

SABA
INTELLECTUAL
PROPERTY

BULLETIN

December 2023



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UAE | REVAMPING DISPUTE RESOLUTION: HOW THE ARBITRATION REFORMS IMPACT THE IP LANDSCAPE



The United Arab Emirates (UAE) has recently taken a significant step to further refine its arbitration mechanism by introducing amendments to the Federal Arbitration Law No. (6) of 2018 through the Federal Law No. (15) of 2023 ("Amendment Law").

While the amendments span various aspects of arbitration, the following article emphasizes key points that intellectual property stakeholders should be particularly aware of.

Virtual and Online Arbitration Proceedings

The Amendment Law broadens the scope of the arbitration process by embracing virtual and online arbitration. In an era where digital interactions are becoming the norm, this change facilitates IP stakeholders who may be distributed across different geographical locations. Virtual arbitration can be a boon for IP disputes that often involve international parties, eliminating travel hindrances and expediting the resolution process.

Arbitrator Appointments

Previously, there were restrictions on appointing arbitrators from the arbitration institution's controlling bodies.

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The Amendment Law provides exceptions to this, under specific conditions. For IP matters, where expertise in a niche area might be concentrated among a few individuals, this relaxation could mean a wider selection of experienced arbitrators.

Arbitration Tribunal's Discretion

The Amendment Law further empowers the arbitration tribunal in determining the procedures and rules of evidence. For IP disputes, which often require a blend of standard legal procedures and nuanced domain-specific considerations, such flexibility can ensure that the proceedings are tailored to the unique nature of IP cases.

While the Amendment Law undeniably enhances the arbitration framework in the UAE, it is also crucial for parties engaged in IP disputes to be cautious.

The move to online arbitration brings challenges related to security and confidentiality, especially crucial for IP matters where proprietary information is often at stake. Furthermore, while the increased discretion given to the arbitration tribunal offers flexibility, parties must remain vigilant to ensure that their rights and interests remain protected.

Closing Thoughts

The UAE continues to solidify its position as a preferred destination for international legal proceedings. With these new amendments, the nation offers a modernized approach to arbitration that aligns with global standards. For IP stakeholders, these changes underscore the need for a proactive approach in understanding and navigating the evolving legal landscape.



UAE | UNLOCKING POTENTIAL: A BOON FOR FRANCHISERS IN THE INTELLECTUAL PROPERTY ARENA



Dubai's skyline and Abu Dhabi's innovative architecture are the hallmarks of the United Arab Emirates' (UAE) intent to be a leading player in the global business sphere. When assessing the nation's offerings to global franchisers, it is crucial to note its progressive intellectual property (IP) landscape.

UAE: More than a Strategic Geographical Nexus

The UAE, strategically located between Europe, Africa, and Asia, offers much more than just its location. Its world-class infrastructure, business-oriented policies, and competitive tax system, as enshrined in laws like the Federal-Decree Law No. 19 of 2018 on Foreign Direct Investment, open opportunities for global brands. But what truly sets UAE apart is its pioneering stance on IP.

