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Maghreb: A rapidly developing historical region

Namir Sioufi and Yahia Hamade, Saba IP, give insight to the patent strategy and systems in place in the Maghreb region, which consists of Morocco, Algeria, Tunisia, and Libya.

The Maghreb region, known for its tourist and historical sites, has been experiencing its own industrial revolution over the span of the past several years. From West to East, the region is comprised of Morocco, Algeria, Tunisia, and Libya.

With a total population in excess of 90 million, the region has attracted its share of business and development. Algeria and Morocco account for the majority of this market with populations of 40 million and 35 million, respectively. Tunisia, a much smaller country in land size, has a population of over 11 million. Finally, Libya, despite its massive land size, has a very small population of about 6 million. This is primarily due to the political situation and instability in the country for decades.

Libya's patent system is weak at best, based on a law that was published in 1959 and not amended or ratified since, despite the country's accession to the Patent Cooperation Treaty (PCT) in 2005. There is certainly a lot of work to be done in Libya, which may create the right opportunities in the future.

The focus of this article will be on the three other countries, which have been actively developing local industries, attracting foreign investment and working on developing their patent systems. These three countries share cultural heritage, languages, and a common history.

Résumé

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Namir joined Saba IP in 2012 and currently holds the position of Regional Head of Patents. He works alongside a team of professional experts with various specialized backgrounds and provides technical and legal support across all Saba IP branch offices.

Namir and his team manage several key patent portfolios from pre-filing recommendations and strategy through prosecution and grant.

He has participated in several Global IP conferences as an attendee or a presenter.

Saba IP is the oldest and leading IP firm with offices throughout the Middle East and North African countries. They provide all type of IP-related services including prosecutions, procurement and litigation.

Algeria (DZ)

Algeria is the largest country in African and the Arabian world. The country is rich in natural resources including iron ore, phosphates, uranium and lead; still, the backbone of Algeria's economy is the oil and gas sector. Algeria has the tenth-largest proven reserves of natural gas. It also ranks 16th in proven oil reserves. Following the recent decline in oil prices, the Algerian government has taken numerous steps to encourage local development for many industries and began a migration away from state-owned companies.

Until a few years ago, the patent system in Algeria was a system of grant only. Applications were filed claiming a 12-month convention priority, or within the 31-month deadline (Ch. I & II), for international PCT national stage entries. Within 6-12 months, but no less than 18 months from the earliest claimed priority, the applications were granted and published.

Recently, the patent office began performing a substantive examination, which is essentially based on the International Search Report (ISR). The most limiting provisions pursuant to the Algerian patent law are:

1. Voluntary amendments to an application may only be entered within the 1st month from the local filing date; and
2. Divisional applications may only be filed within 6 months from the local filing date.

Even if the examination report objects to the unity of the invention, it is not possible to file a divisional application and only one subject matter may be pursued. As a result of the amendment provision stated in bullet point 1 (above), any amendments submitted in response to the examination report are kept pending until further notice, or until this provision in the law is revised.

