

A Guide on Patent Laws in the GCC

2018-2019

STA



A GUIDE ON PATENT LAWS IN THE GCC

“The Patent Office is the Mother-In-Law of Invention.”

Introduction

The Senior MIT lecturer Joe Hadzima defines a patent as follows, *“A patent is an exclusive right issued by a country to an inventor, allowing him to exclude others from manufacturing, using or selling his/her invention in that country during the life of the patent.”*

The exclusive right provided for by the patent allows the holder to recoup development costs and to obtain a return of investment in the development of the patented technology. Patent protection is capable of reducing company costs and increasing company value and as such can play an essential aspect in the increase of any company or business. Not only are patents valuable in that they provide freedom of movement for companies who are competing within a crowded field, but that can also generate revenue with the licensing of such patents to companies inside and outside of the patent holders field. Patents increase overall corporate value and add mainly to the company's intellectual assets. The World Intellectual Property Organisation provides the following reasons for patenting your inventions:

- i. Exclusive rights* – patents give the owner exclusive rights which allows the holder to use and exploit the licensed product for 20 years from the date of filing of the application;
- ii. Strong market position* – due to the exclusive rights, the holder will be entitled to prevent others from commercially utilizing the patented invention – thus reducing the competition and establishing the holder in the market as the pre-eminent player;
- iii. Higher returns on investments* – under the exclusive rights provided for by the patent, the holder could commercialize the invention which would enable him/her to obtain higher returns on investments;

iv. The opportunity to license or sell the device – a patent holder, may choose not to exploit the patent but rather to sell the patent or license the rights to commercialize it to another enterprise which will constitute a source of income for the holder;

v. Increase in negotiating power – having an extensive patent portfolio will enhance the bargaining power of a patent holder who wishes to acquire the right to use the patents of another enterprise;

vi. Positive look for your enterprise – interested parties may consider patent portfolios as proof of the high level of expertise, specialization and technological capacity within your company.

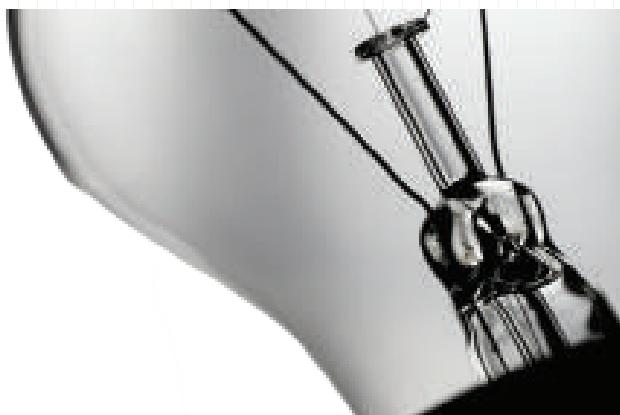


1. What is an invention?

Bahrain

A design shall be considered new and applicable for patent registration in the following circumstances as per **Law Number 14 of 2006** in respect of Patents and Utility Models:

- I.** When such an invention is not in any previous industrial technology state;
- II.** When such invention of inventive step would not have been known/ evident to a person holding ordinary skills in the relevant practice;



***Are you sure your invention
has the protection it deserves?***

III. A design shall be considered to be industrially applicable if it is possible to apply it in agriculture, fishing, services, handicrafts or any industry in the broadest sense of the word;

IV. The patent application would not be successful if the Invention subject were discussed to the public in Bahrain or abroad orally or in writing or by use or by any additional method of utilizing contents of the invention before the date of applying to grant a patent or time or priority on request.

V. For the above, the following shall not be a Disclosure:

i. Disclosure of the invention to the public shall be inconsiderable if it took place at official international exhibitions or officially recognized displays, according to Article 34 of the law, subject to disclosure in the patent request of all details related to said disclosure.

ii. Disclosure of an invention shall also be inconsiderable if it was disclosed by the applicant or by his permission or through him of which the declaration was conducted within the 12 months preceding submitting a patent application or date of priority upon request.

Oman

In terms of Article 2 of the **Royal Decree Number 82/2000** Promulgating the Patent Law an invention will be eligible for a patent if it is new, includes an innovating concept, and is industrially applicable, be it for new industrial products, used industrial methods and means or by a new application for known industrial ways and means, and is not in contravention of the public order and morals, conflicting the principles of the Islamic Sharia or affecting national security.