Intellectual Property: The Cornerstone of Business Assurance

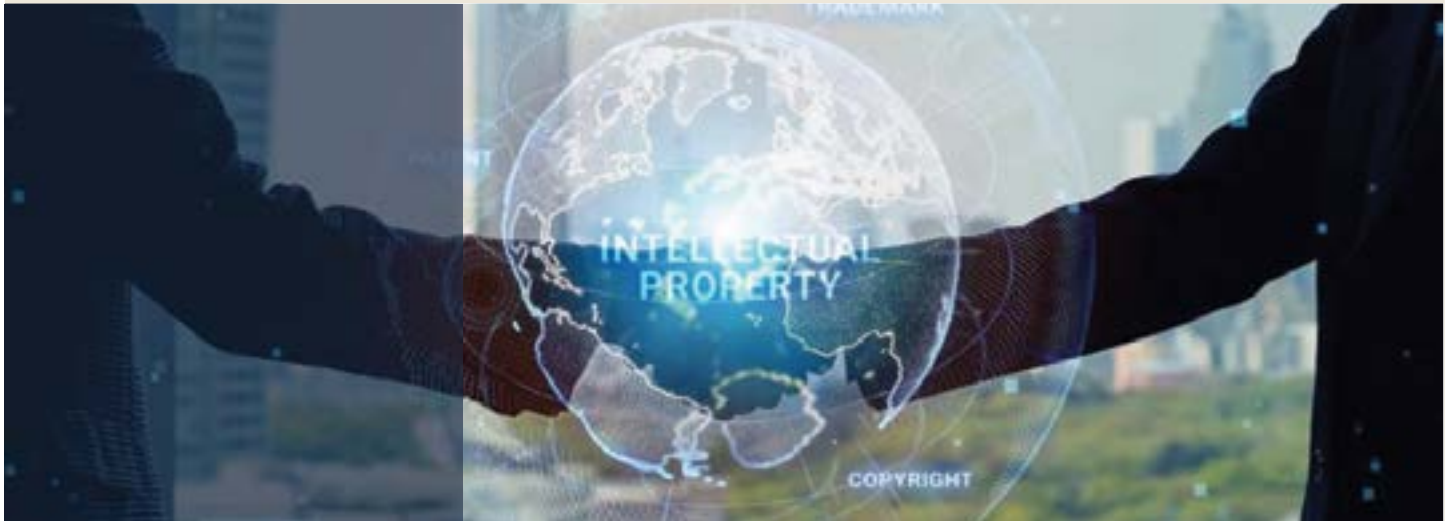
For any global brand, protecting its identity - whether logos, designs, or innovative strategies - is paramount. The UAE has developed effective enforcement mechanisms, such as the administrative measures with the various Departments of Economic Developments, which expedites IP-related enforcement measures. Addressing this, the UAE has enacted several foundational IP laws:

Federal Law No. 36 of 2021 on Trademarks fortifies the protection around brand uniqueness.

The Federal Decree-Law No. 38 of 2021 on Copyrights and Neighboring Rights, alongside Federal Law No. 11 of 2021 on the Regulation and Protection of Industrial Property Rights, collectively form a robust legal foundation for safeguarding creative and innovative endeavors in various fields. The former, focusing on copyrights and neighboring rights, plays a crucial role in ensuring that original designs and innovative strategies are legally protected, fostering an environment where creativity is not only encouraged but also securely guarded against infringement.

Complementing this, Federal Law No. 11 of 2021 extends this protective umbrella to the realm of industrial property.

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This law, along with its associated regulations, lays down a solid framework for the protection of a broader range of intellectual assets.

This includes industrial designs, which encompass the aesthetic aspects of articles, integrated circuit layouts, patents that protect inventions, and undisclosed business information, commonly known as trade secrets. By covering these varied aspects of intellectual property, the law ensures that innovations, whether they are tangible products or strategic business information, receive comprehensive legal protection.

Together, these laws demonstrate a cohesive legal strategy aimed at fostering and protecting innovation across different sectors. By safeguarding everything from artistic creations to industrial inventions and trade secrets, they provide a secure environment for creators and innovators, ensuring that their contributions are recognized and shielded from unauthorized use or exploitation. This legal framework not only protects rights holders but also contributes to a culture of innovation and creativity, essential for economic growth and technological advancement.

The UAE has a dedicated IP Sector under the Ministry of Economy and has recently appointed an Assistant under

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Secretary specifically for IP Matters. Moreover, with platforms like the Ministry of Economy's website and the Gulf Cooperation Council's IP database, the process of safeguarding brand distinctiveness has become much more streamlined.

E-Commerce: The UAE's Digital Prowess

In response to the exponential growth of e-commerce, UAE has set itself as a benchmark by enacting laws that:

Regulate digital marketing and ensure transparency in e-commerce as stated in Federal Law No. 1 of 2006 on Electronic Commerce and Transactions.

Combat cybercrimes through the Federal Decree-Law No. 5 of 2012 on Combating Cybercrimes.

