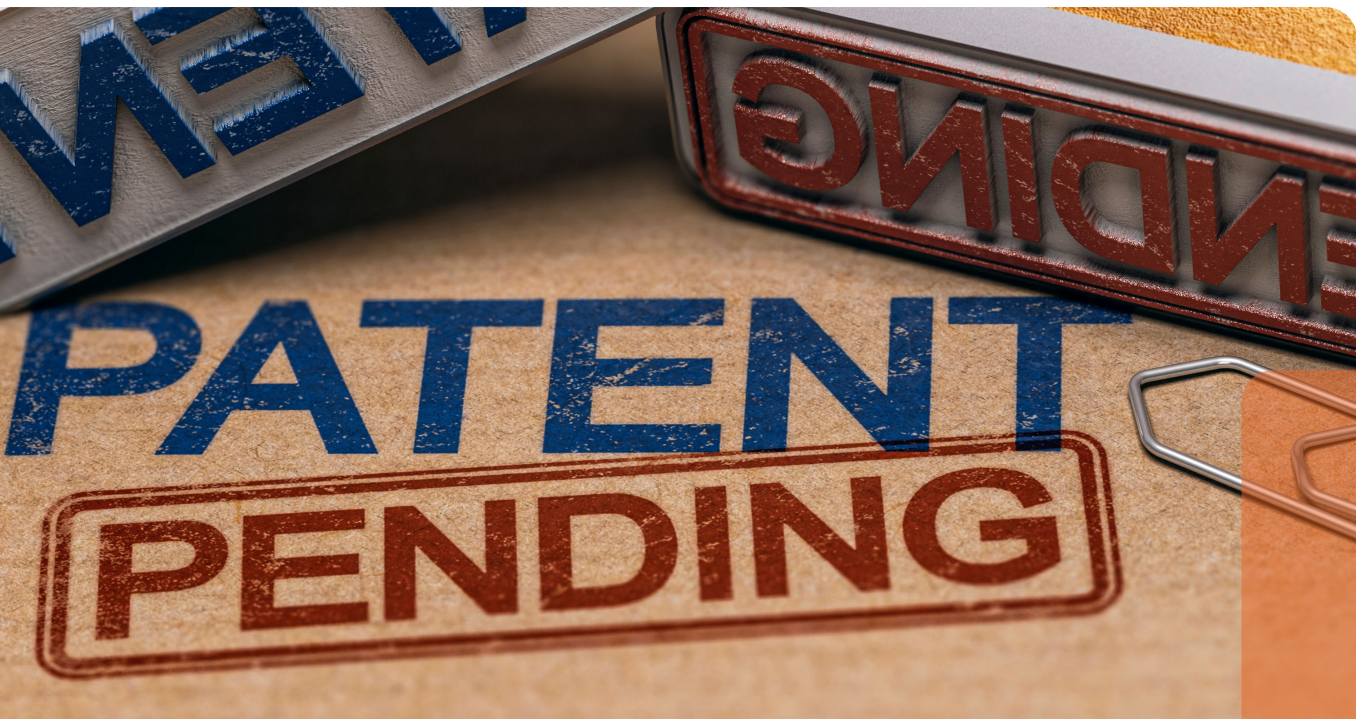


**International
Comparative
Legal Guides**



Patents

2024

14th Edition

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1 Patent Enforcement

1.1 Before what tribunals can a patent be enforced against an infringer? Is there a choice between tribunals and what would influence a claimant's choice?

In the United Arab Emirates (“UAE”), patent infringement cases can be enforced before two main tribunals: the Local Civil Courts and the specialised Intellectual Property (“IP”) Courts.

For Local Civil Courts, patent infringement cases can be filed in the Civil Courts of the relevant emirate where the infringement occurred. These courts handle a broad range of civil disputes, including IP matters. They have jurisdiction over patent infringement cases and can issue judgments and enforce remedies.

Further, the UAE has established specialised IP Courts in Dubai and Abu Dhabi to handle IP-related disputes, including patent infringement cases. These Courts are dedicated to resolving IP matters efficiently and have specialised judges with expertise in IP law.

The factors that may influence a claimant's choice of tribunal may include the availability of the expertise of the Court, as well as the speed and efficiency of the Courts.