United Arab Emirates

As per **Federal Law Number 7 of 2002 as amended by Law Number 32 of 2006** regarding Copyright and

Related Rights, the following works are capable of being protected by a patent:

- i.* Books, booklets, articles and other literature;
 - ii.* Computer software and applications, databases and similar products defined in a decision to be issued by the Minister;
 - iii.* Lectures, speeches, sermons and other works of a similar nature;
 - iv.* Plays, musicals, and pantomimes;
 - v.* Musicals accompanied by dialogue and musicals which are not accompanied by discussion;
 - vi.* Audio and video work or audio-visual work;
 - vii.* Architectural work and architectural plans and drawings;
 - viii.* Work involving drawing, painting, sculpturing, etching, lithography, screen printing, relief an intaglio prints and other similar works of fine art;
 - ix.* Photographic work and the like;
 - x.* Work of applied art and plastic art;
 - xi.* Charts, maps, plans, 3-D modeling for geographical and topographical applications and architectural designs;
 - xii.* Derivative works, under the protection afforded to the work upon which they are based. The security shall extend to the title of the work is created as well as the creative concept devised for broadcast material.
- The granting of patent protection for inventions that are novel, inventive and useful. The terms of protection for patents is 20 years from the date of filing.
- According to Article 4 of the **Federal Law Number 31 of 2006**, a patent application will be applied to obtain a letter patent or a utility certificate. The awarding of a letter patent will be to any new invention resulting from an innovative idea or inventive step in all fields of technology.

"A patent is an exclusive right granted by a country to an inventor, allowing the inventor to exclude others from making, using or selling his or her invention in that country during the life of the patent"

- Joe Hadzima



This idea or inventive step must, however, have a scientific basis and must be capable of industrial application.

A utility certificate may be for new inventions which are capable of industrial application but having no innovative character warranting patentability.

GCC Patent Regulation

According to Article 2 of the **Patent Regulation of the Cooperation Council for the Arab States of the Gulf**, an invention will be patentable following this law if:

- i.* It is new; a design will be considered further for such purposes and states that design is new if prior art does not foresee it;
- ii.* It involves an inventive step; an invention will include an inventive step if, having regard to the relevant prior art, it would not have been evident to a person having ordinary skill in the art;
- iii.* It is industrially applicable; this will be so if it can be used or produced in any industry, agriculture, fishing or services.
- iv.* It is not in conflict with the law of Islamic Shariya, or public order or to morality observed in the Cooperation Council States.

The prior art in the Act is "everything disclosed to the public anywhere through written or oral statements, by utilization, or by any additional way by which the realization of the invention is before the appropriate filing date of the patent application or priority date validly claimed in respect thereof."

2. Procedure for Registering Patent

Bahrain

Article 16 of the **Law Number 14 of 2006** in respect of Patents and Utility Models provide the process for the registration of a patent in Bahrain. The law provides as follows:

- i.* An application for the filing of a license must be by the person whose invention it is or a person who has acquired the rights thereof at the competent authority. Such an application must be on the relevant form designed for this application. The set designs of the invention must be attached to the application form, and the application itself must contain details of the invention and the requested protection. This application must include sufficient and adequate disclosure of the patent.
- ii.* The application shall disclose a detailed specification of the invention which provides a full account of the subject of the invention and the best ways for a person who is knowledgeable in the industry in which the patent is requested to implement and use the device without the need for additional experiments upon applying. The invention shall be considered sufficiently supported in its disclosure when such a specification appears reasonable for a person knowledgeable in the industry in which the applicant requires the patent for;
- iii.* The application must clarify the subject that needs the protection, and such clarification should be clear, concise and supported with the necessary details for the consideration of the patent application;
- iv.* The applicant must submit all statements and data related to any previous application filed by him about the same patent subject abroad, and the decisions made thereof.

In furtherance of the procedure for registration, Article 19 provides the objectives of the competent authority. The competent administrative authority at the Ministry of Trade will be the authority that examines the patent applications; the body will verify that the application meets the required conditions. The organization may request from the applicant – within thirty days from the date of receiving the application –



Patent protection can be applied for within a country but also is respect of international treaties and Conventions for international protection.

an opportunity to conduct further modifications and state as it deems appropriate to enable it to decide upon the request.

