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Department of Law

***INTELLECTUAL PROPERTY PROTECTION IN THE
INTERNATIONAL LAW.***

A Dissertation Submitted in partial fulfillment of the requirement for the master
degree in law of business

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وزارة التعليم العالي والبحث العلمي
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ميدان التكوين في الحقوق والعلوم السياسية
فريق شعبة التكوين في الحقوق

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حماية الملكية الفكرية في القانون الدولي (بالإنجليزية)

Intellectual property protection in the International law.

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الجمهورية الجزائرية الديمقراطية الشعبية
وزارة التعليم العالي والبحث العلمي
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ميدان التكوين
فريق التكوين في شعبة الحقوق



محضر رفع التحفظات بعد مناقشة مذكرة الماستر العلوم السياسية

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تاريخ المناقشة:

أشهد بأن الطلبة المعنيين بانجاز المذكرة قاموا بتصحيح المذكرة التي نوقشت، وتفيدوا بجميع الملاحظات الشكلية والموضوعية التي وجهت إليهم أثناء جلسة المناقشة من قبل السادة الأساتذة أعضاء اللجنة.

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- بعد المناقشة تودع ثلاث نسخ الكترونية مصححة مدمجة في أقراس مضغوطة PDF (02 للمكتبة، 01 للميدان).
- لا تقبل المذكرات غير المصححة وغير المرفقة بمحضر رفع التحفظات الموقع من قبل الأستاذ المشرف.
- يجب تصحيح جميع النسخ الالكترونية في جانبها الشكلي أو الموضوعي، بناء على ملاحظات أعضاء لجنة المناقشة.
- لا تعن نتائج المداوات للطلبة غير الملتزمين بقواعد مناقشة المذكرات.
- سيتم لاحقا نشر المذكرات التي نوقشت (المصححة) في الموقع الرسمي للجامعة.

Dedication

To my precious parents, whose love, strength, support and sacrifices have shaped every step of my journey.

This dissertation is a reflection of your unwavering encouragement, and I dedicate it to you and to my beloved few people with all my heart.

Thank you.

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Abstract

This dissertation addresses protection of Intellectual Property (IP) under international law. It begins with defining the nature and forms of IP, like patents, trademarks, copyrights, trade secrets, industrial designs and geographical indications, and legal ways to guard and protect them.

The study adopts a legal framework of analysis to trace the development and structure of global IP regimes, with powerful treaties and agreements like the World Intellectual Property Organization (WIPO), and the TRIPS Agreement of specific significance for the study.

The study looks at the ways in which these frameworks attempt to harmonize IP protection across jurisdictions, weighing the interests of creators, states, and the public.

The research establishes the current global IP enforcement framework and concludes with observations of current challenges and possible reform to enhance global Intellectual Property governance

ملخص

تتناول هذه الأطروحة حماية الملكية الفكرية في القانون الدولي. وتبدأ بتعريف طبيعة الملكية الفكرية و أشكالها، مثل حقوق الطبع و النشر و براءات الإختراع و العلامات التجارية و غيرها، و السبل القانونية لحمايتها. و تعتمد الدراسة اطارا قانونيا تحليليا لتتبع تطور و هيكل أنظمة الملكية الفكرية العالمية، مع الأخذ في الإعتبار أهمية المعاهدات و المؤسسات و الإتفاقيات القوية، مثل المنظمة العالمية للملكية الفكرية (الويبو)، و اتفاقية الجوانب المتصلة بالتجارة من الحقوق الفكرية (تريبس).

و تتناول الدراسة السبل التي تسعى من خلالها هذه الأطر الى موائمة حماية الملكية الفكرية عبر الولايات القضائية، مع مراعاة مصالح المبدعين و الدول و الجمهور. و يحدد البحث الاطار العالمي الحالي لإنفاذ حقوق الملكية الفكرية، و يختتم بملاحظات حول التحديات الحالية و الإصلاحات الممكنة لتعزيز حماية الملكية الفكرية العالمية.

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List of abbreviations and Acronyms

IP: Intellectual Property.

IPRs: Intellectual Property Rights.

WIPO: World Intellectual Property Organization.

WTO: World Trade Organization.

TRIPS: Trade Related-Aspects of Intellectual Property Rights.

AMC: Arbitration and Mediation Center.

Introduction

Introduction

If such ideas as invention, a bestseller novel, or multinational brands are considered, then the Intellectual Property is at the heart of innovation and creativity. Protecting these intangible assets is not only about what is written in the legal documents; it is caring for innovations, rewarding creators, and ensuring free competition for everyone involved.

In the globe, intellectual property rights are essential to businesses. As international trades increases and digital platforms are generated, countries corporations will have to go beyond the borders to secure their intellectual property internationally.

Advancements of modern society have given a rise up to intellectual property previously unrecognized in traditional jurisprudence. They signify a person's control over an intangible entity, like an inventor's entitlement to their industrial creations.

On the other hand, a creator can spend years producing a fine piece of patented work only to face loss to counterfeiting, piracy, or unlicensed use of his rights during such times. Cross-border protection of intellectual property is, however, not an easy task. Laws and enforcement mechanisms, as well as attitudes towards intellectual property rights, differ across countries, given that an increasing number of treaties and regional agreements have been developed to standardize the model made at international levels. Although progress was

made in this field, there are still challenges because of the rapid emergence of technology and among the many forms of digital piracy.

Intellectual property (IP) protection is crucial for fostering innovation and driving economic growth, nevertheless enforcement remains uneven on global scale. Although agreements like TRIPS, The Berne convention exist, weak enforcement in many countries has led to rampant piracy, counterfeiting and unauthorized use of intellectual property.