1.2 Can the parties be required to undertake mediation before commencing court proceedings? Is mediation or arbitration a commonly used alternative to court proceedings?

A mediation procedure in law involves a neutral intermediary (the “mediator”), which helps the parties to resolve any conflict or dispute amicably.

In the given situation, compulsory mediation is not required by law. However, arbitration has been proved to be commonly used in the UAE for several forms of disputes, notably construction disputes.

1.3 Who is permitted to represent parties to a patent dispute in court?

In the UAE, representation of parties in Court, including in patent disputes, generally requires the assistance of a licensed advocate or lawyer.

It is important to note that only qualified legal professionals i.e., registered with the UAE's relevant judicial authorities, are permitted to represent parties in Court proceedings.

To appear before the Courts in the UAE, individuals and entities involved in a patent dispute, claimants or defendants, would typically engage the services of an advocate or lawyer who is duly licensed to practise law in the country.

The UAE legal system places importance on legal representation, and the Courts generally expect parties to be represented by qualified legal professionals. This requirement helps ensure that the proceedings are conducted in accordance with the law, the rights and the interests of the parties.

1.4 What has to be done to commence proceedings, what court fees have to be paid and how long does it generally take for proceedings to reach trial from commencement?

In the UAE Federal Courts, pre-trial procedures are not mandated.

Further, the Court fee is determined based on the value of the claim, although in patent disputes, the Court may appoint an expert whose fees are paid separately to the Court at a later stage of the case.

Once the claim is submitted and the Court fee is officially paid, the Court will determine the first hearing date and summon the parties involved.

1.5 Can a party be compelled to disclose relevant documents or materials to its adversary either before or after commencing proceedings, and if so, how?

It is possible for a party to be compelled to disclose relevant documents, information or materials to its adversary before and after commencing proceedings.

Typically, the claimant may request the Court to order the other party to provide certain documents or information required to proceed with the proceedings, subject to the condition for the request to produce said documents being available.

1.6 What are the steps each party must take pre-trial? Is any technical evidence produced, and if so, how?

Usually, no pre-trial procedures are mandated in the UAE, and evidence is usually presented during the trial.

However, in cases regarding IP, the claimant must provide an Advisory Report, proving that the patent had been infringed.

1.7 How are arguments and evidence presented at the trial? Can a party change its pleaded arguments before and/or at trial?

Civil trials are mainly conducted on the basis of exchange of written memoranda and documentary evidence. Further, the Court could potentially call oral witnesses or appoint experts to prepare and submit reports to the Courts. However, the Court is not bound by the expert's findings and both parties may submit further documents, such as memoranda, in order to assist the findings of the expert. The latter may also be appointed by the parties themselves, upon a request before the Court.

Further arguments are possible and may be raised at any time during the first instance proceedings. In the event of such matter, the other party reserves the right to respond to any further argument given.

1.8 How long does the trial generally last and how long is it before a judgment is made available?

Commonly in the UAE, the Court of First Instance proceedings generally take 12 to 18 months to complete. However, this duration may be longer, in the instance of the involvement of third parties, such as experts, which may delay the submissions of their report.

Further, decisions from the judges are usually rendered orally. One or two weeks later, the written judgment is made available. Appeal periods are calculated from the date of the oral judgment.

1.9 Is there any alternative shorter, flexible or streamlined procedure available? If so, what are the criteria for eligibility and what is the impact on procedure and overall timing to trial?

The new Federal Patent Law ("FPL") provides in Article 14 the possibility to request for an urgent application in which, upon the request of the claimants(s), the Ministry may examine certain urgent applications of patent or utility certificates before other applications, under the condition that it does not prejudice priority applications.

1.10 Are judgments made available to the public? If not as a matter of course, can third parties request copies of the judgment?

The only judgments made available to the public are those of the Court of Cassation, and they are commonly published in the Court gazette, in which any third party may access them. On the contrary, decisions taken from the Courts of First Instance and the Court of Appeal cannot be obtained to the public.

Further, in the event of a penalty, Article 70 of the new FPL stipulates that the Court may order the publication of the judgment in the Industrial Property Bulletin or in one of the daily local newspapers at the expense of the convicted person.

