

BULLETIN

July 2019

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Grace Period for Late Payment
of Patent Fees

INDIA

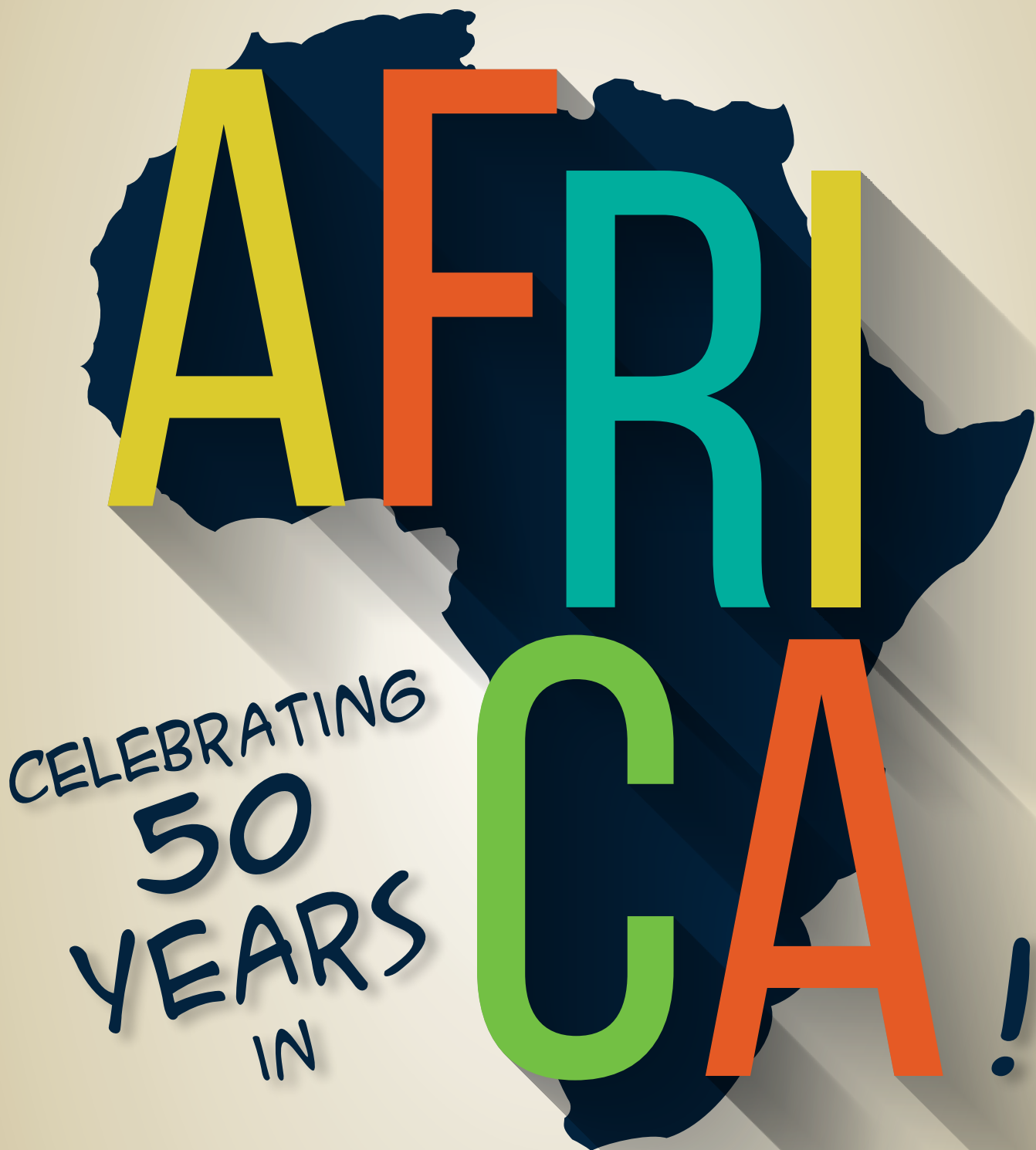
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SYRIA | GRACE PERIOD FOR LATE PAYMENT OF PATENT FEES



The Patent Office in Syria recently announced that it will be granting a grace period for late payment of patent fees. This update allows inventors who have not paid the annual fees due from the beginning of 2011 a grace period of three months, starting from June 17, 2019, to settle the fees. As for inventors who did not invest in their inventions, the Patent Office is granting a grace period of one year as of June 17, 2019, to reinstate patents for their inventions, or submit a nominal working.

The grace period of six months for late payment of annuities remains unchanged, however.

