

SABA
INTELLECTUAL
PROPERTY

BULLETIN

January 2021



SAUDI ARABIA

Copy that: Over three million infringing items seized

MENA

Rising challenges in patent prosecution in the region

PAKISTAN

What you need to know about IPRs

THE BIGGER YOU GROW,
THE STRONGER WE GET



90⁺
YEARS

50⁺
JURISDICTIONS

1
FIRM

COUNSELING | PROSECUTION | ENFORCEMENT | ANTI-COUNTERFEITING

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SAUDI ARABIA | COPY THAT: OVER THREE MILLION INFRINGING ITEMS SEIZED



CONFISCATED

The Saudi Authority for Intellectual Property (SAIP) is continuously proving its prowess after it has successfully confiscated and destroyed more than 3.5 million items that were in violation of intellectual property rights.

This news was announced on November 9, 2020 and follows the handover of all copyright-related matters, which include the enforcement of said rights, from the Ministry of Media to the SAIP.

The infringing products that were confiscated by the SAIP included illegally copied books, satellite broadcasting devices, and computer program storage devices. In addition, the authorities concerned also seized devices that copy audio works.

This massive takedown operation comes as the culmination of many successful campaigns by the SAIP that targeted various cities in Saudi Arabia as part of their efforts to raise awareness and enforce intellectual property rights within the Kingdom.

Ever since its inception, the SAIP has made it clear that there will be no clemency for any violation of any intellectual property rights.

While most of the seized items were destroyed, the SAIP was able to recycle nearly one million items. In a statement made on their official website, the SAIP states that ***"we are continuing our efforts to confront items that violate intellectual property rights in the Kingdom of Saudi Arabia by destroying and recycling them in collaboration with the concerned entities and to preserve the environment."***

Such developments are a clear testament to the fact that Saudi Arabia is nurturing the right environment for the protection and enforcement of intellectual property rights.

SAUDI
ARABIA

MENA | RISING CHALLENGES IN PATENT PROSECUTION



The Middle East and North Africa region, more commonly known as MENA, receives its share of news in the international circuit. Saudi Arabia, for example, has been a steadily growing economy, which with the introduction and implementation of a number of reforms, has seen a sudden boom with the diversification of the economy and further opening of its borders to foreign investments. Egypt has also drawn considerable attention from foreign investment with its development of a number of industries, including manufacturing and pharmaceuticals.

The MENA region has been the stage for political and economic developments that led to a rapidly growing middle class, with a penchant for innovative products and innovation itself. A combined, relatively young population of half a billion growing at double digit rates, plays a significant role to making the region one of the fastest growing markets in the world with five year

compound annual growth rate outlooks of between 9 to 30 percent depending on the field or sector.

In that same period, and with the support of at least the WIPO, EPO, and/or the USPTO, the countries of the region have established, implemented, or ratified their laws governing intellectual property.

A key development in an increasing number of countries of the region is the implementation of substantive examination leading to legally valid patents. This point has become one of utmost importance since the Patent Offices in most of the countries of the region have taken on the burden of rejecting or granting patents based on substantive examination, rather than placing the burden on the applicant meeting the patentability criteria of novelty, inventive step, applicability, unity, and compliance with local laws and regulations on allowed subject matter.