Intellectual property (IP) means, broadest terms, mind creations: invention, literary works, artistic expressions, designs, signs, and trade secrets. Such creations often become the industry or the economy in which they prosper.

Protection brings further development of innovations while making those creations reap benefits for the creators and the organizations they belong to.

The problem of the study: This research makes us asking about what is Intellectual Property and what is the process protecting it in the international law?

Hypotheses:

1. **Hypothesis 1:** The advancement of the international intellectual property law has promoted greater legal standardization, though its protection is weak due to the rapid development in various fields.

2. **Hypothesis 2:** If the disputants want to resolve their dispute without resorting to the litigation, they can use other legal ways to resolve it as arbitration or mediation to dispute resolutions.
3. **Hypothesis 3:** Global intellectual property enforcement mechanisms can be strengthened through uniting or increasing international cooperation, legal reforms and encourage innovation.
4. **Hypothesis 4:** Ineffective enforcement mechanisms of intellectual property rights annihilate innovation and slows economic progress globally.

Research Objectives:

This research is driven by the need of :

1. Defining intellectual property and its types in different international legislation.
2. A brief look at historical development of IP.
3. Knowing the sources of IP's Law and how to protect the IP works.
4. Recommend strategies, such as legislative changes and dispute resolutions to improve IP protection worldwide faster and less costs.

Significance of study:

- Searching deeply insight into world intellectual property regulations and their effectiveness in protecting different types of IPRs.

- Suggesting legislatives and technological strategies to enhance international IP protection.

Reasons for choosing the subject:

Intellectual property rights plays an important role in the international law, yet challenges like rapid development and globalization threaten their enforcement.

The lack of strong IP protection nullifies innovations, discourage investment and distort market fairness globally.

This study is focusing on these difficulties, evaluates the economic effects of weak enforcement and explores legal solutions to reinforce global IP protection.

Plan of work:

Part one: Intellectual Property

- **Chapter 1: Definition of Intellectual property**
 - Exploring different meanings of IP, IPRs and types of IPRs.
- **Chapter 2: Historical development of international IP law**
 - This chapter will lead us to know different upgrades on IP law through time on protecting IP rights.
 - Exploring different regimes of IP protection throughout history.

Part two: The process of protecting IP Internationally:

- **Chapter 1: International treaties and agreements**

- Knowledge of various international sources protecting IP.
- Knowledge of different treaties and agreements on IP and IPRs.
- Knowledge of the way protecting IP works.

- **Chapter 2: Enforcement mechanisms and dispute resolution**

- Discovering of formal and objective conditions to fully register and protect any IPRs.
- Knowledge of others ways to resolve any IP problems other than legislation.

PART ONE

Intellectual Property

Chapter 01:

Definition of Intellectual property

Chapter 1: Definition of intellectual property:

1.1 Introduction:

In order to understand the meaning of Intellectual property , it had to be defined from diverse international legislations and having a better sight of what is exactly meant by intellectual property.

1.2 Defining intellectual property:

Much has been said about the nature and the meaning of intellectual property in different aspects, times, languages and even domains, but it shares the same definition , same concept and same perspective that leads to a one agreed point that intellectual property can be described as a moral or none physical assets or as an intangible property rights or rights to ideas, matter of fact it is the same meaning. IP is a type of property that appeared in the last centuries due to the progress of mankind , which was a result of various fields as scientific development and industrial, technical and commercial progress that have been witnessed by humanity, especially within the era that experienced widespread prosperity in diverse sciences and arts.¹

Different perspectives differed in naming IP, defining it, classifying it and determining it's rights. Some called it innovation rights, others named it intellectual, it was even defined as commercial or industrial property rights,

¹ Rebouh Fatima « investment and intellectual property », master's Thesis, University of Ibn Khaldoun, Tiaret, 2022/2023, p.7

while others saw it as the rights to scientific production, and others defined it by enumerating its forms and images. In general, the concept of intellectual property is broad, as it refers to inventions and innovations in all domains in life. The term intellectual property can also be a legal term that indicates what human mind produces in terms of innovative ideas that are translated into tangible things. All rights resulting from human intellectual activities in artistic, literary, scientific, industrial, commercial rights and the like fall within the scope .¹

Intellectual property is originally known as a property right over a none physical object, whether mobile or immobile. However, as a result of modern development intellectual or mental right has been emerged as a property and personal rights.

Intellectual property (IP) covers products, artistic or literary works, inventions, logos and other things that are created by the human mind and have legal protection as an intangible asset. An idea in itself is not IP. To become intellectual property, the idea needs to have been turned into something that's expressed in a legally defined way. "The owner of intellectual property has legal rights over how the asset is used, which means it can't be solid, distributed or used by someone else without permission," says Maximilian Yam, Associate, Intellectual property- Backed Financing at BDC Capital. "IP

¹ Rebouh Fatima « investment and intellectual property », master's Thesis, University of Ibn Khaldoun, Tiaret, 2022/2023, p.7

can be a valuable core asset for many companies, and it is important to think about how to protect and leverage it.”¹

And for the World Intellectual Property Organization (WIPO) defined IP briefly that IP refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.²

After having the full idea of the meaning of IP we have to move forward to know the meaning of intellectual property rights (IPRs).