The appropriate authority will issue a decision on the application within sixty days from the date of receiving a complete request, or from the time of conducting the modifications and receipt of fees required for deciding on it.

When the competent authority makes its decision concerning the patent application, and such application has been successful, the publication of the determination must be in the official gazette. Should the application have been rejected, the reason for such rejection must be communicated to the applicant immediately upon issuance employing a registered letter.

Oman

The process for registering a patent is found in **Royal Decree Number 82/2000** Promulgating the Patent Law. The prescribed process is as follows:

i. The patent applicant must apply to the Patent Office. Such an applicant must be the inventor or his accredited agent, or where there has been a transfer of the rights to the invention, that relevant person. The application is per the conditions as found in the bylaws.

ii. The application may provide the inventor's wishes to consider the priority for an application submitted in a state that is a party to an agreement or convention with the Sultanate of Oman;

iii. The Department will then examine the registration application and may in that period, a request of the applicant, whatever additional documentation as is necessary for the determination of the patent application;

iv. Should the application be rejected, an applicant may complain against such rejection within fifteen days from receipt of such refusal in a registered letter. The submission of such complaint is before a committee who will decide on the matter. Such a decision will only be final if approved by the Minister;

v. On acceptance of a patent, the registration of such approval will be by the Department and made public as stipulated in the bylaws;

vi. Any interested party may now, within sixty days from the date of publication, submit a written complaint to the Department who will decide on such claim within thirty days of receiving such;

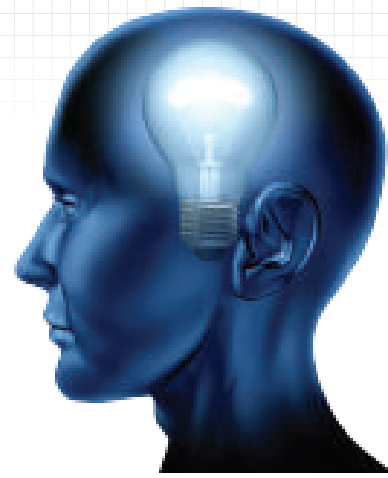
vii. The patent will then be handed over to the patent holder and will contain the patent number from the register, the date of issue and any other details as prescribed by the bylaws.

United Arab Emirates

In the UAE there are two routes concerning which a person can apply for patent protection. These routes are the national route or the regional route. The domestic path entails the filing of an application at the UAE Patent Office while the local path requires the filing of a GCC patent application, which once granted, would in principle cover protection in the six GCC countries.

The UAE is a party to international and regional treaties regulating patent application, and these include the World Intellectual Property Organisation (WIPO) Convention, the Patent Cooperation Treaty (PCT), the Paris Convention, The Agreement regarding Trade Related Aspects of Intellectual Property Rights (TRIPS), and the Gulf Cooperation Council (GCC).

A patent is not only good for protecting your invention, it also increases the worth of your business.



The filing of a patent application in the UAE with the following documents:

- i.* A power of attorney;
- ii.* An assignment (in cases where the applicant is not the inventor); and
- iii.* A commercial license (in cases where the applicant is a business entity).

According to Article 4 of the **Federal Law Number 31** of 2006, it provides for the confinement of an application to one invention only or a group of interrelated designs holding one general innovating concept.

Where an application claims priority over an application previously filed under the Paris Convention, the filing of a copy of the priority application in both languages (English and Arabic) should accompany the request of priority. The filing of the abovementioned documents can be within 90 days from the date of filing of the patent application.

The application will be confirmed or denied based on the documents supplied, and then it will be put in line for substantive examination – this may take up to two years. The patent office may also require from an applicant to pay the substantive examination fees once the application reaches its turn for examination.

In such an examination the applicant will be provided with opportunities to respond to the examiners' queries as well as a chance to amend the application to bring it in line with what is expected by the examiner.

Following this, the examiner will either accept or reject the application. If denied, an applicant can appeal the matter in front of a committee at the Ministry of the Economy. If approved, the applicant must prepare material to be published in the UAE Official Gazette. The publication is for 60 days in which parties have the opportunity to oppose the decision to grant a patent.