This provides a solid framework for franchisers venturing into the digital realm.

Reasons for Franchisers to Favor the UAE

The UAE stands out as a prime destination

for franchisers, and it is not hard to see why. With its stable and burgeoning economy marked by a high GDP per capita, the nation presents a favorable economic environment for business expansion. The unique blend of over 200 nationalities within its borders signifies a diverse and vast consumer base, catering to the needs and tastes of a global clientele. This multicultural fabric is complemented by the UAE's globally recognized ease of doing business, thanks to progressive laws such as the Resolution of the Cabinet of Ministers No. 31 of 2019 on the Economic Substance Regulations. Furthermore, the unwavering governmental support and the country's rich cultural vibrancy offer brands an unparalleled platform, allowing them not just to operate, but to truly thrive and gain recognition on the world stage.

Diving Deeper into IP in the UAE

The UAE's unique IP stance balances domestic priorities with global standards. For instance, while it leans towards acquisition-through-registration,

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it also understands the nuances required to identify unregistered trademarks in a dynamic market. From understanding religious sensibilities to public morals, the trademark protection criteria, as detailed in the Federal Law No. 36 of 2021, ensure brands remain both locally and globally relevant. Furthermore, the UAE's commitment to brand rights enforcement is second to none.

Conclusion

For global franchisers, the UAE is not just a market but a land of infinite potential. With laws that foster innovation, encourage creativity, and champion business excellence, brands not only flourish but also give a lasting impression. The UAE, with its forward-looking approach, is indeed the future for global franchisers.

MENA | UNDERSTANDING IP DOCUMENT LEGALIZATION

Intellectual Property (IP) protection is crucial for innovation and business growth. However, one of the more challenging aspects of securing IP rights in the Middle East and North Africa (MENA) region is the often-complex requirement for document legalization. Legalization authenticates the origin of a document, a step which, while necessary, is seen by many as cumbersome and costly.

Regional Variations in Document Legalization

In the MENA region, the approach to document legalization varies significantly. Algeria, Morocco, Tunisia, and Gaza offer a more streamlined process by accepting a simply signed Power of Attorney (POA) without the need for further legalization, facilitating a more straightforward IP filing process in these jurisdictions.

In contrast, the majority of MENA countries mandate formal legalization procedures. However, the landscape is changing as Bahrain and Oman have already embraced the Hague Apostille Convention. Saudi Arabia is the latest to join, simplifying the legalization process for the Convention members and signaling a shift towards greater procedural efficiency in the region.

The Legalization Process: A Critical Component

Despite the perceived complexity, legalization is essential. However, many Trademark Offices (TMOs) in the region do not

require the submission of POAs at the time of filing, offering a grace period, typically ranging from 1 to 6 months from filing date, to complete all formalities. Exceptions include Kuwait, Libya, and Saudi Arabia, where immediate submission is necessary.

Leveraging Multi-Jurisdictional POAs

A Multi-Jurisdictional Power of Attorney (POA) can greatly simplify the filing process. Recognized by most countries in the Middle East and North Africa (MENA) region, this type of POA allows for the consolidation of authorizations across multiple countries. This approach is highly efficient, as it decreases the volume of documents a trademark owner must sign. Upon execution, individual POAs can be drafted for each country, which significantly cuts down on the administrative burden for the owner.

Preparing for a Smooth IP Filing Journey

Navigating the nuances of document legalization in the MENA region requires a clear understanding of the varying national requirements.

For IP practitioners, being well-informed and proactive in managing legalization and POA requirements is key to a smooth filing journey. The region's trend towards easing IP procedures is a positive sign for businesses and innovators looking to protect their intellectual assets.



MENA | A GUIDE ON TRADEMARK OPPOSITION PROCEDURES

Navigating the intricacies of trademark protection in the Middle East and North Africa (MENA) region is a multifaceted endeavor. From pre-registration oppositions to cancellation proceedings, the path to securing trademark rights varies widely across different jurisdictions. This guide provides an in-depth look at the opposition system, offering clarity to businesses and legal practitioners aiming to safeguard their intellectual property.

