of interests between them and the developing states.

The industrialized states have put pressure on the developing countries to get them agree on the proposed framework of protection. They held several rounds of multilateral negotiations to reach an international agreement on fighting imitated commodities and add the commercial secrecy protection as a type of intellectual property.

These countries also began to search for more efficient ways and means to protect intellectual property given the fact that the current pacts do not fulfill their aspirations in this regard (from their perspective). To achieve that, the industrialized countries offered financial privileges to the (developing) countries.

**It is to be mentioned that the regulation and protection of the intellectual property can be realized through several accords most notably:**

- Bern copyright agreement in 1971
- Paris agreement for industrial property protection 1967
- Rome agreement for protecting neighborhood rights (Radio and Transmission) in 1961.
- Washington agreement for integrated circuits in 1989

These agreements are run by WIPO (World Intellectual Property Organization) that works to push forward the wheel of the economic, social and cultural development in the developing countries by transferring technology to them.

WIPO has helped in showing the group of the developing countries as one strong front of an effective weight that work to get special privileges before the advanced countries.

These developed countries strongly objected to this situation and started looking for another channel to achieve their aspirations represented in the GATT agreement.

They began floating and discussing ways and means of protecting intellectual property since late Tokyo Round in 1973-1979. Meanwhile, they stressed the need for the amendment or enacting the national legislations by each country in line with the new criteria, otherwise they shall face economic sanctions in case of non-compliance.

### **GATT Most Critical Restrictions and Their Negative Effects**

The GATT states imposing constant restrictions and putting obstacles to the way of transferring technology from the foreign countries to the developing ones, which can escalate into prohibition of (transferring) some technological parts.

This caused extreme damage to the Egyptian industry. In addition, there are several tough impediments added by the agreement on the intellectual property protection that is part of the GATT to the Egyptian industry in the field of transfer of the modern and sophisticated technology by the industrialized countries possessing it.

**Also, this agreement has had many negative effects due to the new restrictions imposed by the agreement as follows:**

**1-Expanding the scope of technology that shall be protected:**

This includes protecting products and means of production in all fields of technology in addition to providing protection to the chemical, pharmaceutical, foodstuff, agricultural and animal wealth products safeguarded by the current law 132 for the year 1949.

**2-Extending period of protection given to technology**

This involves extending the period of protection to 20 years for patents instead of the current period that reaches so far 15 years for types of patents and 10 years for the ways of manufacturing pharmaceutical, foodstuff and agricultural products.

**3-Patent owners' monopoly of product import rights:**

This imposes a restriction on importing the protected product from any foreign source.

The only deterrent for averting damage is to have the new patent law provide for the local parties' rights to make use of the invention by applying it to production in what is usually known as the forced license and in light with the agreement (article 31).

#### **4-Protecting patent products and allowing use of protected ways of production**

This is done by granting the patent owner the right of monopolizing the selling offers and the sale itself in addition to importing the product he gets directly as a result of applying the way of the production protected. This does not prevent the parallel import of other genuine commodities as this (parallel) import helps reduce prices and urges patent owners to put their inventions to use in the Egyptian industry.

#### **5-Broadening scope of rights granted to patent owner:**

This is done by granting the protecting rights to patent owners without discriminating the invention place or subject of technology and whether or not the products are imported or locally produced.

This opens the door for protection (in Egypt and abroad). Making use of the additional five-year grace period set in the agreement (article 56) for the intellectually unprotected products under the current law (132) for the year 1949 helps the national industry in confronting this restriction.

This also provides opportunity for the researches and development institutions to change their policies and regulations to overcome this restriction.

**We would like to signal that the current law needs to be amended to conform with the GATT**

**First:** Regarding the definition of the trademarks, matching between the first article of the law 57/1939 and the two articles 15 and 16 of the TRIPS should be reviewed.

These involve the trademarks and items prone to intellectual property protection. The review shall involve the definition of the service marks and the famous trademarks. Meanwhile, defining the qualities of the famous trademarks and the party in charge of defining them shall be left to the regulation of this law.

**Second:** The Egyptian law should provide for protecting indexes and geographical names according to the articles 22 and 23 of the agreement and conform with the article (5) paragraph "I" and article 30 of the law 57/1939.

**Third:** Proposing that the period of using the intellectually protected trademarks be only three years, the minimum set in article 19 of the agreement rather than 5 years under the article 22 of the law 57/1939 provided the use shall be regional not international.