1.3 Defining intellectual property rights (IPRs):

Generally IPRs are legal rights that provides creators protection for their original works: inventions, the appearance of products, artistic works, scientific developments, and so on. Simply speaking, IPRs are a common type of legal IP protection for those who invent. These rights have played an important role especially in the commercial field. The purpose of these legal rights (IPRs) is to encourage new creations, including technology, artwork and inventions, that might increase economic growth. IPRs increase the incentives for individuals to keep producing more IP works that may create job

¹ “ Intellectual property, “ BDC, accessed Mach 22, 2025, <https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/glossary/intellectual-property>

² “ What is Intellectual Property ? “ WIPO, accessed March 22, 2025, <https://www.wipo.int/en/web/about-ip>.

opportunities in the future and new technologies that provides improvement and evolvement of our world faster .¹

IP is protected by legal rights and these legal rights are for example, patents, copyrights and trademarks..., which enable people to earn recognition or financial benefits from what they invent or create. By striking the right balance between the interests of innovators and the public interest, IPRs aims to foster an environment in which creativity and innovation can prosper.²

There are many types of IPRs, it differs from a country to another, this difference is noticed between developed and developing countries, in general, all the nations have agreed to some essential types according to various upgrades on international IP law through time which are (Patents, Copyrights, Trade secrets, Trademarks, Industrial designs and Geographical indications) according to the official page of world intellectual property organization (WIPO). After citing these types superficially we will dive deeper in their definitions according to the (WIPO) and different legalization.

¹ "Different types of Intellectual Property rights and Why they are important," Inquartik, released January 13, 2022, <https://www.inquartik.com/blog/basic-intellectual-property-rights/>

² "What is Intellectual Property ? " WIPO, accessed March 22, 2025, same reference.

1.4 Defining types of IPRs:

1.4.1 Patents :

I. According to the WIPO:

A patent is an exclusive right granted for an invention. It benefit inventors by providing them with legal protection of their inventions. However, patents also enhance the society by providing public access to technical information about these inventions, and thus accelerating innovation. And these inventions are products or processes that provides new ways of doing things or offering new technical solutions to a problem that surpass trivial solutions.¹

II. According to the Algerian IP law:

The Algerian legislator has defined patent in the second article of the first chapter “Objective and definitions” of law 03-07² as: “ The meaning of this order is as follows:

- Invention: an idea by an inventor that practically allows for finding a solution to a specific problem in the field of technology
- Patent: a document issued to protect an invention.
- Competent authority: Algerian National Institute of Industrial Property.”

¹ « Patents », WIPO , accessed March 22, 2025, <https://www.wipo.int/en/web/patents>

² Law No. 03-07 issued on July 19,2003, which includes IPRs protection, J.R. No. 44.

III. According to the United States of America IP law:

A patent is a right granted to the inventor of a: process, machine, article of manufacture, or composition of matter that is new, useful and non-obvious. A patent is the right to exclude others for a limited time (20 years) from profiting, making, using, selling, importing from a patented invention without the consent of the patent holder.¹

IV. According to the European Patent Office (EPO):

Patents protect technical inventions as: products, process or an apparatus, in all fields of technology. And for an invention it must be novel, involve an inventive step and be industrially applicable to qualified for patent protection. A patent is an exclusive right, it means the patent owner can decide who or how can use the patented invention, and prevent third parties from exploiting it commercially. In return the holder or the owner of the patent has to fully disclose the invention when applying for the patent. Patent applications and granted patents are published, which makes them a prime source of technical information.²

¹ « United States patent law », Wikipedia, accessed March 22, 2025,

https://en.m.wikipedia.org/wiki/United_States_patent_law

² « what are patents and what do they protect ? »; EPO, accessed March 22, 2025,

<https://www.epo.org/en/service-support/faq/patents-and-ip/what-are-patents-and-what-do-they-protect>

Concluding this type, it seems like patents is classified within the scope of industrial and commercial property rights, and the IPRs in general, to improve the importance of inventions and the need of human societies for it. This latter had shown it importance in encouraging and pushing innovators to greater creativity and exercising the mind in what serves humanity and facilitates their lives in various fields, which was something that required appraising the inventor first for his efforts, and giving him the opportunity to benefit from his invention, so that he can have exclusive rights to exploit, use or sell as an owner would. This is through giving his invention a legal protection for specific timeline. And when this specific period of time expires, the legal protection right falls and the invention returns to the public field and for the public benefit.¹



Figure 1. Search Engine Journal. (2021, March 12). PATENTS (Image).

<https://www.searchenginejournal.com/google-patents-are-not-always-used-in-search/395383/>

¹ (Radia, THE INTERNATIONAL PROTECTION OF PATENTS AND ITS EFFECTS ON THE ALGERIAN LEGISLATION, THE INTERNAL LAWS AND THE INTERNATIONAL (GLOBAL) CONVENTIOS, 2023)

1.4.2 Copyrights “©”:

I. According to the WIPO:

Copyright or (right of author) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright are ranged from books, music, paintings, maps, sculpture, films, computer programs, database, advertisements to technical drawings. Copyright protection extends only to expressions, and not to the ideas. This right may or may not be available for a number of objects such as: titles, slogans, logos depending on whether they contain sufficient authorship.¹

II. According to the Algerian IP law:

As for the Algerian legislator had not defined Copyrights, but instead he mentioned every work in details that can be related or protected by/ to Copyrights, on the part one under the title of PROTECTION OF WORKS AND COPYRIGHTS of the Ordinance No 03-05 issued on July 19, 2003, from article 3 to article 11.

But he mentioned them briefly on the article 2 under the same ordinance saying: “The provision of this law shall guarantee the protection of the rights of:

¹ « Copyright », WIPO, accessed March 23, 2025, <https://www.wipo.int/en/web/copyright>

-The author of literary or artistic works, the performer or the musician, the producer of audio or audio and video recordings, institutions of audio or audio/video radio broadcasting.