It is worth noting that Article 35 (3) of Law no. 18 of 2012 states that a patent will be forfeited in case of "[f]ailure by the inventor to put his invention in employment within three years from the date of granting him the invention certificate, unless he proves that he presented his invention directly to the industrialists capable of implementing his invention, and that he did not reject, without a reason, requests for his acceptance to invest his invention in accordance with provisions set in the Executive List."

By way of background, Syria accepted nominal working as sufficient to satisfy the requirement. This means that isolated advertisements satisfy the requirement when those advertisements are placed in industry magazines and the advertisements offered to grant licenses to anyone interested. The voluntary "license of right" mechanism helps patent owners comply with the working requirement in Syria. Furthermore, a patent owner may request that their patent be designated as "license of right," meaning that the patent is available to anyone by license, and such a designation protects the patent owner from being attacked for nonworking.

INDIA | ACCESSION TO THREE KEY WIPO INTERNATIONAL CLASSIFICATION TREATIES

INDIA

In its ongoing efforts to advance the intellectual property scene in the country, India joined three key World Intellectual Property Organization treaties: Nice Agreement, Vienna Agreement, and Locarno Agreement.

Although India was already following the Nice Agreement, Vienna Agreement, and the Locarno Agreement, the treaties will officially enter into force in India on September 7, 2019. The accessions underline India's strong multilateral engagement with the WIPO.



MAGHREB | WHAT YOU NEED TO KNOW ABOUT PATENTS IN AN EMERGING REGION FULL OF POSSIBILITIES



The Maghreb region, known for its touristic and historical sites, along with its considerable proximity to Europe, has been experiencing its own industrial revolution over the span of the past several years. From West to East, the region includes Morocco, Algeria, Tunisia, and Libya.

With a total population in excess of 90 million, the Maghreb 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 based on a law that was published in 1959 and has not been amended since then, despite the country's accession to the Patent Cooperation Treaty 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, mainly Algeria, Morocco, and Tunisia, which have been actively developing local industries, attracting foreign investment and working on developing their patent systems. These three countries share a common history, cultural heritage, and language.

Algeria (DZ)

Algeria is the largest country in Africa and the Arab world. The country is rich in natural resources including iron ore, phosphates, uranium, and lead - but the backbone of Algeria's economy remains as the oil and gas sector. Algeria has the tenth-largest proven reserves of natural gas in the world. The country also ranks 16th in proven oil reserves. Following the decline in oil prices in recent years, 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.

MAGHREB | WHAT YOU NEED TO KNOW ABOUT PATENTS IN AN EMERGING REGION FULL OF POSSIBILITIES



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 patent applications were granted and published.

Recently, the Patent Office in Algeria began performing substantive examination, which is essentially based on the International Search Report. 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 the first bullet point 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 provision for the filing of a patent of addition after issuance of the initial application. Whereas this does not necessarily compensate for not being able to file divisional patent 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 provision for any exclusivity period nor for any patent term extensions, even for delays resulting from the approval of marketing authorizations.

MAGHREB | WHAT YOU NEED TO KNOW ABOUT PATENTS IN AN EMERGING REGION FULL OF POSSIBILITIES



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. The industrial protection rights which accession to the WTO afford 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 by the authorities concerned, and the patent system evolves, the growth, although consistent, will remain slow.

Enforcement of patents has not yet been tested adequately in Algeria. 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 intellectual property matters relating to trademarks, then it is conceivable that the system should be reliable and dependable, but needs to be put to use.

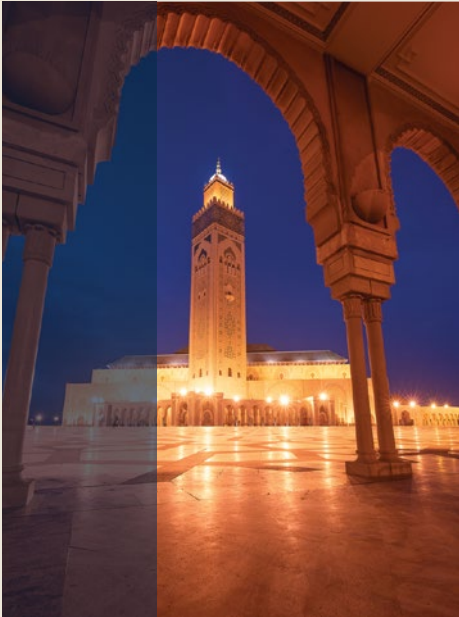
Algeria has a highly educated population, which speaks three languages fluently: Arabic, French, and Tamazight. It is conceivable that the Patent Office in Algeria can become a strong examination authority with the proper trainings. Alternatively, Algeria may follow in the footsteps of its neighboring 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.

