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# August 2022

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# MIDDLE EAST AND NORTH AFRICA

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# THE BIGGER YOU GROW, THE STRONGER WE GET



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August 2022

# **TURKEY. MIDDLE EAST AND NORTH AFRICA. GHANA**

# TURKEY | BUSTING SCREENS: TURKEY CRACKS DOWN ON ONLINE INFRINGERS



Located at the crossroads of Asia and Europe, Turkey occupies a transcontinental position of significant importance, which bestows upon the country a considerable influence across the region and beyond. Turkey's strategic geographic position makes it an important energy and logistics corridor, linking Europe with the Middle East, the Caucasus, and Central Asia.

With the rise of e-commerce sites, many infringers and counterfeiters are resorting to online platforms to pawn their illicit goods to unsuspecting consumers. Nonetheless, this does not mean that such criminals are beyond the long arm of the Law in Turkey. Court actions are available as a remedy for online infringement if the brand owner can associate the infringer with a local entity or individual in Turkey.

In fact, Turkey maintains strict control when it comes to registering domain names under the ".tr" country code.

The Information Technologies Authority, which acts as the competent registrar, applies strict rules, and requires precise and detailed documentation for proof of genuine rights ownership before granting the designation. This process makes it extremely challenging and near impossible for infringers to register fraudulent domain names under the ".tr" country code.

In addition, it is worth noting that an internet service provider in Turkey may be held accountable for aiding an infringer or is unaware of the ongoing infringement activities and is able to block or suspend the infringing website. Turkey maintains Law No. 5651 to set down the guiding principles as related to the liability of content, hosting, and internet service providers. The Law also applies to acts of online counterfeiting and piracy.

# MENA | PATENT PROSECUTION IN A RAPIDLY BOOMING REGION



The Middle East and North Africa region, more commonly known as MENA, receives its share of news in the international circuit. At the forefront, the boom which began in Saudi Arabia a few years ago is still going strong, along with the introduction and implementation of many reforms, which are steadily fueling the diversification of the economy and attracting both national and foreign investment. Egypt's economy also continues to grow and draw considerable attention from foreign investment given the constant development of several industries, including manufacturing, food processing, agriculture, hydrocarbons, and pharmaceuticals, and other service sectors that are driving the country's diverse economic activity.

The MENA region continues to be the stage for political and economic developments that led to the growing of a middle class, with a penchant for innovative products and innovation itself. A combined, young population of half a billion growing at double digit rates, plays a significant role in 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 continued support of at least the World Intellectual Property Organization (WIPO), French Patent Office (INPI), Japan Patent Office (JPO), Korean Intellectual Property Office (KIPO), and the United States Patent Office (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. The most recent office to join this group is the Kuwaiti Patent Office.

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# **TURKEY. MIDDLE EAST AND NORTH AFRICA. GHANA**

# MENA | PATENT PROSECUTION IN A RAPIDLY BOOMING REGION

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 included in the MENA region, and only leaves out a handful of countries, such as: Lebanon, Libya, and Yemen. 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 most 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 International Preliminary Examining Authorities' (IPEA) 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 must be convinced that the objections raised are 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.

A more recent development that has made a significant impact on the region and applicants is the suspension of new filings in the GCC Patent Office, the only regional patent office in the MENA.



# **TURKEY. MIDDLE EAST AND NORTH AFRICA. GHANA**

# MENA | PATENT PROSECUTION IN A RAPIDLY BOOMING REGION



# **Patents**



The GCC Patent Office was comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE and which implemented a unitary system, stopped accepting new patent applications as of January 6, 2021. While this is a temporary situation, as an amended law has been published but awaits new regulations to start implementation, many applicants found themselves having to reassess their filing strategy and budget for the Arabian Gulf countries in the interim.

Pursuant to the laws of the countries in the region, foreign applicants must 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, because of the absence of any need for technical expertise or know-how. With several 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 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 with which the Patent Offices started issuing examination reports 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.