-Rules for the collective enforcement of rights and the protection of traditional cultural heritage and national works of public property.”¹

And this protection lasts for the whole life of the author plus 50 years after his death (except posthumous wok).

III. According to the United States of America IP law:

The American legislator also did not defined Copyrights but he mentioned the works that is covered by the Copyright protection, Addressing with:

“Copyright protection subsists, in accordance with the title, in original works of authorships fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) Literary works;
- (2) Musical works, including any accompanying words;
- (3) Dramatic works, including any accompanying music;
- (4) Pantomimes and choreographic works;

¹ Ordinance No. 03-05 issued On July 19, 2003, Which includes Copyright and Related Rights, article No.2

- (5) Pictorial, graphic, and sculptural works;
- (6) Motion pictures and other audiovisual works;
- (7) Sound recordings; and
- (8) Architectural works.”¹

And this protection lasts for the life of the author plus an additional 70 years.²

IV. According to the European Union (EU):

In brief, Copyright in the European Union is a collection of rights granted to authors, performers, producers and broadcasters, and it consists primarily of economic rights to control and be remunerated for their works for a limited time (70years after the death of the creator or 70 years of the death of the last surviving creator in the case of a work of joint authorship.).³

Concluding this type, it seemed that copyright is one of the types of IPRs that offers its owner the protection and right to copy, distribute, adapt and perform a creative work for a period of time; it varies from a country to another, usually it begins from the day of registering the work and goes with

¹ U.S Copyright Act, 17 U.S.C. §102 (1976).

² “ how long does copyright protection lasts?”, Copyright.gov, accessed March 23, 2025, <https://www.copyright.gov/help/faq/faq-duration.html>

³ « EU Copyright », EUR-Lex, accessed March 23, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:eu_copyright

the creator his whole life and it even last from 50 years to 70 years after his death.

And this creative work must be in a literary, artistic, educational or musical form. Evidently, this type of IPRs is symbolized with © as significant to every protected creative work .Copyright is aimed to protect the original expression of an idea in the form of a creative work, but not the idea itself.¹



Figure 2. AntheDesign. (n.d). ©copyright all rights reserved (image).

<https://www.anthedesign.fr/autour-du-web/copyright-internet/>

¹ “Copyright”, Wikipedia, accessed March 23, 2025, <https://www.wikipedia.org/wiki/Copyright>

1.4.3 Trade secrets:

I. According to the WIPO:

Trade secrets are one of the types of IPRs that is specialized on confidential information which can be sold or licensed. Generally, to recognize a trade secret, the information must contain some obligatory points that it resume in:

- Commercially valuable because it is secret,
- Be known only by a very limited group of persons,
- Be subject to reasonable steps taken by the rightful holder of the information to keep it secret,
- Including the use of confidentiality agreements for business partners and employees.

The legal obtaining, using or revealing of such secret information in a manner of dishonest commercial practices by others is classified as an unfair practice and violation of the trade secret protection.¹

II. According to the Algerian IP law:

There is no systematic regime of Algerian IP law to exclusively regulate trade secrets.

¹ « Trade secrets », WIPO, accessed March 24, 2025, <https://www.wipo.int/en/web/trade-secrets>

Misuse of trade secrets is not expressly punishable by law, though there is a few limited measures in respect of IP affairs. In similar situations, general statutes on theft or fraud are utilized in their place. This is a contrast with nations that have a more comprehensive trade secret protection regime.

Algeria lacks a legislative regime of trade secrets. But indeed, it is covered by the stricter provisions of Ordinance No. 03-03 against unfair competition.¹

III. According to the United States of America IP law:

According to United States Patent and Trademark office (USPTO), A trade secret is economically valuable information that is not generally known, has value to those who cannot legitimately obtain it, and has been subject to reasonable efforts to keep it secret.

Trade secret play an important role in developing commercial competitiveness, economic gain, and strategic positioning. This type of IPRs is unlike with other types, Trade secrets are generally information that:

- a) Has actual or potential independent economic value because it is generally unknown to others
- b) Is valuable to others who can't legitimately obtain the information,

¹ (Abdelkader, Comparative Analysis of Legal Regulations Governing Trade Secrets (Algeria and France case study), 2023)

c) Is maintained as secret through reasonable efforts taken by the trade secret owner.

If one or more of these cited points above are not met, the information is no more a trade secret.¹

IV. According to the European Union (EU):

Trade secret means information which have all the following requirements:

- It is secret that is known only by its owner only and not others that deal with the same circle of the kind of information,
- It has a commercial value,
- The information can be: Technical, Commercial, Strategic, Long-term knowledge,²

Concluding this IPRs type, seemed that it is a type that only been treated by developed countries as European countries or the USA in opposite the developing countries as Algeria has not dealt with this type but it protected it indirectly with the Fair Competition law. So, generally, Trade secret is a valuable information that is economically profitable and it is not known by others.