1.11 Are courts obliged to follow precedents from previous similar cases as a matter of binding or persuasive authority? Are decisions of any other jurisdictions of persuasive authority?

In the UAE, there exists no strict obligation to follow precedents in practice. However, some principles set down in Court of Cassation judgments are generally followed.

1.12 Are there specialist judges or hearing officers, and if so, do they have a technical background?

There is no Article that clearly determines whether the judges or hearing officers are specialists, neither if they have a technical background in the matter.

1.13 What interest must a party have to bring (i) infringement, (ii) revocation, and (iii) declaratory proceedings?

- i. Infringement proceedings: The patentee or a licensee having rights to enforce a patent, in accordance with the terms of granting a patent, set out under Article 5 of the FPL.
- ii. Revocation proceedings: Any interested party.
- iii. Declaratory proceedings: Not provided by the FPL.

1.14 If declarations are available, can they (i) address non-infringement, and/or (ii) claim coverage over a technical standard or hypothetical activity?

Declarations are unavailable under the FPL.

1.15 Can a party be liable for infringement as a secondary (as opposed to primary) infringer? Can a party infringe by supplying part of, but not all of, the infringing product or process?

The FPL has not expressly provided for secondary or contributory liability.

1.16 Can a party be liable for infringement of a process patent by importing the product when the process is carried on outside the jurisdiction?

Patentees reserve the right to prevent the importation of products made using the patented process under Article 46 of the FPL.

1.17 Does the scope of protection of a patent claim extend to non-literal equivalents (a) in the context of challenges to validity, and (b) in relation to infringement?

The new FPL provides in its conditions of patent eligibility, precisely in Article 5.5, that an invention is considered to involve an inventive step in if it is not an obvious or intuitive procedure based on earlier technology related to the patent application. This is enforced in order to ensure that patents are granted for inventions that represent significant advancements or improvements over existing technology.

However, the Article prevents the granting of patents for inventions that would be obvious to a person skilled in the relevant field based on the existing knowledge or prior art. On the

contrary, if an invention goes beyond what is considered obvious to a skilled person and involves a non-intuitive or unexpected solution, it is more likely to be considered to have an inventive step and may meet the criteria for patentability.

Further, Article 8.4 of the new FPL provides that if the basic elements of the invention in relation to the application are derived from another person's invention, all rights related to the invention shall belong to the original inventor.

Therefore, non-literal equivalents may not be considered "inventive", failing to meet the criteria for patentability.

1.18 Can a defence of patent invalidity be raised, and if so, how? Are there restrictions on such a defence e.g. where there is a pending opposition? Are the issues of validity and infringement heard in the same proceedings or are they bifurcated?

The new FPL (Federal Law No. 11 of 2021) does not expressly specify whether invalidity constitutes a defence against patent infringement.

However, Article 35 of the new FPL provides that any interested party may request that the Court invalidate the grant of patent. However, due to the uncertainty mentioned herein above (question 1.1), it is still ambiguous whether the infringement and revocation actions would be bifurcated in the UAE under such circumstances.

1.19 Is it a defence to infringement by equivalence that the equivalent would have lacked novelty or inventive step over the prior art at the priority date of the patent (the "Formstein defence")?

The new FPL provides in Article 5.5 the requirement of an inventive step in order to meet the criteria of patentability. Therefore, it is a defence to infringement by equivalence when the equivalent has lacked novelty and inventive step.

1.20 Other than lack of novelty and inventive step, what are the grounds for invalidity of a patent?

Article 35 of the new FPL (Federal Law No. 11 of 2021) provides that any interested party may request the Court to invalidate the grant of a patent or utility certificate if it was granted without fulfilling the conditions for grant as stipulated in the law of its Executive Regulations. However, the legislation does not set out defined and specific grounds for invalidity of a patent.

1.21 Are infringement proceedings stayed pending resolution of validity in another court or the Patent Office?

Neither the new FPL nor the Patent Office have provided information on the possibility of staying pending resolution of validity in another Court or the Patent Office. Therefore, it is assumed that the infringement proceedings are not stayed pending the resolution of validity of the patent.