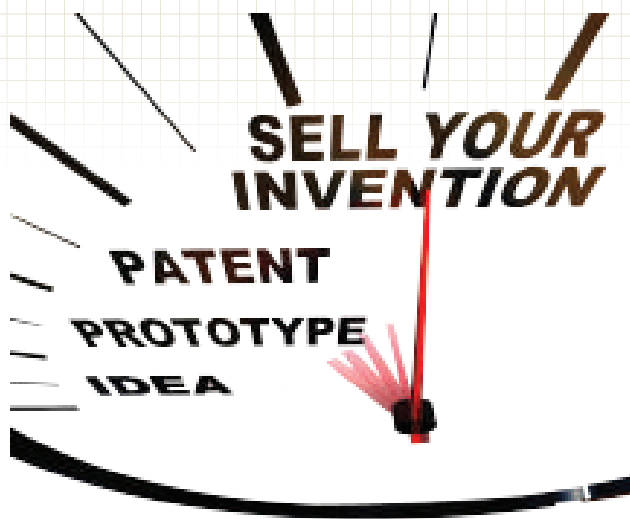
Should there be no resistance to the granting of the patent within that period, the granting of a patent happens, and the UAE Patent Office issues a registration certificate evidencing the grant of the patent. Once the allowing of such patent, it will be in place for 20 years from the date of filing and provides the patentee with the right to exclude others from exploiting the invention without authorization within the UAE territory.

GCC Patent Regulation

The patent application procedure is under Article 5 of the Patent Regulation of the Cooperation Council of the Arab States of the Gulf; this Article states that an application must be provided to the patent office by the inventor, his registered agent, or his successor in title. The prescribed fee must accompany the application.

The application must include the following:

- i.* The names of the applicant;
- ii.* The names of the inventor and registered agent (if any); and
- iii.* In cases where the applicant is not the inventor, a statement justifying the applicant's rights to the invention;
- iv.* The title of the invention;
- v.* A specification – which discloses the device in a manner that is sufficiently clear and concise for the execution of the design by a person having the reasonable skill in the art;
- vi.* One or more claims – which must determine the scope of the protection sought and must be fully supported by the specification
- vii.* One or more drawings; and
- viii.* An abstract – which will serve the purpose of technical information;
- ix.* The applicant may include all other additional information to which he deems fit.



The GCC Patent Regulation provides grants patents which are applicable across the whole of the Middle East..

The application will be examined formally as well as a substantive examination by the Patent Office or an approved examination authority. Regarding the Formal Examination, an applicant will be provided with three months to comply with any requirements as prescribed by the examiner.

Following this will be the substantive examination, if the application has satisfied the terms prescribed by the laws, the official will grant the patent, enter it in the register and publish it. The delivery of the patent will be to the owner three months from the publication date provided that no person had submitted an objection to the Grievance Committee.

III. Reasons for Rejection

Bahrain

According to Article 3 of the **Law Number 14 of 2006** in respect of Patents and Utility Models, the following things will not qualify for the granting of a patent:

- i.* Any invention which the prohibition of the commercial use of such, within the Kingdom of Bahrain, is imperative for the protection of human life or health or the life and health of animals or plants or imperative for the avoidance of causing such harm to the environment;
- ii.* An animal;
- iii.* Diagnostic, therapeutic, and surgical methods necessary for the treatment of humans and animals. This provision will not have application to the products used in any of these methods.

Oman

The following are not considered inventions according to the regulations of this Law:

- i.* Scientific theories, mathematical methods, computer programs, pure mental activities and playing games;
- ii.* Plant and animal research, or biological processes for

the production of plants, animals or types of plant and animal. Exempted from this Article are minute biology and its produce;

- iii.* Methods of medical or surgical treatment of the human and animal body and methods for diagnosis of illnesses applied to humans or animals.

United Arab Emirates

As per **Federal Law Number 7 of 2002**, as amended by Law Number 32 of 2006 regarding Copyright and Related Rights, the following is not capable of being protected under the law, any idea, procedures, methods of doing business, mathematical algorithms and fundamental principles and facts. Only the expression of the abovementioned is capable of being protected. In addition to this, the affording of protection will not take place in any of the following:

- i.* Official documents, such as provisions of the legislation, regulations, decisions, international conventions, court judgments, arbitrators awards and decisions issued by administrative committees concerning court matters;
- ii.* News of current happenings and issues that is strictly media coverage;
- iii.* Works which have become public property.