¹ « Trade Secret Intellectual Property Toolkit », USPTO, accessed March 24, 2025, <https://www.uspto.gov/sites/default/files/documents/tradesecripsiptoolkit.pdf> , page 02

² “PROTECTION OF TRADE SECRETS AND KNOW-HOW IN THE EUROPEAN UNION” , WIPO , accessed March 24, 2025, https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_reg_ip_ge_22/wipo_reg_ip_ge_22_t2.pdf

1.4.4 Trademarks:

I. According to the WIPO:

Trademarks are a sign that are capable of distinguishing the goods or services of an enterprise from another. And it can be in kinds of words, letters, numbers, drawings, symbols, three-dimensional features as the shape and packaging of goods, none visible signs as sounds or fragrances, or color shades used as a peculiar feature, ... ¹

II. According to the Algerian IP law:

In the Part One titled General Definitions and Obligation of the Order No. 03-06 dated July 19, 2003, related to Trademarks, the Algerian legislator had defined Trademarks in the second article of that order saying :

“ 1) Trademarks : any sign capable of graphic representation, in particular words, including personal names, letters, numbers, drawings or images, characteristic shapes of products or their packaging, colors, alone or in combination, which are intended and capable of distinguishing the products or services of a natural or legal person from those of others;

2) Collective mark: any mark intended to guarantee the origin, composition, manufacture or any other common characteristic of products or services from various companies using the mark under the control of its owner;

¹ « Trademarks », WIPO, accessed March 24, 2025, <https://www.wipo.int/en/web/trademarks>

- 3) product: any natural, agricultural, artisanal or industrial product, raw or processed;
- 4) service: any service with economic value;
- 5) trade name: the name or designation identifying the company;
- 6) competent service: The Algerian National Institute of Industrial Property.”¹

III. According to the United States of America IP law:

According to the United States Patents and Trademarks Office (USPTO), a Trademark can be any word, phrase, symbol, design, or a combination of these things that identifies the goods or services of a company, it is how a customer recognize a company in the marketplace and distinguish it from its competitors. Trademark is both trademarks and service marks; trademarks refers to the goods and service marks to the services. Trademark importance lies on identification of the source of the goods or services of any company, providing legal protection to company’s brand, and helping companies to guard against counterfeiting and fraud.²

¹ Ordinance No. 03-06 issued On July 19, 2003, related to Trademarks, article No.2

² « what is a trademark ? », USPTO, accessed March 24, 2025, <https://www.uspto.gov/trademarks/basics/what-trademark#:~:text=A%20trademark%20can%20be%20any,both%20trademarks%20and%20service%20marks.>

IV. According to the European Union (EU):

A trademark is a distinctive sign such as names, logos, colors, sounds, images, patterns, shapes, packages, all that identify the products and distinguishes goods or services of a company from others.¹

Concluding this IPRs type, trademark simply is a form of IP that is a kind of a word , phrase, symbol, design, specific colors, sounds, scent, drawings ... or a mixture that present a product or a service and display its source and distinguishes it from other trademarks. And usually a protected trademark is symbolized with “TM”.



Figure 3. Gestalt Law. (n.d). Trademark registration form and pen (image).

<https://www.gestalt.law/insights/trademarks-an-overview>

¹ « trademarks », Europa.eu, accessed March 24, 2025, <https://www.europa.eu/youreurope/business/running-business/intellectual-property/trade-marks/>

1.4.5 Industrial designs:

I. According to the WIPO:

In a legal sense, Industrial designs constitutes the decorative aspect of a product. It may consist of three-dimensional features, such as shapes of products, or two-dimensional features, such as patterns, lines or colors. Industrial designs are one of the main factors that attracts clients to products, or lead them to prefer using a product over another.¹

II. According to the Algerian IP Law:

For the Algerian legislator, he defined Industrial Designs in the second article of the Ordinance No. 66-86 related to Designs and Models, saying: “Any assembly of lines and colors intended to give a special appearance to any industrial or craft object are considered as designs, and any plastic form associated or not with colors and any industrial object which can serve as a type of manufacture of other units and which is distinguished from similar models by its configuration are considered as Designs...”²

¹ « Industrial Designs », WIPO, accessed March 25, 2025, <https://www.wipo.int/en/web/designs>

² Ordinance No. 66-86, issued On April 28, 1966, Related to Designs and Models, article No.1.

III. According to the United States of America IP Law:

The American legislator refers to Industrial Designs as the ornamental design of a product of manufacture, such as visual aspects, or the configuration or the shape of a product, or a combination of these. Design patents are granted for new, original, and decorative designs combined in, or applied on a product of manufacture. The design patents are classified in terms of function or purpose of use of the Industrial Design.¹

IV. According to the European Union (EU) IP Law:

In the European Union Industrial designs can be defined as the outward appearance of a product or a part of it, resulting from lines, contours, colors, shapes, textures, materials and/or its decoration. Industrial designs are applied to a wide variety of products, from technical and medical instruments to household products, electrical goods, clothing, motor vehicles and plastics .

²And these designs have to be unique, original aesthetic and have a distinctive appearance that distinguishes it from other rivals to guarantee the protection.

At the end of this IPRs type, Industrial design is a process that mixes both creativity and solutions to attract customers and create innovative products that be distinguished in the field of industry, and it focuses on the appearance and

¹ U.S Code Title 35- Patents Act, 35 U.S.C. §171 (Edited January 31, 2024).

² « Industrial Designs », gov.ie, accessed March 25, 2025, <https://www.gov.ie/en/policy-information/bbd15-industrial-desings/>

the manufacturability of the products and leaving a deep impact in the market on customers.