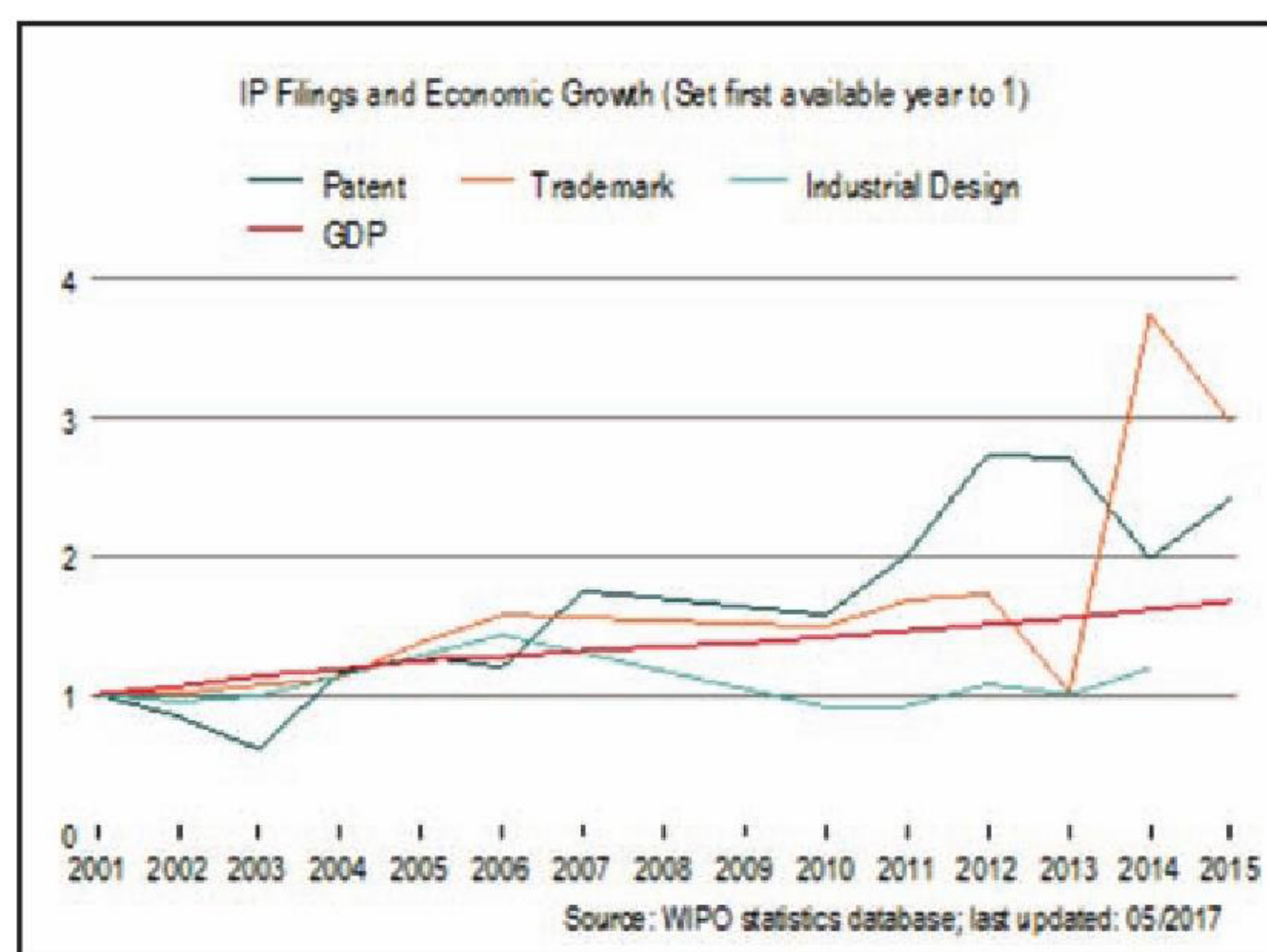
The law does provide for the filing of a patent of addition after issuance of the parent application. Although this does not necessarily compensate for not being able to file divisional applications, it does allow for introducing new claims or specific claims as long as these find adequate support in the original application.

Furthermore, the current system in Algeria does not



provide for a patent listing system or a patent linkage system. These are causes for concern for the pharmaceutical industry where the local generic industry is growing. As is the case in the rest of the region, the need for access to cheaper medicine has drawn the attention of foreign generic firms as well. The system does not provide for any exclusivity period, nor for any patent term extensions, even for delays resulting from the approval of marketing authorizations.

Given its wealth in natural resources, its history, and both the size of its population and land, Algeria offers plenty of opportunities. These have been slow to materialize as can be seen in the graph below:



One of the criteria holding back Algeria from experiencing an explosive growth is the country's status as an observer of the World Trade Organization (WTO). The industrial protection rights that acquire to the WTO, as well as the trade related aspects of intellectual property rights, or TRIPs, should increase the confidence of investors seeking to capitalize on these opportunities. Until these are put in place, and the patent system evolves, the growth, although consistent, will remain slow.

Enforcement of patents has not yet been tested adequately. The law provisions for actions such as requesting injunctions, initiating court

cases and obtaining damages. The lack of a specialized court system and country experience makes it difficult to gauge the efficiency of the system in place. If we are to extrapolate based on teachings and experience from IP matters relating to trademark, then it is conceivable that the system should be reliable and dependable, but needs to be put to use.

Algeria has a highly educated population, which speaks fluently three languages: Arabic, French, and Tamazight. It is conceivable that the patent office can become a strong examination authority with the proper training. Alternatively, Algeria may follow in the footsteps of its neighboring countries – Morocco and Tunisia – and enter into an agreement with the European Patent Office. Based on such an agreement, applicants filing a European patent application can designate DZ when requesting examination. Upon grant, the European patent can be validated in Algeria.