MENA | RISING CHALLENGES IN PATENT PROSECUTION

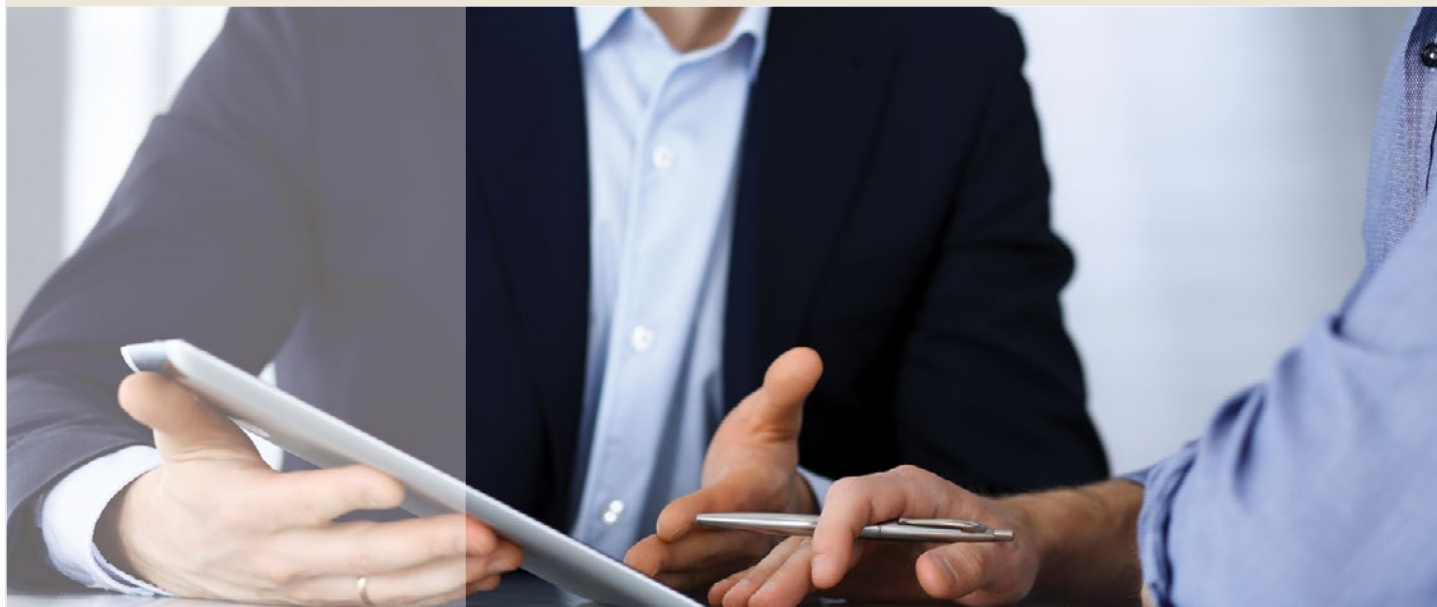
The Patent Offices of the following countries have been issuing decisions based on substantive examination: the United Arab Emirates, Saudi Arabia, Oman, Bahrain, Qatar, Iraq, Egypt, Jordan, Algeria, Morocco, and Tunisia. This is the list of most of the countries generally included in the MENA region, and only leaves out a handful of countries, such as: Lebanon, Libya, Yemen, and Kuwait. Less than five years ago, the number of countries was much smaller and excluded Oman, Bahrain, Qatar, Tunisia, and Algeria. Going back even longer, the number of countries with substantive examination was even smaller.

The quality and level of examination of course varies from country to country. The trend though has been for most countries to adopt the same strategy and refer to the International Search and Opinion (i.e. ISR and IRPR), at least for the First Examination Report (FER). For the majority of applicants, this is a welcome implementation since it provides for the possibility to adopt a similar strategy in those countries as the

one adopted in most countries where the IPEA's opinion is applicable. Most of the examiners in the countries in the MENA region, with the proper compliance and arguments on file, will look favorably at foreign grants and acknowledge their peers' decisions. This is not to say that a foreign grant will automatically result in a national grant. The examiners have to be convinced that the objections raised are adequately addressed. This then brings us to the challenges faced by the local agents representing multinational corporations and small and medium-sized enterprises, and even in some cases, local or regional companies.

Pursuant to the laws of the countries in the region, foreign applicants have to be represented by a locally registered practitioner with a local address. Historically, the capabilities and competencies of these local representatives were primarily limited to administrative duties, as a result of the absence of any particular need for technical expertise or know-how.



MENA | RISING CHALLENGES IN PATENT PROSECUTION

With a number of Patent Offices issuing technical examination reports, and in most countries in the local language, Arabic, applicants tend to depend on the local representative to fully understand the technical and legal implications and provide a plan or strategy for preparing and filing the best response to address these reports in a methodical, adequate and timely manner. In many instances, an interview with the examiner may be required. As the applicant's local representative, the latter should be able to understand the applicant's strategy and adequately argue with the examiner as needed to address any remarks or comments made during an interview.