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MAGHREB | WHAT YOU NEED TO KNOW ABOUT PATENTS IN AN EMERGING REGION FULL OF POSSIBILITIES



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 US\$1 billion in 2013 and created employment opportunities for 10,000 people in the country. Aerospace exports accounted for six percent of total exports in 2013, up from 0.5 percent 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 supply over 50 percent 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 them more affordable.

Morocco is a member of the Paris Convention as well as the PCT. In addition, Morocco is a WTO member and abides by the TRIPs Agreement. Similarly to Algeria, the Moroccan patent system used to be one of grant only. In 2014, the Patent Office in Morocco issued a new intellectual property 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 European Patent Office. This decision effectively simplified the patenting system in Morocco.

MAGHREB | WHAT YOU NEED TO KNOW ABOUT PATENTS IN AN EMERGING REGION FULL OF POSSIBILITIES



All European patent 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 state, the local patent law governs matters relating to infringement, validity, supplementary protection certificates and such.

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 half years.

Tunisia (TN)

By far the smallest country in the Maghreb region and with 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 it's 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 percent 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. The country has been facing an array of challenges since 2011, however.

Pursuant to Decree no. 67 of 2017 and the agreement signed between the European Patent Office and the Tunisian Patent Office in July 2014, European patent applications filed on or after December 1, 2017 can designate TN and European patent grants can be validated in Tunisia.

Although Tunisia is not a European Patent Convention member state, the Law provides the country a pseudo-EPC status with regards to patent procurement, and is expected to encourage more filings and more foreign investment.

MAGHREB | WHAT YOU NEED TO KNOW ABOUT PATENTS IN AN EMERGING REGION FULL OF POSSIBILITIES



It will still be possible to file patent applications in Tunisia via PCT national stage entry or claiming Paris Convention.

Once again, while provisions relating to the enforcement of patents are clearly stated, the lack of country experience and a specialized intellectual property 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 European Union, but has also moved to position itself to attract foreign investments from beyond, namely Japan, North America, China, and South Korea, among other nations. 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.

MAGHREB

DJIBOUTI | SMALL COUNTRY, BIG AMBITIONS



With an area of 23,200 square kilometers, it is easy to overlook Djibouti on a map. Despite its size, this small country occupies an unrivaled regional role in East Africa that is increasing in significance. Due to the country having the largest deepwater port off of the coast of the Red Sea, Djibouti serves as an international refueling and transshipment center. It also offers a route to the sea for Ethiopia and South Sudan.

Djibouti experiences stable economic development as the annual GDP growth averaged 6.7 percent due to good performance in the services sector. The GDP is US\$3.364 billion, while the GDP per capita is US\$3,600. The GDP composition is 2.4 percent for agriculture, 17.3 percent for industry, and 80.2 percent for services.

Djibouti encourages foreign investment. With laws based on the French legal system catering to the benefit of investors, the country's investment code guarantees investors to freely import all the required material for their investments. The Law protects the acquisition and disposition of all property rights, including intellectual property rights.

In addition to being a signatory to TRIPs Agreement and a member of the World Trade Organization, Djibouti observes the WIPO Convention, the Paris Convention, the Berne Convention, and is a member of the Patent Cooperation Treaty.

Trademarks are registered in Djibouti, in accordance with the 11th edition of the Nice Classification, for a period of 10 years from filing date and are renewable for like periods.

DJIBOUTI | SMALL COUNTRY, BIG AMBITIONS

DJIBOUTI

A grace period of six months is observed. A single application can include several classes. Provisions apply for the registration of collective marks and certification marks. Examination on relative grounds is not performed.

On the patents front, three types of patents are available: Patents of Invention, National Phase PCT Application, and Certificates of Addition. Absolute novelty is required. However, novelty will not be destroyed if the disclosure of the invention to the public occurred not earlier than 12 months preceding the filing date or where applicable the priority date owing to acts committed by (1) the applicant or their legal predecessor, (2) a Patent Office that has unduly published or made available to the public a patent application filed by the applicant or their legal predecessor, or an application filed without the knowledge or consent of the applicant or his legal predecessor by a third party which obtained information directly or indirectly from the applicant or his legal predecessor, or (3) a third party which obtained the information contained in the item of prior art directly or indirectly from the inventor.

The term of a patent is 20 years from the filing date, and renewal fees fall due at intervals of 5 years, the first being payable simultaneously with the application fee then on the 5th, 10th, and 15th anniversaries of the filing date.