1.22 What other grounds of defence can be raised in addition to non-infringement or invalidity?

In addition to non-infringement and invalidity, acts carried out for non-commercial purposes, temporary introduction by

transport means, and good-faith prior use could all stand as other grounds of defence.

1.23 (a) Are preliminary injunctions available on (i) an *ex parte* basis, or (ii) an *inter partes* basis? In each case, what is the basis on which they are granted and is there a requirement for a bond? Is it possible to file protective letters with the court to protect against *ex parte* injunctions? (b) Are final injunctions available? (c) Is a public interest defence available to prevent the grant of injunctions where the infringed patent is for a life-saving drug or medical device?

- (a) In the UAE, preliminary injunctions are available on both an *ex parte* (without notice to the other party) and *inter partes* basis (after notice and hearing involving both parties). The basis for granting preliminary injunctions typically involves demonstrating a *prima facie* case of infringement, urgency, and the potential for irreparable harm. In regard to the requirement for a bond, the UAE Patent Law does not explicitly mention a bond or security requirement for granting preliminary injunctions.
- (b) Final injunctions are generally available in patent infringement cases in the UAE. If the Court finds that infringement has occurred and all legal requirements are met, it may grant a final injunction to prohibit further infringement of the patent.
- (c) There exists no provision for a public interest defence in the UAE FPL to prevent the grant of injunctions where the infringed patent is for a life-saving drug or medical device. However, public-interest considerations are taken into consideration by the judges in the Court when deciding whether to grant an injunction or not.

1.24 Are damages or an account of profits assessed with the issues of infringement/validity or separately? On what basis are damages or an account of profits assessed? Are punitive/flagrancy damages available?

Under the UAE patent framework, it is possible to assess for damages or an account of profits in patent infringement cases. The said assessment is determined as part of the same infringement proceedings, rather than separately.

The evidence placed before the Court gives an estimate to the damages or account of profits. In practice, determining damages or an account of profits is usually done by the Court in consideration of various factors. Namely, the actual loss suffered by the patent owner, the profits gained by the infringer as a result of the infringement, the market value of the patent invention, or any relevant circumstances. Further, the Court may ask an expert to assist with the calculations.

1.25 How are orders of the court enforced (whether they be for an injunction, an award of damages or for any other relief)?

In the UAE, the UAE Civil Procedure Code ("CPC"), Federal Law No. 11 of 1992, governs the enforcement of Court orders. Precisely, Article 330 of the CPC outlines the general provisions of Court orders. It stipulates that Court orders, including judgments and decisions, can be enforced by the competent authorities which is often the Execution Division.

1.26 What other form of relief can be obtained for patent infringement? Would the tribunal consider granting cross-border relief?

Typically, decisions of Courts in the UAE only provide cross-border relief when they acquire recognition. In other terms, cross-border relief is possible under the condition that it is recognised by other jurisdictions.

1.27 How common is settlement of infringement proceedings prior to trial?

Infringement proceedings prior to trial in patent cases are typically uncommon, due to both parties claiming the rights of the patent until reaching Courts. Therefore, settlement of infringement prior to reaching the Courts is rare.

1.28 After what period is a claim for patent infringement time-barred?

In the UAE, the period after which a claim for patent infringement is time-barred is generally three years. Further, the UAE Civil Transactions Law provides the general limitation period for civil claims, including patent infringement, as three years from the date on which the claimant becomes aware of the harm caused by the infringement.

However, it is imperative to note that the specific time limitation for patent infringement claims may vary depending on different circumstances, such as the applicable laws, and the Emirate in which the claim shall be filed.

1.29 Is there a right of appeal from a first instance judgment, and if so, is it a right to contest all aspects of the judgment?

The right of appeal is always provided by the law from a first instance judgment. The law sets the first instance judgment, which is always subject to appeal before the second-degree jurisdiction (the Court of Appeal).

The appellant reserves the right to contest all aspects of the judgment provided from the Court of First Instance.

1.30 What effect does an appeal have on the award of: (i) an injunction; (ii) an enquiry as to damages or an account of profits; or (iii) an order that a patent be revoked?

In all cases mentioned above, the CPC provides that when the first instance judgment issues a decision, it is only enforced when the Court of Appeal confirms on its execution.