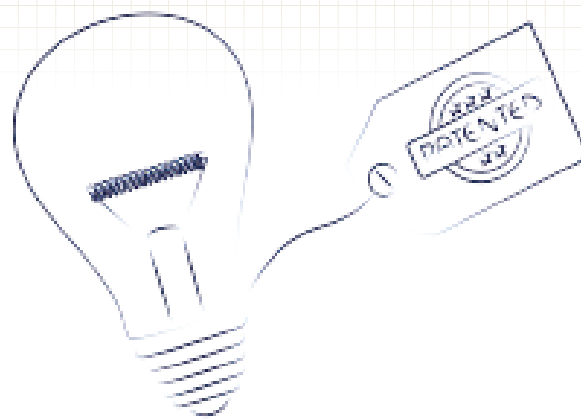
However, the above are eligible for protection if there has been an innovative element in the manner in which they are constructed or arranged or in the efforts involved.

As per Article 6 of the **Federal Law Number 31 of 2006** no letters patent or the utility certificate shall be issued for the following:

- i.* Plant varieties, biological methods of producing plants or animals or animal species. The permissibility of microbiological methods and their products is an exception;

"The historical purpose of the patent system was to encourage the development of new inventions"

-Arnoud Engelfriet.



- ii.* Diagnostic methods, treatments and surgical operations needed for humans and animals;
- iii.* Scientific and mathematical principles, discoveries and methods;
- iv.* Guides, rules or methods followed to conduct business or perform mental activities or play games; and
- v.* Inventions that may lead to a violation of the public order or morals.

GCC Patent Regulation

In Article 3 of the Patent Regulation of the Cooperation Council for the Arab States of the Gulf, it states that the following will not be an invention:

- i.* Discoveries, scientific theories, mathematical methods and computer programs;
- ii.* Schemes, rules, and means for conducting business, performing purely mental acts, or playing games;
- iii.* Species of animals or plant varieties, and biological processes for the manufacturing of plants or animals except for microbiological procedures and such products;
- iv.* Methods of therapeutic or surgical treatment of the human or animal body and the application diagnosis methods to the human or animal body except for products used in any of these methods;
- v.* This Regulation shall not protect varieties of plants or species of animals.

In addition to the above, the Ministerial Council can exclude some inventions from being patented whenever necessary to maintain public order or morality, including the preservation of animal or human or plantation life and health, or to avoid any severe damage to the environment.

According to Article 14 of the law, the rights under the patent shall not extend to the following:

- i.* Acts carried out mainly for scientific purposes;
- ii.* The use of patent articles on means of transportation temporarily or accidentally entering the territories of the Council States, whether such materials used in the body, apparatus, devices, equipment, or any other accessories of the said means, provided use of such articles is limited to their necessities.

IV. Rights of Entitlement

Oman

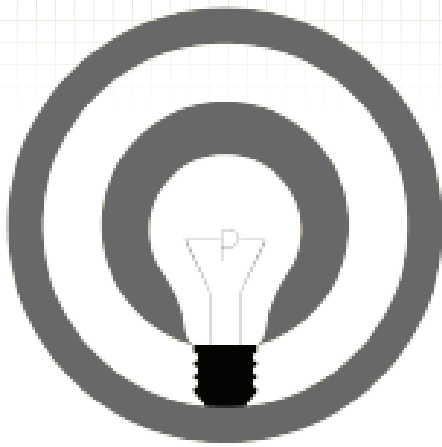
As per Article 9 of the **Royal Decree Number 82/2000** Promulgating the Patent Law the patent will provide the owner with the right to use of the invention by manufacturing usage, importation of whatever product is being constructed and offer it for sale, whether the subject of the invention was material produced, industrial operation or manufacturing process.

Should a bona fide person who made the product, have utilized the patent process or made several arrangements for the utilization or manufacturing, within Oman, before the date of a patent registration application, or priority for this application, then the usage or construction will continue. This right cannot be assigned or transferred to third parties without the rest of the establishment's elements.