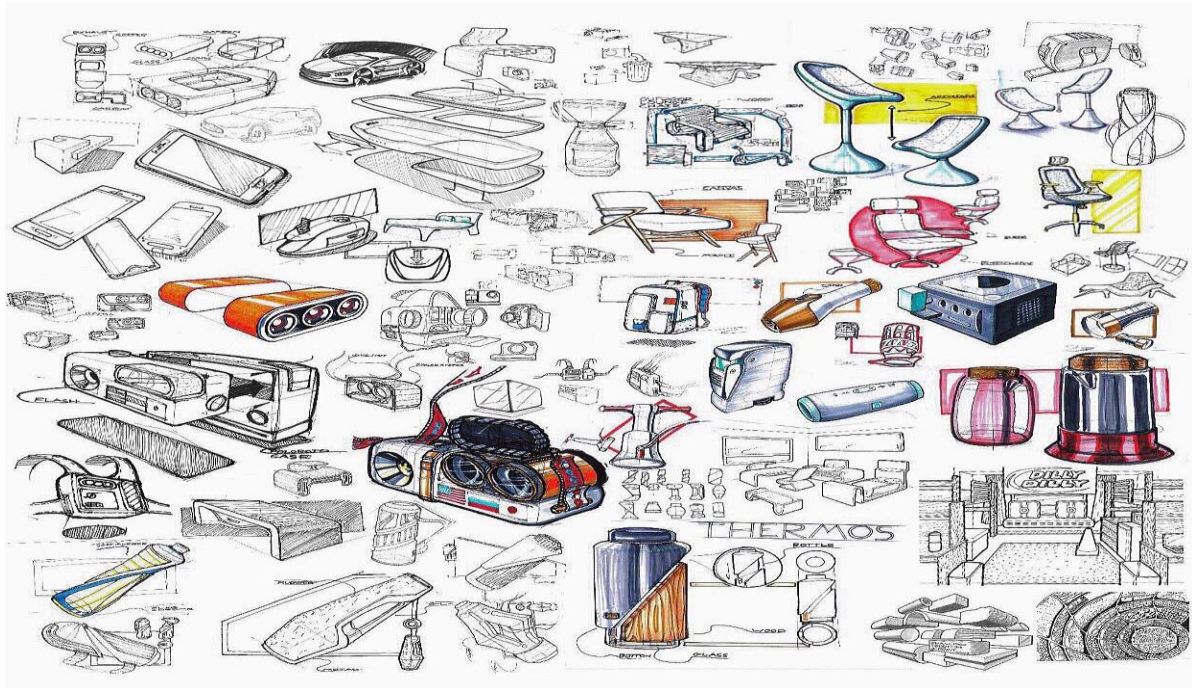


Figure 4. IP Transpate. (n.d). What is an industrial design? (image). <https://iptranspate.com/what-is-an-industrial-design/>

1.4.6 Geographical indications (GIs):

I. According to the WIPO :

A geographical indications (GIs) is a mark or a sign used on products that have a specific geographical origin and have qualities or a reputation that are due to that origin. In order to function as GIs, the sign or the mark must represent a product as originating in a given place. Moreover, the qualities,

characteristics or reputation of the product must be due to its original place of production.¹

II. According to the Algerian IP Law:

According to the Algerian Ordinance No. 76-65 of July 16, 1976, on Trademarks and GIs. “A Geographical indication means a geographical name of a country, a region, a part of a region, a locality, or a place name used to assign a product originating there and whose qualities or characteristics are due to exclusively or essentially to the geographical environment, including natural and human factors. A geographical name is also considered to be a name that refers to the county, a region, part of a region, locality, place, refers to a specific geographical area for the purposes of the products.”² As an example for an Algerian GIs products: Deglet Nour Dates they are known for their translucent and golden color and rich flavor their origins is from province of Biskra.

III. According to the United States of America IP Law:

According to the (USPTO), GIs are signs or indications that identify a product as originating in the territory of a country, region, or a locality within that territory, where a given quality, reputation, or other characteristics of the

¹ «Geographical Indications», WIPO, accessed March 25, 2025, <https://www.wipo.int/en/web/geographical-indications>

² Ordinance No. 76-65, issued on July 16, 1976, related to Appellations of origin, article 1

product is essentially attributable to its geographic origin. And as an example for U.S GIs products: Washington's Apples grown in the state of Washington and famous for their crispness and flavor.¹

IV. According to the European Union (EU) IP Law:

For the European Union GIs are defined as names of specific places, regions, countries or territory used to represent a product that's originate from these locations, and it obliges that the products be on high tier from the side of quality, reputation and attributable to their geographical origins. And this type in Europe protect (agricultural products, foodstuffs, spirit drinks and wines), and there are three schemes of quality (protected designations of origin (PDO) and protected geographical indications (PGI) which are specialized for agricultural and foodstuffs products and wines, and geographical indications (GI) which specialized for spirit drinks).²

And some examples for Europe GIs products:

(PDO): Feta, a traditional Greek cheese made from sheep or goat milk.

(PGI): Chorizo de Cantimpalos, a traditional Spanish sausage from a Spanish region called Cantimpalos.

¹ « Geographical Indications », USPTO, accessed March 25, 2025, <https://www.uspto.gov/ip-policy/trademark-policy/geographical-indications>

² « Geographical Indications », europa.eu, accessed March 25, 2025, <https://europa.eu/youreurope/business/running-business/intellectual-property/geographical-indications>

(PDO): Champagne, Sparkling wine exclusively produced in the Champagne region in France.

Concluding this IPRs type, it is obvious that GIs is similar to Trademarks but it differs in various important points as for the purpose and Scope, the purpose of IGs is Regional product identity but for Trademarks is the brand recognition, and its scope is only region specific products but Trademark's scope is about any product and any service.

1.5 Conclusion:

At the end of this chapter, the idea of IP, IPRs and the types of IPRs had been clear and obvious and from knowing the meaning of IP and its rights, moving forward to explore its past and its way of development in the next chapter.