However, all decisions issued by judges within “urgent applications” mentioned hereinabove (question 1.9) are usually immediately enforced. Nonetheless, the objecting parties have the possibility to appeal said urgent decisions or submit a grievance before the Court of Appeal.

1.31 Is an appeal by way of a review or a rehearing? Can new evidence be adduced on appeal?

The CPC provides that an appeal is usually by way of a rehearing. Further, it is possible to provide new evidence on appeal. However, such evidence should not change the subject or the matter of the case.

1.32 How long does it usually take for an appeal to be heard?

In practice, an appeal is expected to take 12 to 15 months to be resolved.

1.33 How many levels of appeal are there? Is there a right to a second level of appeal? How often in practice is there a second level of appeal in patent cases?

Usually, there exists two levels of appeal: the Court of Appeal; and the Court of Cassation. The decision of the Court of Appeal is always subject for appeal by the claimant since the Court of Cassation issues its judgments in regard to the laws and regulations, and if the decision of the Court of Appeal applies these laws and regulations accordingly.

Therefore, the claimant reserves the right to appeal the decisions issued from the Court of Appeal.

1.34 What are the typical costs of proceedings to a first instance judgment on: (i) infringement; and (ii) validity? How much of such costs are recoverable from the losing party? What are the typical costs of an appeal and are they recoverable?

In practice, the costs of proceedings for infringement and validity cases in the UAE vary depending on various factors such as the complexity of the cases, the lawyer’s fees (typically unrecoverable from the losing party), the Court fees (typically borne by the parties initiating the proceedings), and other related expenses such as the possibility of appointing an expert (generally incurred by the party engaging them).

In both cases (infringement and validity), the Court may render an order to pay advocate legal fees (which is approximately AED 1,000).

Further, as per the dictates of Court, the party that is unsuccessful shall bear the Court costs and fees, appointed by the Court, excluding the attorney fees.

The costs of appeal are typically estimated as half of the Court fees paid in the first instance judgment, in addition to the Court of Appeal fees (approximately AED 2,000).

Similarly, to the first instance judgment, lawyers’ fees are not fully recoverable in appeal proceedings. Further, the party filing the appeal is responsible for paying the Court fees for the appellate proceedings. Recovery of these fees from the losing party is subject to the Court’s discretion.

1.35 For jurisdictions within the European Union: What is the status in your jurisdiction on ratifying the Unified Patent Court Agreement and preparing for the unitary patent package? For jurisdictions outside of the European Union: Are there any mutual recognition of judgments arrangements relating to patents, whether formal or informal, that apply in your jurisdiction?

Regarding patents, there is absence of any bilateral recognition of verdicts provisions within the UAE jurisdiction. The establishment anticipates a Court to exhibit cognisance of rulings from other tribunals. With regard to Gulf Cooperation Council (“GCC”) patents (which are presently non-issuable), there is an expectation for judicial recognition of actions pertaining to the subject patent in the other GCC nations.

2 Patent Amendment

2.1 Can a patent be amended *ex parte* after grant, and if so, how?

In accordance with Article 32 of the FPL, it is possible for the holder of a patent to request the cancellation of some or all of the patent through an application to the Patent Office. However, reasons for requesting amendments must be provided.

2.2 Can a patent be amended in *inter partes* revocation/invalidity proceedings?

In accordance with Article 6 of the FPL, the patent holder has the option to request a modification of their patent through an application process at the Patent Office, and subsequently present these alterations to the Court.

2.3 Are there any constraints upon the amendments that may be made?

It is imperative that any surrender of a patent, whether in part or in its entirety, does not infringe upon the rights of any other individual without their explicit written consent. Articles 19 and 23 of the FPL support these rights.

3 Licensing

3.1 Are there any laws which limit the terms upon which parties may agree a patent licence?

In accordance with contract laws in the UAE, parties involved in a licensing agreement typically possess the liberty to negotiate and establish the licence parameters, which encompass the extent of the licence and the geographical region. However, it is imperative that licences do not exceed the duration of safeguarding provided by the patent and must be documented in writing.