Regional Variations in Pre-Registration Opposition

Most countries in the MENA region offer a window for pre-registration opposition, allowing third parties to contest a trademark application. The opposition period typically ranges from 60 to 90 days from the publication date. There are exceptions, however: Lebanon and Algeria do not provide for pre-registration opposition, leaving legal cancellation as the sole recourse to challenge a mark's registrability.

Administrative vs. Court Opposition Proceedings

Opposition proceedings are primarily administrative and filed before the respective Trademark Offices (TMOs), except in Iran, where they can also involve court proceedings. The administrative nature of these processes generally makes them less costly, focusing on the written record and limiting jurisdiction to the issue of registrability. This is reflective of the first-to-file principle predominant in the region, where the opponent is not required to prove the use of the earlier registered mark that forms the basis of the opposition. Tunisia's TMO adopts a conciliatory approach, where it facilitates a meeting to help the parties reach a settlement. If no agreement is reached, and a party contests, a court case is necessary to prevent the registration of the opposed mark.

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Criteria for Fame and Other Opposition Grounds

Even if prior rights are not established locally, opposition based on the fame of a trademark is permissible. The determination of fame adheres to both international and local standards, considering various factors such as sales duration, geographic reach, advertising, market reputation, and expert testimony. Other grounds for opposition can include absolute grounds, bad faith, and rights under specific articles of the Paris Convention, encompassing trade names, state emblems, and agent or representative registrations.

Timeframes and Procedural Specifics

The MENA region does not have a unified opposition system, resulting in diverse timeframes for filing oppositions. For example, Iran and Kuwait have a 30-day period, while Sudan extends it to 8 months for foreigners. Jordan stands out as the only jurisdiction offering the possibility of an extension, albeit under strict conditions.

Workflow and Withdrawal

Most countries have not adopted electronic filing for oppositions, except for Saudi Arabia. The workflow involves the submission of briefs and allows for the withdrawal of an opposition, typically terminating the proceedings. In some countries, such as Egypt, the opposition can remain pending, potentially blocking new applications until an official notice is issued.

Conclusion

The trademark opposition procedures in the MENA region are as diverse as the countries themselves. Understanding the specific requirements, timelines, and procedural nuances of each jurisdiction is crucial for effectively managing trademark disputes. This guide serves as a comprehensive resource for navigating the complex landscape of trademark opposition and cancellation, ensuring informed decision-making and strategic planning.



2023 | A YEAR IN REVIEW

The year 2023 marked a period of substantial growth and transformation in the field of intellectual property. Our annual review encapsulates the pivotal developments, innovative breakthroughs, and key milestones in IP that defined the year across the region.

TRADEMARK UPDATES

Harmonizing with International Standards:

Yemen, Gaza, and Saudi Arabia aligned with international norms. Yemen and Gaza adopted the 10th and 11th editions of the Nice Classification, respectively, while Saudi Arabia implemented the 12th edition, enhancing clarity and predictability for brand owners. In addition to this update, the Saudi Authority for Intellectual Property (SAIP) no longer accepts class headings, compelling applicants to choose between listing specific items from the list or selecting all items within a class. This shift marks a decisive move towards a more detailed and precise approach in the trademark application process. Applicants, especially those from international backgrounds, need to navigate this system with an informed and strategic approach. Consulting with local counsel is highly recommended to effectively manage the complexities of the new classification.

New Requirements for Arabic Transliteration

The Trademark Office in Iraq now requires

trademarks filed in Latin script to include Arabic transliteration. This change, effective January 2, 2023, applies to both new applications and those under examination, aligning with Iraqi Trademark Law. The policy addresses challenges in transliterating certain letters and ensures clearer brand recognition and easier enforcement of trademark rights in Arabic. All Aboard the GCC Trademark Law: Qatar's adoption of the GCC Trademark Law marked a significant milestone in trademark law uniformity across the GCC countries.