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# MENA | PATENT PROSECUTION IN A RAPIDLY BOOMING REGION



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 preparing budgets. However, 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 various 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. This will also necessitate a review of the budgets relating to IP for the MENA region.

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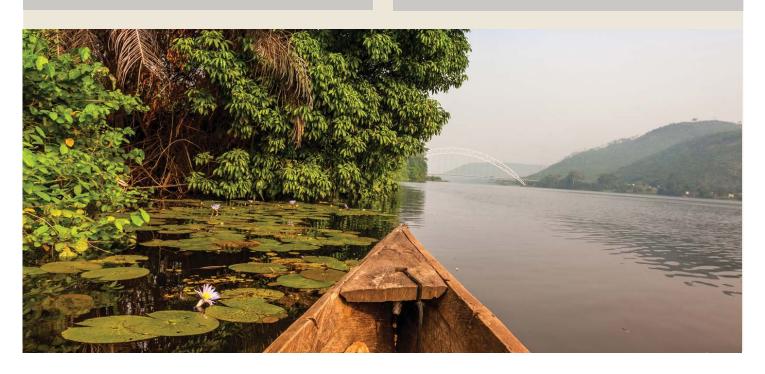
# **GHANA | DESTINATION AFRICA: WHAT YOU NEED TO KNOW**

Formed from the merger of the British colony of the Gold Coast and the Togoland trust territory, Ghana in 1957 became the first Sub-Saharan country in colonial Africa to gain its independence. With a total area of 238,535 km2 (92,099 sq mi), Ghana is bordered by Côte d'Ivoire in the West, Burkina Faso in the North, Togo in the East, and the Gulf of Guinea and the Atlantic Ocean in the South.

With diverse and abundant natural resources, Ghana has roughly twice the per capita output of the countries in West Africa. Gold, cocoa, petroleum, and individual remittances are major sources of foreign exchange. Agriculture's contribution to economic activity in Ghana has decreased in recent years, now accounting for approximately 20 percent of GDP, and employing about 45 percent of the workforce.

As oil and gas production shows moderate growth, opportunities for auxiliary services to the industry will continue to rise.
Although Nigeria remains the sectorial hub for West Africa, the relative ease of doing business in Ghana will attract a greater number of companies to establish a local or even regional presence in the market.

Ghana joined the World Intellectual Property Organization (WIPO) in 1976 and has since acceded to all the major intellectual property related treaties. Ghana maintains legislations for the protection of copyright, patent, trademark, and industrial design rights. The country also has a law encompassing unfair competition. Furthermore, Ghana is also a party to the Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO) and the Harare Protocol.



# TURKEY. MIDDLE EAST AND NORTH AFRICA. GHANA

# GHANA | DESTINATION AFRICA: WHAT YOU NEED TO KNOW



On the trademarks front, Ghana follows the 10th Edition of the Nice classification, and a single application may not include several classes. Trademark examination is performed on absolute and relative grounds and oppositions may be filed within 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 cancellation by any interested party if there has been no effective use of the mark for a period of five consecutive years preceding date of filing for cancellation.

Foreign patent applications in Ghana may be filed claiming 12-month Convention priority or entered as national stage via PCT within 30 months from the earliest claimed priority. Furthermore, it is also possible for a patent to be obtained by an ARIPO-PCT application. In line with expected PCT Rules, patents are

protected for a period of 20 years from the international filing date. Annuities in Ghana are due annually on the anniversary of the international filing date and payable as of nationalization of the application.

It is worth noting that Ghana fared well as evidenced in the 2015 World Economic Forum's Africa Competitiveness report, especially when considering the ranking of countries for intellectual property protection. Ghana was ranked fifth out of the top fifteen countries assessed. Ghana 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 Ghana become more of an innovative hub in West Africa and lead to this required healthy financial balance.

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