Unless explicitly mentioned, licences are considered non-exclusive and must be registered with the Patent Office. In the event of patent infringement, the licensee is entitled to initiate legal action provided that they have notified the licensor of the infringement and the licensor has failed to take necessary measures within a period of 30 days. In the event that the licensee exercises their entitlement, they may additionally pursue reparation from the licensor.

Additionally, the UAE applies the Shari'ah in its laws. The latter does not recognise the validity of interest; therefore, provisions for penalty interest that are deemed excessive are typically considered invalid.

3.2 Can a patent be the subject of a compulsory licence, and if so, how are the terms settled and how common is this type of licence?

In accordance with Article 25 of the FPL, compulsory licences become accessible after a period of three years, subsequent to the patent's issuance, under certain conditions as follows:

- It is imperative that the patent has not been adequately utilised or has not been utilised at all.
- The potential licensee is required to have exerted reasonable efforts to secure a licence on commercially reasonable terms.

- The potential licensee must meet the demands of the domestic market and provide equitable remuneration to the patent holder.

4 Patent Term Extension

4.1 Can the term of a patent be extended, and if so, (i) on what grounds, and (ii) for how long?

No Article of legislation provides information on the possibility of a patent term extension. However, generally, patent extensions are not possible under the new FPL.

5 Patent Prosecution and Opposition

5.1 Are all types of subject matter patentable, and if not, what types are excluded?

Article 7 of the FPL excludes the following categories from patentability:

- research, plant or animal species, biological methods for plant or animal production;
- methods pertaining to the diagnosis, treatment and surgery for the medical care of humans or animals;
- principles, discoveries, scientific theories and mathematical methods;
- schemes, rules, computer programs or methods employed in business activities or purely mental processes, including games;
- natural materials, even if they have undergone purification or isolation from their natural environment; and
- inventions that, upon exploitation, would contravene public orders or morals, or cause harm to life, human health or the environment.

Finally, if the Ministry determines during the examination of a patent application that the invention pertains to the security and military industries, it shall adhere to the procedures specified in the Executive Regulations provided in the FPL.

5.2 Is there a duty to the Patent Office to disclose prejudicial prior disclosures or documents? If so, what are the consequences of failure to comply with the duty?

There exists no affirmative obligation to reveal said documents. However, the Patent Office reserves the right to request any information or documentation that it deems necessary.

5.3 May the grant of a patent by the Patent Office be opposed by a third party, and if so, when can this be done?

Article 74 of the FPL mandates, in the occurrence of an opposition or grievance, the creation of a Grievance Committee decided by the Cabinet of Ministers. A judge is appointed as its chairman to address stakeholder complaints.

Parties involved in post-grant re-examination requests, including the initial requester or the patent holder, have the opportunity to petition the Grievance Committee to invalidate the Patent Office's re-examination decision. The petition must be submitted within 60 days of the re-examination decision's delivery, following a prior submission of a re-examination request to the Patent Office.

Additionally, according to the new Executive Regulations, any individual can request the Patent Office to cancel a patent's

registration, either partially or entirely, by means of a post-grant re-examination request. This request should be made within 90 days of the patent's registration and publication. Furthermore, a party with a significant interest in the patent has the right to file a post-grant re-examination request at any time after 90 days from the publication of the registration.

Moreover, patent grants can be challenged through either a Patent Office or a Court of law. A successful challenge by a third party can lead to the invalidation or revocation of the patent by a Court. Many Patent Offices offer administrative procedures, including opposition systems, which enable third parties to oppose the grant of a patent based on grounds such as lack of novelty or inventive step in the claimed invention.

5.4 Is there a right of appeal from a decision of the Patent Office, and if so, to whom?

No legislative text provides the possibility of appeal from a decision of the Patent Office. However, pursuant to Article 50 of the Executive Regulations, certain provisions have been introduced to govern the appeals process and petitions with respect to decisions rendered by the Grievance Committee and the Patent Office. With respect to appeals, it is specified that the decisions made by the Grievance Committee may be contested in the Federal Courts, subject to a time limit of 30 days from the date of receipt of the committee's decision to initiate the appeal. Furthermore, it is stipulated in the Article that any concerned party is entitled to submit a petition to the Grievance Committee, with the aim of annulling a decision made by the Ministry of Economy in connection with the recent federal patent legislation and its corresponding Executive Regulations. It is imperative that the present petition be filed within a period of 60 days from the date of the Ministry's resolution. The aforementioned provisions offer means for the concerned parties to pursue legal remedies and contest determinations within the patent framework in the UAE.