Morocco (MA)

With coasts along the Atlantic Ocean and the Mediterranean Sea, Morocco occupies a strategic regional position of great importance. The country has made use of its proximity to Europe and its location in North Africa, along with skilled labor, to work towards building a diverse, open, market-oriented economy. Key sectors of Morocco's economy include agriculture, tourism, aerospace, automotive, phosphates, textiles, apparel, and subcomponents. The economic system of the country presents several facets that are characterized by a large opening towards the outside world.

Morocco has recently increased investment in its port, transportation, and industrial infrastructure in order to better position itself as the epicenter for business in the region. Industrial growth policies and infrastructure developments, which are most visibly illustrated by a new port and free trade zone, are improving Morocco's attractiveness for investment. Morocco's main industries are the mining and processing of phosphate rock, food processing, manufacturing of leather goods, arts and crafts, textiles, construction, and tourism.

The latest industry taking off in Morocco is the aerospace industry, which has made significant strides over the past decade with its

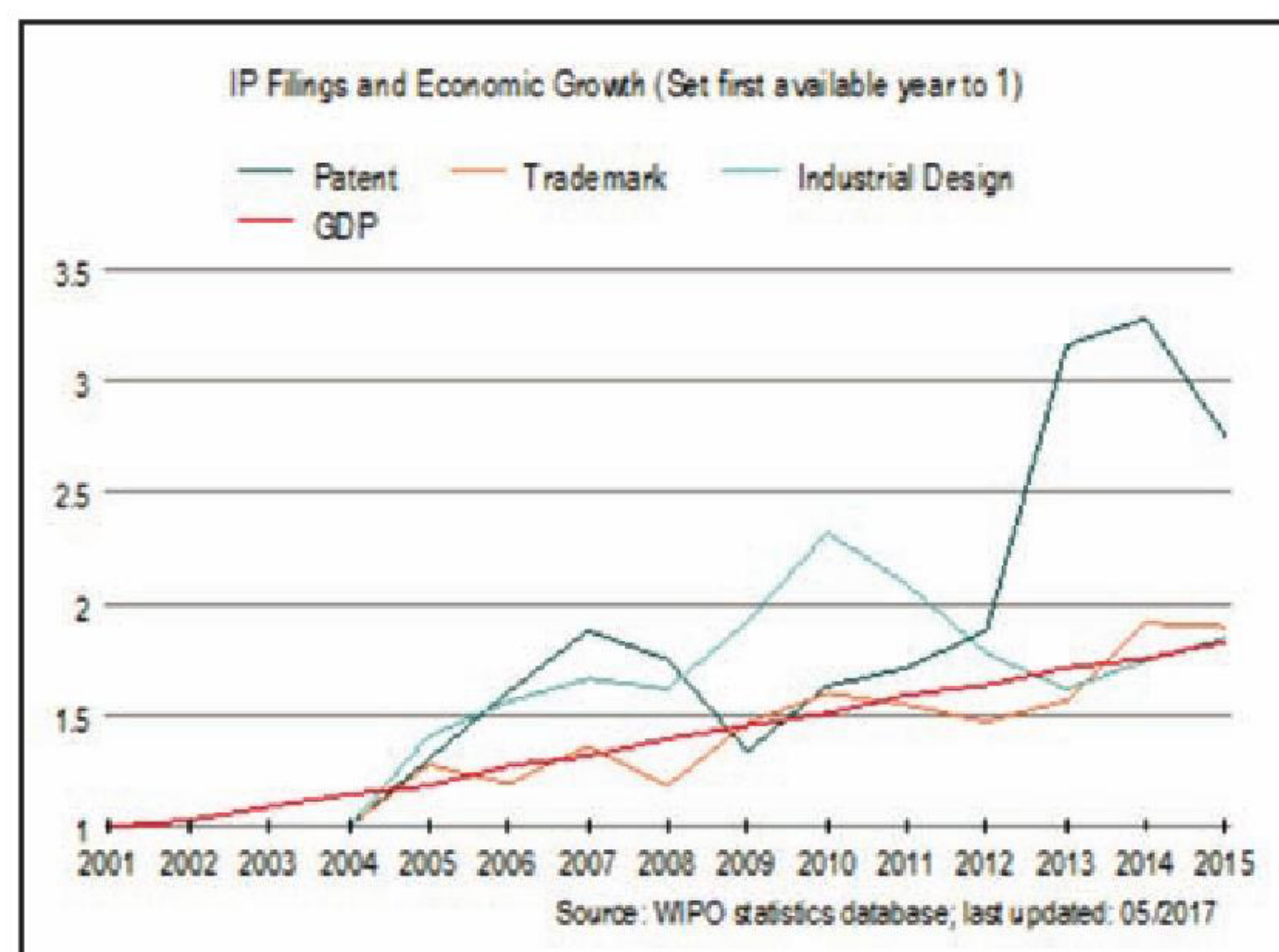
industrial base growing from around 10 companies to over 100. The industry generated \$1 billion in 2013 and created employment opportunities for 10,000 people in the country. Aerospace exports accounted for 6% of total exports in 2013, up from 0.5% a decade earlier. Major manufacturers are present in Morocco and are contributing to the rise of this industry.