Such competencies are hard to find in the MENA region, especially considering the rapidity within which the Patent Offices started issuing examination reports in order to go through the backlog created from maintaining pending applications until the implementation of the examination guidelines set in motion. Such competencies also come at an elevated price. For some local or regional IP firms, this means loss of the ability to offer the same services with the usual competitive pricing. For others, this means expanding the patent teams to include foreign patent attorneys, which comes however with a limitation due to the language barrier.

MENA | RISING CHALLENGES IN PATENT PROSECUTION



With these changing parameters, foreign applicants are now faced with additional variables when considering their global patent strategy where this now includes the MENA region. Pricing will always be an important variable to consider when looking at budgets. But the quality and competence of the team prosecuting the patent applications has become as important for at least two reasons: (1) identifying subject matter which may be patentable at different stages of the patent procurement, and (2) ensuring a streamlined prosecution with minimal office actions and the ability to proceed to grant when needed.

As the MENA region begins to attract the attention of a growing number of industries, the importance of securing legally valid IP rights and the ability of adequately enforcing those rights necessitate the identification of local representatives with both the capabilities and abilities to understand not only the legal aspects of these rights, but also their merits and validity to withstand cancellation and/or possible acts of infringement. Needless to say, this will also necessitate a review of the budgets relating to IP for the MENA region.

PAKISTAN | WHAT YOU NEED TO KNOW ABOUT IPRS



With its significant geopolitical position in South Asia that provides the country with convenient access to the international market, Pakistan is nestled in the cradle of the historical Indus Valley civilization, which dates back at least 5,000 years.

Local industries include textiles and apparel, food processing, pharmaceuticals, surgical instruments, construction materials, paper products, fertilizer, and shrimp. Pakistan's GDP growth has gradually increased since 2012, and was 5.3 percent in 2017.

The GDP composition by sector of origin is 24.4 percent for agriculture, 19.1 percent for industry, and 56.5 percent for services.

Pakistan maintains a relatively comprehensive regulatory and legislative system for the protection of trademarks, patents, designs, and copyright. In order to have an effective protection strategy, all intellectual property rights must be registered and enforced in Pakistan, under local laws. While Pakistan has been a Contracting Party to the Paris Convention for the Protection of Industrial Property since July 2004, the country is not a Contracting Party to the Patent Cooperation Treaty.

On the trademarks front, Pakistan follows the 11th edition of the Nice classification and a single application may not include several classes. Trademark examination is performed on formal, absolute, and relative grounds and oppositions may be filed after two months from publication date.

The protection term for a trademark is 10 years from filing date and is renewable for like periods. As for use, trademarks are vulnerable to a cancellation action by any interested party if there has been no effective use of the mark for a period of five consecutive years after registration. An extension of time is possible for filing oppositions, counter oppositions, and responding to office actions.

It is worth noting that priority can be claimed if the application is filed within six months of the application in the Paris Convention country. If registration is granted without use, the brand owner must use the mark within five years from the date of registration to maintain the registration. This is also useful in order to mitigate any risk from a third-party that might challenge on grounds of non-use.