**Fourth:** In case of granting license and waiver, it is not required to abandon and transfer the ownership of facility that owns trademark in accordance with the law 21 of the treaty as stated in article 18 of the law 57/1939.

**Fifth:** The Egyptian legislative system should take into account the administrative border procedures such as stopping clearance of commodities by the customs authorities according to articles 51, 52, 53, 54 of the agreement, which is something new for the Egyptian legislation.

**Sixth:** It is proposed to toughen criminal penalties provided in the current law to strengthen protection and deterrence by making confiscating of items obligatory on the markets and raising fine to be 5 thousand Egyptian pounds minimum and 50 thousand maximum. These procedures shall be taken in accordance with the law on composition copyright and the anti-counterfeit law, while the artificial character shall bear civil responsibility.

**Other amendments proposed to some articles in the current law:**

Article 1: Added to it "the mark refers to rendering a service"

Article 4: Added to it "each one who performs a service"

Article 9: Added to it "the management may issue a decision to pay the final registration fees and if the registration applicant did not pay them within six months, his application shall be deemed null and void.

Article 10: The applicant may appeal against the management's decision within 40 days from the date of notifying him. Such an appeal shall be submitted to a commission to be formed for this purpose (...).



- In case of rejecting the appeal, the registration applicant can challenge this decision before the State Council's Administrative Judiciary Court within 60 days of notifying him of the commission's decision.

The phrase "final decision" shall be omitted from article 10 as all decision can be challenged.

Article 13:-Amending the deadline for appealing against the management's decision to be 40 days under the procedural law.

- Rescinding the last paragraph of article (13) that stipulates the management may, in case of seeing objection to registering the trademark as unwarranted, issue a decision to continue on the registration procedures in spite of the appeal. This decision can be taken as the issue is still being examined by the judicial parties and all procedures shall be halted until deciding on it.

Article 14: added to it "the holder of the previously-registered trademark may introduce any amendments to the statement of products by omitting without adding.

Article 18: Ownership of the trademark may be transferred with or without the commercial shop or the investment project.

Article 19: Proposing adding an article stating that the general rules applied to the transfer of ownership shall be applied to usufruct license right. It shall also specify a deadline for the license in the license contract concluded between the two parties. The license applicant shall not be bound by the condition of submitting license applications for the relevant trademarks.

Article 23: If the trademark registration was removed, it shall not be allowed to re-register it for other persons unless after three years from the removal date except for the cases where the removal is done in implementation of a judicial ruling under the law.

**But regarding the regulation, the law suggests the following:**

First: adding paragraph (9) to the article (4) if the application was submitted as a priority case, details of this priority shall be stated.

Second: Abolishing article (9) or restricting it to clarifying how to pronounce the foreign trademark in Arabic.

Third: The amendment of the ministerial decision number 371/1996 shall be added to paragraph 4 of the article (8). This article stated that the registration applicant may present the required documents attached to the registration application within a period of not more than three months from the application date. This deadline can be doubled in return of additional

fees and when this additional period comes to a close, his application shall be considered nullified.

**Amendments proposed to the administrative procedures:**

- 1- Allowing full registration of the category on the model of the applied system in the international registration
- 2- Removing the condition of writing the commercial details (name of the firm, factory or the manufacturing body) as in integral part of the trademark.
- 3- Obliging the applicant to write the foreign names and addresses regarding the foreign firms in Latin in addition to writing them in Arabic. This is designed to avoid any mistakes to emanate from inaccurate translation of names as well as mistakes in geographical names when declaring the trademarks in the trademark journal.
- 4- Showing the products' statement in the registration application in Arabic together with English only in case of the foreign applicant.
- 5- Printing the trademark photo in its color in the trademark journal according to the registration application and the certificate of the colored registration.
- 6- Setting clear standards for examination and providing modern ways to conduct it in coordination with the World Intellectual Property Organization (WIPO).
- 7- Stipulating in the regulation at the core of the law that there shall be chargeable research before applying for registering the trademark

together with providing the necessary means and ways for that. In this regard, the trademark department shall be responsible for the outcome of the research.

- 8- Modernizing ways of saving and requesting data and files by the computer and introducing the microfilm system as followed in courts and real estate registration department.
- 9- Making a register in alphabetical order for the names of the registration applicants.
- 10- Extending the deadline for submitting the documents in return for additional fees.