Another sector of great ambition in Morocco is renewable energy. The country relies on imports for fossil fuels but is committed to supplying over 50% of the country's needs by 2030 using renewable energy. Several ongoing projects including solar and wind plants are under way with more to come as new technologies are developed and making access to these technologies more affordable.

Morocco is a member of the Paris Convention as well as the Patent Cooperation Treaty (PCT). In addition, Morocco is a WTO member and abides by the TRIPs agreements. Similarly to Algeria, the Moroccan patent system used to be one of grant only. In 2014, the patent office issued a new IP law amending the existing law with updated provisions. Under the new law, applications are examined substantively and issued on their merits of novelty, inventiveness, applicability, and compliance.

In 2015, the Moroccan government voted into law the agreement of 2010, entered between the Moroccan Patent Office and the EPO. This decision effectively simplified the patenting system in Morocco. All European applications filed on or after March 1, 2015, can designate MA at the time of requesting examination. Upon grant of the European patent, the same can be validated in Morocco. Since Morocco is not a European Patent Convention (EPC) state, the local patent law governs matters relating to infringement, validity, supplementary protection certificates and such.

All these factors can be seen in the continuous growth profile shown in the graph below:



As a WTO member and a signatory to the TRIPs agreement, Morocco does provide for an exclusivity period. In addition, pursuant to provisions of its own patent laws, patent term extensions are possible, but in all cases, for no longer than a period of two and a half (2.5) years.

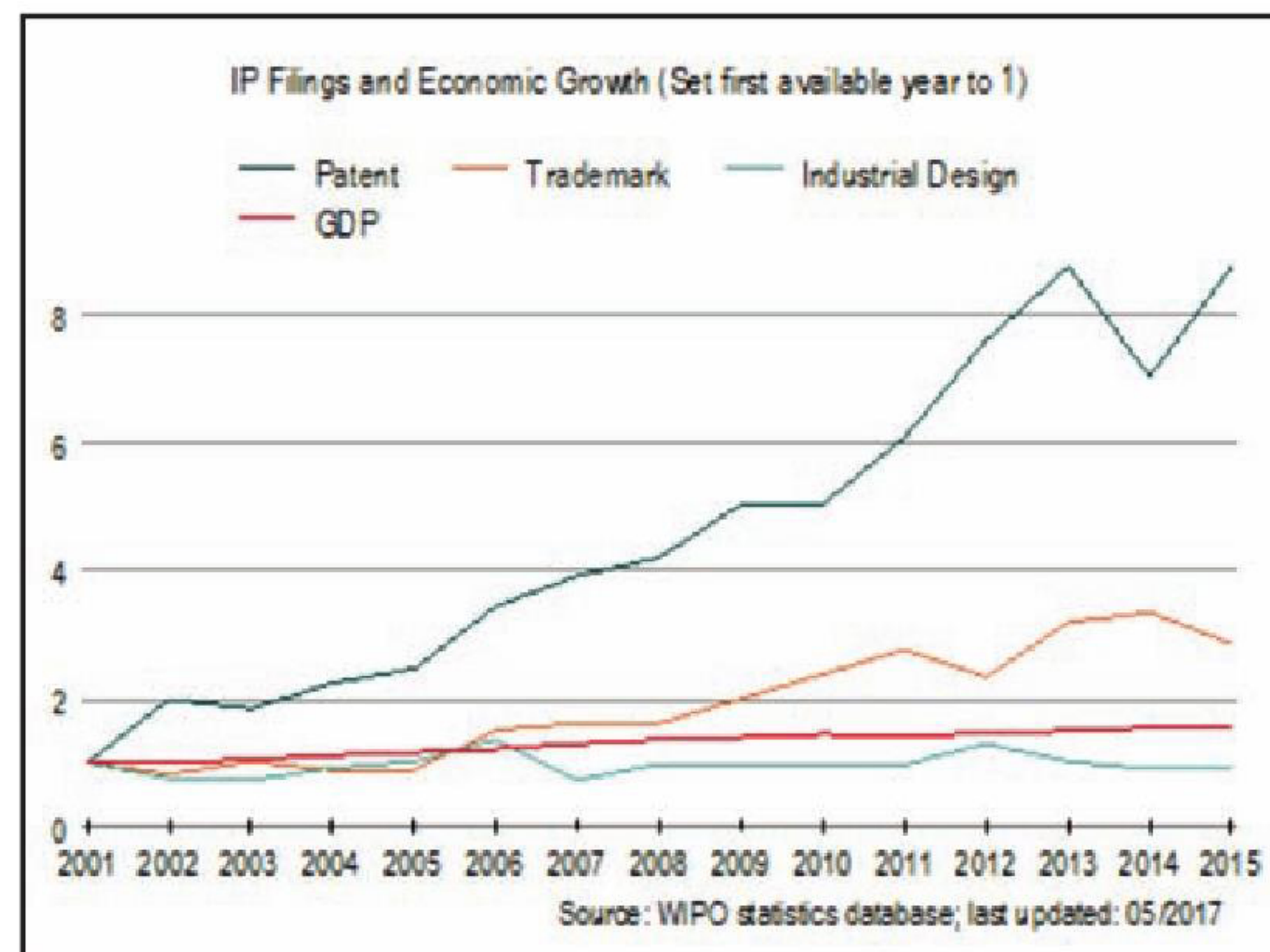
Tunisia (TN)