5.5 How are disputes over entitlement to priority and ownership of the invention resolved?

Article 8 of the FPL, and under the UAE's first-to-file system, it is provided that in cases where multiple individuals have contributed to the creation of an invention, they or their successors will possess shared rights to the invention.

Further, Article 18 of the Executive Regulations stipulates that in situations where multiple parties assert ownership of a particular invention and submit applications on the same date, the Patent Office will endeavour to determine the precise chronological sequence of submission. In cases where the sequence of events cannot be ascertained, it is incumbent upon the candidates to come to a consensus regarding their eligibility. In the event that an agreement is not reached, it will lead to the denial of patent grants for all the applicants.

In any case a consensus is attained, it is imperative that the said agreement be documented in writing and presented to the Patent Office within a period of 90 days subsequent to the filing of the application.

Further, upon occurrence that it has been wrongfully obtained through the submission of a patent application, the Executive Regulations provide for the legitimate proprietor of the invention to seek the transfer of the patent application or patent.

Submission of a written request, accompanied by substantiating evidence, is a prerequisite for entitlement verification at the Patent Office. Following the receipt of the request, the individual who is officially registered as the owner is granted a time

frame of 30 days within which to provide a response to the claim of entitlement.

The Grievance Committee holds the responsibility of ascertaining the legitimate ownership, and in case of dissatisfaction with their verdict, an appeal can be filed with the Federal Courts.

5.6 Is there a "grace period" in your jurisdiction, and if so, how long is it?

The new FPL includes a novel provision within its Article 5.4, which introduces a grace period of 12 months following the initial disclosure of information by the inventor or those who have received information directly from the inventor. This temporal interval allows for the revelation of the invention without compromising its novelty. A similar provision is also applicable to registered designs.

However, it is recommended to exercise utmost confidentiality regarding inventions until a patent application has been officially filed, and to only rely on the grace period under exceptional circumstances.

5.7 What is the term of a patent?

Article 18 of the new FPL provides that the term of the patent is 20 years, starting from the date of filing, deemed date of filing, or international filing date, whichever occurs first.

5.8 Is double patenting allowed?

The act of obtaining two patents for the same invention is now prohibited by the latest federal legislation and executive guidelines.

5.9 For jurisdictions within the European Union: Once the Unified Patent Court Agreement enters into force, will a Unitary Patent, on grant, take effect in your jurisdiction?

This is not applicable to the UAE.

6 Border Control Measures

6.1 Is there any mechanism for seizing or preventing the importation of infringing products, and if so, how quickly are such measures resolved?

The UAE is one of the six member states of the GCC. The latter provides a Customs Law, which is a consolidated legal framework that pertains to customs affairs in the six member states of the GCC, namely Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the UAE.

According to the GCC Customs Law, the admission, transit or exit of prohibited or infringing goods is strictly prohibited. Commodities that infringe upon IP rights are classified as "prohibited goods".

Thus, in principle, patent violations can be prevented at the border, whether they are imported or exported. Notwithstanding, in practical terms, *ex officio* measures are not applicable, except in cases of trademark violations and specific categories of copyright infringements. To forestall the importation of patent infringements, a judicial decree would be necessary.

7 Antitrust Law and Inequitable Conduct

7.1 Can antitrust law be deployed to prevent relief for patent infringement being granted?

Generally, antitrust laws are designed to promote competition and prevent anti-competitive behaviour. While they may impact IP rights and their enforcement, they do not typically serve as direct means to prevent relief for patent infringement from being granted in patent law proceedings.

However, in the context of patent law, the focus is on protecting and enforcing exclusive rights granted to patent holders. If someone infringes on a valid patent, the patent holder may seek legal remedies, such as injunctive relief or damages, through patent infringement proceedings.

Further, the claimant reserves the right to utilise antitrust laws as means to prove necessary information required in the case.