Trademark Reservation Process

The reintroduction of the trademark reservation process in South Sudan was a key development, offering enhanced protection mechanisms for trademark owners in a burgeoning economic environment. Trademark owners can start filing applications for reservation immediately. Although official registration of the mark will only be completed once the Intellectual Property Bill 2015 is enacted, the reservation process secures the rights of the mark in the Ministry's database. A duly stamped copy of the reservation application will be provided, reinforcing the mark's protection even during the waiting period for the law's passage.





Bahrain's decision to reduce patent fees for individual applicants aimed to stimulate grassroots innovation and entrepreneurial spirit, enhancing accessibility to patent protection for smaller players.

The Patent Prosecution Highway agreement between SAIP and IPOS underscored Saudi Arabia's commitment to global IP cooperation, facilitating expedited patent processing and enhancing cross-border technology exchange. In Morocco, the collaboration between OMPIC and INPI was a strategic move towards a more integrated and efficient patent system, reinforcing Morocco's position in the global IP landscape.

The establishment of the Egyptian Authority for Intellectual Property was a game-changer, potentially ushering in a new era of streamlined IP governance and enhanced innovation support. This central role aligns with the nation's broader economic and strategic interests, positioning the EAIP as a key player in shaping IP practices within the country. Underpinning the EAIP's operations is a robust legislative framework, which serves several crucial functions. Firstly, it charges the EAIP with the development of a comprehensive national IP strategy.

2023 | A YEAR IN REVIEW

This strategy, formed in collaboration with various ministries and authorities, is designed to cultivate an environment that nurtures innovation and bolsters Egypt's standing in the global competitive landscape. Another critical aspect of the legislative framework is the establishment of a governing board. This board is tasked with defining the EAIP's organizational structure, internal regulations, and strategic goals. The governance mechanism established by this board is fundamental in ensuring the EAIP's efficiency and effectiveness in its operations. Regional Patent Cooperation: The inclusion of Qatar in the GCC Patent Office's services signified a strengthening of patent cooperation within the region, facilitating a more unified approach to patent administration and protection.

LEGISLATION AND ENFORCEMENT UPDATES

UAE - Advancing Legal Framework

The UAE's arbitration reforms and the enhanced focus on franchising rights underlined a proactive approach to refining its legal framework, offering a more predictable and favorable business environment for IP stakeholders.

Saudi Arabia - Streamlining Legal Processes

The implementation of The Hague Apostille Convention in Saudi Arabia represented a major facilitation in legal processes, streamlining market entry and supporting private sector growth, simplifying document authentication processes. With Saudi Arabia's accession, an apostille issued by the state of origin is sufficient to certify a document's validity, and removes the need for double certification, by the originating country and then by the receiving country. This update is bound to reduce complexity, timelines, and cost for the private sector in Saudi Arabia.

Kenya - Bolstering Brand Protection

Kenya's reinforced anti-counterfeiting measures by mandating IPR recording for exporters underscored its determination to protect international brands and combat infringement.

Libya - Revitalizing Trademark Services

The resumption of the Libyan Trademark Office's operations was a positive signal for IP rights holders in North Africa, enhancing the prospects for brand protection and enforcement.



2023 | A YEAR IN REVIEW**SABA IP HIGHLIGHTS*****Partnerships***

Saba IP signed a memorandum of understanding (MOU) with the Ras Al Khaimah Department of Economic Development (RAK DED) to combat commercial fraud and counterfeiting of trademarks. The agreement aims to implement the best practices and procedures to protect intellectual property rights while preserving the rights of consumers, brand owners and the economic interests of the Emirate and its investors. Our collaboration with the RAK DED marked a significant step in our ongoing efforts to combat commercial fraud and counterfeiting.

LOOKING FORWARD

As we close 2023, Saba IP reflects on a year marked by significant strides in intellectual property rights protection and innovation. Our involvement in these developments not only demonstrates our expertise but also our commitment to advancing the IP landscape.

Looking ahead to 2024, we remain dedicated to navigating the evolving challenges and opportunities in IP, striving to provide our clients with exceptional service and insightful legal guidance.

2023

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