PAKISTAN | WHAT YOU NEED TO KNOW ABOUT IPRS



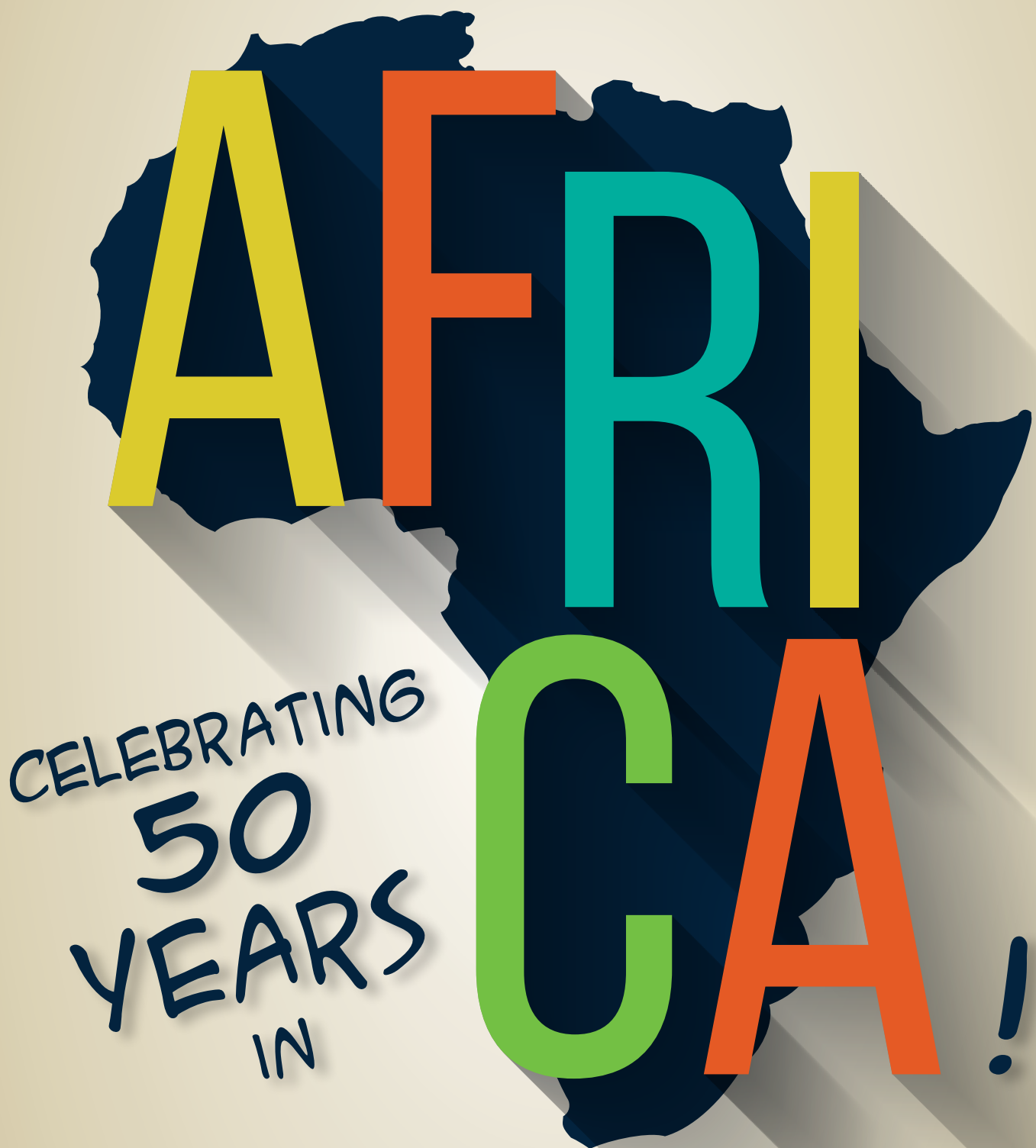
PAKISTAN

As for patents, priority rights may be claimed from states that are a party to the Paris Convention for the Protection of Industrial Property, and a claim for priority is required to be filed within twelve months of the first filing. The examination results for the filed patents in Pakistan are subject to the Patents Ordinance (2000) and Patents Rules (2003).

The Examiners will consider equivalent filings as well when evaluating patentability. Once approved, the notification is published upon grant in the Official Gazette and oppositions may be filed within four months from publication date. Patents are protected for a period of 20 years from the filing date, or from the priority date. Annuities are due annually on the anniversary of the filing date, or the priority date, and payable after the granting of the patent. A six month grace period is observed for late payment along with a surcharge.

Given that Pakistan is not a member of the PCT, nationals do not have the option of filing with the PCT Receiving Office for international protection or for international publication of their patents within the 153 PCT contracting states.

Pakistan remains a country with high aspirations that welcomes foreign investments. A healthy balance between the latter and local development is bound to be beneficial for the country's own growth. The proper application and enforcement of IP laws should help Pakistan become more of an innovative hub in South Asia and lead to this required healthy financial balance.



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