7.2 What limitations are put on patent licensing due to antitrust law?

Antitrust legislation does not address the limitations set on patent licensing. However, the claimant is able to request the judge to enforce measures to avoid antitrust law concerns.

7.3 In cases involving standard essential patents, are technical trials on patent validity and infringement heard separately from proceedings relating to the assessment of fair reasonable and non-discriminatory (FRAND) licences? Do courts set FRAND terms (or would they do so in principle)? Do courts grant FRAND injunctions, i.e. final injunctions against patent infringement unless and until defendants enter into a FRAND licence?

Fair, Reasonable, and Non-Discriminatory (“FRAND”) licences are a type of licensing arrangement used in the context of standard essential patents. The latter are patents that are necessary to implement a specific industry standard, such as telecommunications or wireless technologies.

Due to the novelty state of FRAND terms in patent law in the UAE, and the absence of prior instances involving such licences, the perspective of the Courts regarding this matter remains uncertain.

8 Current Developments

8.1 What have been the significant developments in relation to patents in the last year?

The new FPL has brought about significant modifications to the legal framework governing patents, industrial drawings, and designs. Further, the Cabinet Resolution No. 6 of 2022 has brought into effect the Executive Regulations of Federal Law No. 11 of 2021, as of June 12, 2022.

In addition to the above-mentioned apprehensions pertaining to the settlement of patent conflicts via the legal framework, there exist several procedural ambiguities that stem from the concomitant Executive Regulations. The resolution of these uncertainties is expected to occur in the upcoming year as the Ministry of Economy commences the implementation of the novel regulations in routine operations.

The UAE maintains its focus on prioritising the advancement of a profoundly innovative economy and the essential ecosystems required to sustain it.

The government of the UAE anticipates that the FinTech and AI sectors will have a substantial impact on the country's economy in the future, leading to an increased awareness of technological matters in these fields.

Moreover, the policy entails the implementation of a 12-month grace period for inventor disclosures, the conduct of substantive examinations for designs, and the establishment of an expedited examination process for patents and utility models. The allowance of divisional applications for patents and utility models has been implemented, and the duration of design protection has been prolonged to a period of 20 years.

The Executive Regulations are poised to delineate a range of procedures, encompassing, but not limited to, examination, publication and grievances. The establishment of a Grievance and Objections Committee has been implemented to manage re-examination requests, whereas the Patent Office functions as a recipient entity for global submissions. Furthermore, the legislation brings about substantial modifications to the privileges of both employee inventors and their employers.

8.2 Are there any significant developments expected in the next year?

Due to the earnest commitment of the UAE to ensure comprehensive investor protection, there has been a notable advancement when comparing the current state of patent law to previous years. Consequently, there is a parallel anticipation that these developments will continue to progress and strengthen in the forthcoming years.

8.3 Are there any general practice or enforcement trends that have become apparent in your jurisdiction over the last year or so?

The FPL, which has been recently enacted, is in accordance with the aim of improving public services to promote economic advancement. It has come to our attention that the Ministry in question intends to imminently provide public access to granted patents through its official website. The disclosure of granted patents was not previously comprehensively accessible. Additionally, it should be noted that the Executive Regulations have implemented certain procedural improvements, including the removal of the prior mandate for translations of priority documents into Arabic. Notwithstanding the progress, it is imperative to note that the implementation of patent protection measures in the UAE is still in its development phase.



Mohammad AlShraideh, with over two decades of comprehensive experience in the Middle East, stands as a towering figure in the realm of commercial, banking and Islamic finance litigation. His journey has been one of unwavering dedication, steeped in the intricacies of arbitration procedures and the enforcement of arbitral awards within the UAE Courts. Mohammad's prowess lies not only in his profound understanding of legal intricacies, but also in his ability to effectively navigate the diverse landscape of international litigation, with a clientele ranging from high-net-worth individuals to global corporations. The foundations of Mohammad's illustrious career were laid in Amman, Jordan, where he embarked on his legal journey until 2007. During this formative period, he was instrumental in shaping laws and regulations, playing a pivotal role in various private projects aimed at legal development. This early exposure to complex legal issues honed his skills in handling cases of great significance and complexity, including those involving public opinion dynamics.

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