United Arab Emirates

According to Article 15 of the **Federal Law Number 31 of 2006** a letters patent will afford its owner the following rights:

- i.* The right to exploit the invention through manufacture, usage, or sale of a product;
- ii.* Where the invention deals with an industrial product or with a process for manufacturing a particular product, the right shall then be afforded to the owner to use such a product or process;



A patent application needs to have been made in order for a person to claim a priority right;

iii. Where the invention is a product, the owner has the power to prevent any party from manufacturing, using, retaining, selling or importing that product without the permission from the patent owner;

iv. Where the invention is an industrial process, the owner has the right to prevent a party from utilizing the process and the product generated directly from that process, and from using, retaining or importing the product without the express permission from the owner.

The deed of protection shall determine the scope of the protection of the letters patent or utility certificate.

GCC Patent Regulation

A patent following the GCC Patent Regulation entitles an owner to exploit the invention. The utilization of an invention which pertains to a product is by manufacturing, use, import, sale or offering for sale. Regarding production methods of a particular product, the patent owner shall have the same right to direct products of the said process/method, in addition to his right to use the processes or methods thereof.

Where the content of the patent is a product, the patent owner shall have the right to prevent persons from manufacturing, selling, using or offering to sell, or importation of the product for such purposes, without his/her prior consent.

Where the subject of the patent is an industrial process, the patent owner shall have the right to prevent others from actually using the method. Such owner will also have the power to prevent others from using, selling, offering to sell, or importing the products directly obtained by using the patented process, for such purposes, without his prior consent.

5. Termination of Registered Patent rights

Bahrain

rights from a registered patent will be discontinued in the following circumstances:

i. At the expiration of the period prescribed for such patent protection as prescribed by this law;

ii. The abandonment of the patentee of their rights in the patent provided that such neglect shall cause no impairment to the rights of others;

iii. Abstention for more than one year from the payment of the prescribed fee in violation of the provisions of Article 15 of this law despite receiving a notice to that effect in the form of a registered letter accompanied by a non-enveloped acknowledgment to pay the fees due on time prescribed by the Executive By-Laws;

iv. The issuance of a final ruling of the abrogation of the patent.

Oman

As per **Royal Decree Number 82/2000** Promulgating the Patent Law Article 15, after three years has elapsed since the awarding of the patent, any concerned person may request the grant of a compulsory license to enable them to utilize the invention. The awarding of such permission will be under any of the following reasons:

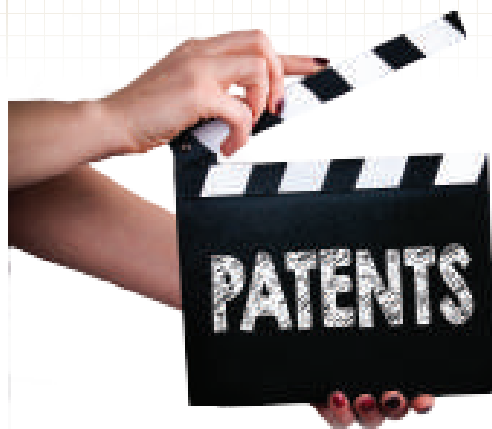
i. If the patent holder does not actively and seriously use the patent within three years from the awarding of such;

ii. If the patent holder has suspended the utilization of the invention protected by the patent for two consecutive years;

iii. If the patent holder's refusal to grant a license for usage of the protected design and such denial may impact the establishment or development of industrial or commercial activities within the Sultanate of Oman.

A compulsory license will provide the licensee with the ability to initiate some, or all, of the activities assigned

Registering a patent as per the GCC Patent Regulation must take place at the GCC Patent Regulation Office.



to the patent holder, per the license conditions. The license holder may use the civil and penal rights associated with the patent holder, to protect and utilize the invention. This issuance of this license will not be until the applicant has provided proof that such person has notified the patent holder, by registered mail, of the request to obtain a permit, and of the fact that they had not agreed within the time frame stipulated in the bylaws.