By far the smallest country in the Maghreb region, and a population of about a fourth of that of Morocco or Algeria, Tunisia is nevertheless a well-established economy. The country has been sought after as a safe haven whenever its neighboring countries, namely Algeria and Libya, experience instability. Tunisia always remained close to its largest economic partner, the European Union, which accounts for over 80% of its exports.

Tunisia's liberal strategy, coupled with investments in education and infrastructure, fueled decades of growth and improved living

standards. The country's diverse, market-oriented economy has long been cited as a success story in Africa and the Middle East. However, the country has been facing an array of challenges since 2011.

Whereas Tunisia is slowly developing its industries and growing its businesses, the country has taken all the necessary steps to ensure adequate patent protection may be obtained. As a member of the Paris Convention and the PCT, patent applicants can choose to enter applications via either route. In 2014, the Tunisian Government entered into an agreement with the EPO whereby it is possible to designate TN on European applications. The Tunisian government has also approved the European Patent Validation Law, however, it is yet to be implemented. The system still awaits publication of the implementing regulations after which the law will take effect. These measures have encouraged patent applicants to extend protection into Tunisia as can be seen from the graph below.



The Tunisian patent system is a grant only system and works like clockwork. Applications are published between 15-18 months from their date of filing. It is possible to enter amendments and file divisional applications any time prior to the application being sent for publication. In the absence of an examination stage, the law provisions that responsibility of the content and patentability criteria fall on the applicant. Once published and past the sixty (60) day opposition period, the application is considered granted as of the date of publication.

Once again, while provisions relating to the enforcement of patents are clearly states. The lack of country experience and a specialized IP court system, time will tell as to the effectiveness of these laws. Building on the country experience on the enforcement of trademarks, it is safe to assume that applicant rights should be adequately protected and enforced.

In closing

With their shared borders, language, culture, history, and more, the Maghreb countries are often viewed as an individual market. The region has always maintained its close ties with its neighboring EU but has also moved to position itself to attract foreign investments from beyond, namely North America, China, Japan, South Korea, and still others. The region's wealth in natural resources has historically drawn industries related to this sector. This has eventually led to the establishment of more industries such as aeronautics and renewable energy in Morocco. As these countries continue to maintain their growth and development, and as they extend ties into neighboring African countries and beyond, they are positioning themselves as global players for access to the African continent in general.

More information can be obtained from visiting Saba IP's website at www.sabaip.com or by contacting us at info@sabaip.com