Djibouti remains a country with high aspirations that welcomes foreign investments. We expect that the proper application and enforcement of IP laws should help Djibouti become more of an innovative hub in East Africa and lead to a healthy financial balance.



THE SABA NETWORK

Head Office

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 45 48 88
F. +961 5 45 48 44
P.O. Box 11-9421
headoffice@sabaip.com

Algeria

Cabinet Boukrami
(In cooperation with Saba & Co. IP)
Centre Commercial et d'Affaires El Qods
10th floor, BU 10-04 B, Cheraga 16002
Algiers, Algeria
T. +213 21 34 11 61
F. +213 21 34 11 62
P.O. Box 86 Centre Commercial et d'Affaires
El Qods, Cheraga 16002
algeria@sabaip.com

Bahrain

Bahrain Tower, Al-Khalifa Road
Manama, Bahrain
T. +973 17 210 301
F. +973 17 224 699
P.O. Box 21013
bahrain@sabaip.com

Cyprus

Mitsis Building #2
14, Makarios Avenue
1065 Nicosia, Cyprus
T. +357 22 755 434
F. +357 22 754 037
P.O. Box 21143
1502 Nicosia
cyprus@sabaip.com

Djibouti

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 45 48 88
F. +961 5 45 48 44
P.O. Box 11-9421
djibouti@sabaip.com

Egypt

10 Aisha El Taymouriah Street
Garden City, CP 11451
Cairo, Egypt
T. + 20 2 279 59686
F. + 20 2 279 52314
P.O. Box 129, Mohamed Farid
info@sabaip-eg.com

Ethiopia

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 45 48 88
F. +961 5 45 48 44
P.O. Box 11-9421
ethiopia@sabaip.com

Gaza

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 454 888
F. +961 5 454 844
P.O. Box 11-9421
gaza@sabaip.com

Iraq

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 454 888
F. +961 5 454 844
P.O. Box 11-9421
iraq@sabaip.com

Jordan

56 Prince Shaker Bin Zaid Street
Al Shmeisani
Amman, Jordan
T. +962 6 464 2145
F. +962 6 464 2159
P.O. Box 840553, Amman 11184
jordan@sabaip.com

Kuwait

Al Hajri Building
Al-Shuhadaa Street
Kuwait, Kuwait
T. +965 2 242 3428
F. +965 2 240 2243
P.O. Box 1245, 13013 Safat
kuwait@sabaip.com

Lebanon

Saba House,
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 45 48 40
F. +961 5 45 48 42
P.O. Box 11-9420
lebanon@sabaip.com

Libya

Saba House,
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 454 888
F. +961 5 454 844
P.O. Box 11-9421
libya@sabaip.com

Morocco

185 Boulevard Zerkoutni
Residence Zerkoutni
Casablanca 20330
Casablanca, Morocco
T. +212 522 251 530
F. +212 522 251 603
P.O. Box 13 921
Casablanca 20032
morocco@sabaip.com

Oman

Muscat International Centre
Beit Al Falaj Street
Muscat, Oman
T. +968 248 111 26
F. +968 248 111 28
P.O. Box 2027 Ruwi
Postal Code 112, Sultanate of Oman
oman@sabaip.com

Qatar

Gridco Building
C Ring Road
Doha, Qatar
T. +974 44 42 3992
F. +974 44 32 4106
P.O. Box 14035
qatar@sabaip.com

Saudi Arabia

Al Hadaf Marks Services LLC
(In Cooperation with Saba & Co. IP)
Office # 1, 2nd Floor, Tower B GOSI Olaya
Towers Olaya Street, Riyadh 11565
Saudi Arabia
T. +966 11 2079596
F. +966 11 2079598
P.O. Box 61145
saudi@sabaip.com

Sudan

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 454 888
F. +961 5 454 844
P.O. Box 11-9421
sudan@sabaip.com

Tunisia

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 454 888
F. +961 5 454 844
P.O. Box 11-9421
tunisia@sabaip.com

United Arab Emirates

Tamani Arts Tower - 18th Floor
Al Asayel Street, Business Bay
Dubai, UAE
T. +971 4 553 9911
F. +971 4 566 8470
P.O. Box 42259
uae@sabaip.com

West Bank

Saba House
Saïd Freiha Street, Hazmieh
Beirut, Lebanon
T. +961 5 454 888
F. +961 5 454 844
P.O. Box 11-9421
westbank@sabaip.com

Yemen

Hadda Towers, Building #7
Hadda Street
Sana'a, Yemen
T. +967 1 420 595
F. +967 1 420 596
P.O. Box 1493
yemen@sabaip.com