Chapter 02:

Historical Development of International IP Law

Chapter 2: Historical Development Of International IP Law:

1.1 Introduction:

Intellectual property, has existed since the dawn of humanity. For as long as the human have walked the earth, IP has been an inherent part of human creativity throughout history. The protection of IP may encourage innovation and creativity however, formal protections for IP have not always existed. This is because, in its primal state, man relied on shared knowledge rather than exclusive ownership, in its earliest forms, intellectual property was developed as a means of ensuring survival. When man formed societies and developed complex systems to serve his increasing needs, the protection of ideas and inventions became more significant. The need for IP protection emerged as societies advanced became a key driver of progress.

Around 500 B.C, one of the earliest known mentions of IP was made. When the Greek state of Sybaris gave chefs one year monopolies for culinary invention. In the Genesis of America patent and copyright law (Bugbee 1967)¹, at least three notable references to the protection of IP can be found in ancient times. In one such case, Vitruvius (275-180 B.C) was judging a literary competition in Alexandria and discovered that some of the participating poets

¹ Bugbee,B., 1967, Genesis of American Patent and Copyright Law, Washington, DC: Public Affairs Press

had plagiarized words and phrases from other poets. These fake poets were convicted and shamed for stealing IP.¹

1.2 The History Of Contemporary Laws:

The existence and present-day operation of the concept of IP can be traced back to 17th and 18th century in England, including the 1624 act of Monopolies and the 1710 statute of Anne. This part discusses and summarizes these iconic statutes. In general, the following headings can be used to examine the history of contemporary IPRs:

1. The English statutes Regime (1624-1883).
2. The International Treaties Regime (1883-1970).
3. The World Intellectual Property Organization (WIPO) Regime (1970-nowadays).

1.2.1 The English Statutes Regime (1624-1883):

Statutes enacted by the British parliament and approved by the British monarchy defined this regime. They originated in the 17th and 18th centuries, and the statutes of Anne of 1710 and the Monopolies of 1624 serve as examples. Both Laws are the cornerstones of IP protection in majority of modern-day governments.

¹ Moore, Adam and Ken Himma, "Intellectual Property", The Stanford Encyclopedia of Philosophy (Fall 2022 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/fall2022/entries/intellectual-property/>, accessed March 28, 2025.

a. The Statute Of Monopolies Of 1624:

The English parliament passed the statute of Monopolies, which is regarded as the first law governing English Patent Law.

The statute's first section declared all Monopolies and patents, past, present and future, to be void. However, section 6 of the aforementioned act allowed for exceptions to the prohibitions against patents and monopolies of any type. These exceptions included letter patents and privileges granted to the real and first inventor and investors of any "any manner of new manufacturers" for a period of 14 years or less, provided that the right was not used to the prejudice of the market.

The aforementioned illustrates how the statute of monopolies related to patent law, which safeguards both new inventors and their manufacturers inventions. Additionally, the act granted such grants for a set of period of time (14 years or less) and with the primary requirement that they not be used as a weapon against fair trade.

b. The Statute Of Anne Of 1710:

Another name for the Anne statute of 1710 is the copyright act of 1710. It was enacted by the British parliament and is recognized as the first law to establish government and judicial control over copyright instead of party regulation. The statute begins:

As a result, “for preventing such practices for the future and for encouraging learnt men to compose and write use books. Be it enacted ...”(Great Statute Of Anne, 1710), the statement reads: “whereas printers, booksellers, and other persons have lately frequently taken the liberty of printing, reprinting, and publishing books without the consent of the authors and proprietors... to their very great detriment, and too often to the ruin of them and their families.”

The English court in the historic decision of the case of *Millar v Taylor*¹ concluded that the inherent right of authors to control what they generate was perpetual and independent of statute law. Even though the English court overturned the decision in the later *Donaldson v Beckett*², it was clear that the law recognized author’s rights.

1.2.2 The International Treaties Regime (1883-1970):

Conventions and treaties between nation states focused on protecting IP were the main focuses of this era. This treaties were not used across the board however, they only were applied on countries that agreed to them during the convention or later on. Some of the most important and well known conventions of this era are illustrated in:

❖ The Paris convention for the protection of Industrial Property of 1883.

¹ (1769) 98 ER 201, Wikipedia, accessed April 07, 2025, https://en.wikipedia.org/wiki/Millar_v_Taylor

² (1774) 98 ER 257, Wikipedia, accessed April 07, 2025, https://en.wikipedia.org/wiki/Donaldson_v_Becket

- ❖ The Bern convention for the protection of Literary and Artistic Works of 1886.
- ❖ The Madrid agreement concerning the International Registration of marks on 1891.
- ❖ The United International Offices Of The Protection Of Intellectual Property on 1893.

a) **The Paris Convention For The Protection Of Industrial Property Of 1883:**

The 1883 Paris convention for the industrial property protection was the first international agreement designed to protect IP including (patents, trademarks, industrial designs, utility models, service marks...) in other nations¹. The issue of protecting IP internationally became evident when foreign exhibitors at the 1873 international exhibition of inventions in Vienna, Austria, decided not to attend, worried their ideas would be copied and commercialized abroad.² It established a union dedicated to protect different types of IP, such as patents, trademarks, utility models and trade names. Another goal of the convention was to combat unfair competition.³ Brazil,

¹ « Paris Convention for the Protection of Industrial Property”, WIPO, accessed April 08, 2025, <https://www.wipo.int/treaties/en/ip/paris/>

² « WIPO- A Brief History », WIPO, accessed April 08, 2025, <https://www.wipo.int/about-wipo/en/history.html>