United Arab Emirates

As per Article 24 of **Federal Law, Number 31 of 2006**, a patent or a utility certificate may be subject to a compulsory license or confiscation of such invention. This compulsory license or forfeiture will take place where the owner of the patent or holder of the utility certificate has not used or made use of such, and due to this neglect to use, an interested party has, following this Law, obtained a compulsory license. This process will happen under the following conditions:

- i.* A period of at least 3 (three) years has passed since the issuance of the letters patent has passed without the holder utilizing the letter patent;
- ii.* The proposed licensee has demonstrated the efforts made to obtain the license from the patentee for a reasonable price and under reasonable commercial conditions;
- iii.* The issuance of the permit shall not be in absolute terms. The license can include obligations and boundaries for both parties;
- iv.* The intention of the grant should be to satisfy the requirements of the local market. The proposed licensee must offer the necessary guarantees set in the implementing regulations of this law to sufficiently put to use the invention to correct an inadequacy or meet the needs that lead to requesting the compulsory license;

v. The scope of the license should be in consonance with the issued objective;

vi. The patentee should receive fair compensation;

vii. The restriction of the use of the patent is to the licensee. The transfer of the license cannot be to a third party except where there has been an assignment of ownership of the establishment of the licensee or the part thereof utilizing the patent. The competent court should approve such a transfer and be bound to articles 28 and 32 of the law;

viii. In the case of semiconductor technology, the license shall only be for the public, non-commercial use, or to remedy a practice determined after the judicial or administrative process to be anti-competitive.

GCC Patent Regulation

Article 19 of the Patent Regulation of the Cooperation Council for the Arab States of the Gulf provides for situations in which the patent holder has not utilized the patented invention within the prescribed period, the Board of Directors of the Patent Office will grant a compulsory license to an applicant who wishes to exploit the invention. In making its decision, the Board of Directors will take the following into account:

i. At least three years have passed after the granting of the patent;

ii. The applicant proves that he exerted, over a reasonable period, efforts to obtain the license from the patent owner for a sufficient compensation, under fair terms;

iii. That the permit is not exclusive;

iv. That the license is primarily granted to meet the demands of the local market;

v. That the license decision defines the scope and terms of the permit, according to its purposes;



"Startups with intellectual property achieve greater long-term success than startups without it."

- Forbes magazine

vi. That there is adequate compensation paid to the patent owner;

vii. That the exploitation of the patent shall be limited to the licensee. The license will not be transferable to additional persons except in case of differentiation of ownership of the licensee's establishment.

VI. Fees

GCC Patent Regulation

Following Article 30 of the Patent Regulation of the Cooperation Council for the Arab States of the Gulf the patent office will collect costs from the beneficiaries in the following instances (the bylaws will prescribe such exact amounts):

- i.* Filling of the patent application;
- ii.* Charges for granting and publishing of the patent;
- iii.* Annual fees;
- iv.* Amendment or addition to the patent application;
- v.* Additional cost for delay of payment of a yearly patent fee;
- vi.* Assignment of the patent application or granted the patent;
- vii.* Gaining a copy of the form, of its record, or of the patent;
- viii.* Requesting the grant of a compulsory license;
- ix.* Grant of a compulsory license;
- x.* Requiring registration of the license contract;
- xi.* Certification of appeal before the Committee;
- xii.* Asking a sample of a microorganism;
- xiii.* Request for a certificate of temporary protection during an exhibition;
- xiv.* Conducting a patent service;
- xv.* Substantive examination.

VII. International Patent Applications

Bahrain

Article 29 of the **Law Number 14 of 2006** states that any natural or legal person has the opportunity to file an international claim to the industrial property competent administrative authority and the Application ensuing rights following the regulations of the Convention and its implementing rules if such applicant is:

- i.* A citizen or a resident of the Kingdom;
- ii.* Foreigners who are nationals of any member states in the International Union or residing thereof;
- iii.* Persons who are nationals of any of the member states in the Paris Convention for the Protection of Industrial Property or living thereof, if the country was not a signatory of the Convention when the International Union Association decides to allow so.

Under Article 29(2) an international application may be given to the industrial property competent administrative authority in its authority as the external applications receipt office. A fee for such request will on the international form, the payment of which must be within a time frame of twelve months from the date of the filing of the petition.

United Arab Emirates

Following **Federal Law Number 31 of 2006**, the Patent Authority of the UAE, pursuant the Article 37 of the Act, shall receive applications for international patents under the international treaties enforced in the State. The determination of the fees in the UAE for such patent application will be as per the regulations provided for in the particular international treaty.

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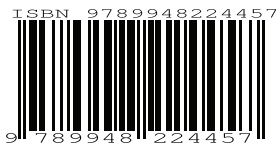
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