³ « Paris Convention for the Protection of Industrial Property”, WIPO, accessed April 08, 2025, <https://www.wipo.int/treaties/en/ip/paris/>

France, Guatemala, The Netherlands, Portugal, Serbia, Spain, Switzerland, Belgium, Italy, and El Salvador all signed the treaty.¹

b) The Berne Convention for the Protection of Literary and Artistic Works of 1886:

The Berne convention dealt specially with copyright, protecting the rights, the rights of authors and creators. The convention provided creators like writers, poets, painters, and musicians, with the means to control how their works were used and by whom, along with setting terms of use.² The united international offices of the protection of IP was created to manage the Berne convention and later merged into the Bureaux Internationaux Réunis pour la protection de la propriété intellectuelle (BIRPI), eventually becoming The World Intellectual Property Organization (WIPO).

c) The Madrid Agreement Concerning the International Registration of Marks of 1891:

The nine member states of the Paris Convention for the Protection of Industrial Property formed the first “ Special agreement focused on protecting industrial property”. The protocol to the Madrid Agreement (1989), along with the original agreement, created the Madrid system, which serves as the primary

¹“WIPO- Administered Treaties”, WIPO, accessed April 08, 2025, https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=2

² “Berne Convention for the Protection of Literary and Artistic Works “, WIPO, accessed April 09, 2025, <https://www.wipo.int/treaties/en/ip/berne/>

international mechanism for registering trademarks in multiple jurisdictions worldwide.¹

d) **The Bureaux Internationaux Réunis pour la protection de la Propriété Intellectuel (BIRPI) 1893 :**

To administer the Paris and Berne Conventions, two secretariats were created and later unified into the United International Bureaux for The Protection of IP (BIRPI), the forerunner of World Intellectual Property Organization (WIPO). With just seven staff members, the organization was initially based in Berne, and later on 1970 the BIRPI became WIPO with its headquarters in Geneva, Switzerland.²

1.2.3 The World Intellectual Property Organization (WIPO)

Regime (1970-nowadays):

WIPO was created through the Convention Establishing the World Intellectual Property Organization, which officially came into effect on April 26, 1970. April 26 is celebrated annually as World Intellectual Property Day. Membership in WIPO was open to any state that was party to the Berne or Paris Convention, or that held membership in the United Nations, its

¹ “Protocol Relating To The Madrid Agreement Concerning the International Registration of Marks”, WIPO, accessed April 15, 2025, https://www.wipo.int/treaties/en/registration/madrid_protocol/

² « WIPO- A Brief History », WIPO, accessed April 15, 2025, <https://www.wipo.int/about-wipo/en/history.html>

specialized agencies, the International Atomic Energy Agency, or the International Court of Justice.

According to the article 3 of the Convention, WIPO's objective is "to promote the protection of intellectual property worldwide". WIPO further contributes to the economic development of its members by promoting technology transfer and innovation. WIPO was designated as a specialized agency of the United Nations in 1974. Countries that are part of WIPO have shaped their IP Legislation based on the precedents and guidelines set by the organization.

Ever since it was founded, WIPO has aimed to develop unified and consistent system for IP protection worldwide. WIPO's role in administering the Patent Cooperation Treaty (PCT) has made it easier for inventors to secure patent rights in several countries concurrently, reducing procedural and financial burdens.¹

The Arbitration and Mediation Center (AMC) was created in 1994 to provide private parties with alternative means of resolving international commercial disputes. In 1994, the World Trade Organization (WTO) played a key role in the creation of the Trade Related-Aspects of Intellectual Property Rights (TRIPS) agreement, a comprehensive framework aimed at unifying IP protection across member states. The TRIPS agreement is pivotal in promoting

¹ « WIPO – A Brief History », WIPO, accessed April 15, 2025, same reference

the exchange of knowledge and creative assets, setting IP related trade disputes, and safeguarding the policy space of (WTO) members to meet national development goals.¹

According to Jean-Frédéric Morin, the global IP system is in the midst of a significant paradigm shift in favor of greater access to protected IP work.² The scholar highlights that the new direction of global IP governance prioritizes policy flexibility and the promotion of knowledge access, especially for the benefit of developing countries.

1.3 Conclusion:

At the end of this chapter, we've clearly known the steps that been took through history to protect IP worldwide, and we've seen various Conventions, Regimes and organizations that focuses on protecting IP and IPRs Internationally from 1624 to our present day.

¹ "TRIPS–Trade-Related Aspects of intellectual property rights", World Trade Organization WTO, accessed April 15, 2025, https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

² Jean-Frédéric Morin, « Paradigm shift in the global IP regime: The agency of academics », (2014) 21 Review of International Political Economy page 275, accessed April 15, 2025, https://www.chaire-epi.ulaval.ca/sites/chaire-epi.ulaval.ca/files/publications/morin_2014_paradigm_shift_agency_of_academics.pdf

Part two:

The Process of Protecting Intellectual Property

Chapter 01:

International Treaties and Agreements

Chapter 01: International Treaties and Agreements:

1. Introduction:

IP and IPRs are now a fundamental elements in the globalized juridical and economic world. While there are no restrictions on innovation, creativity, and technological advancement, so too has there been the adoption of an international legal order harmonized to protect such rights. In this current chapter, it will be a general summary of the most significant international treaties and agreements constituting the international IP regime. It examines the tools to identify, protect, and assert IPRs in the border environment and how they are balancing the interest of the creator, user, and public. It lays special emphasis on the foundation agreements that we should have deeper knowledge on their goals and intentions such as the Paris Convention, Berne Convention, TRIPS Agreement, and WIPO Administered agreements and some others that collectively provide the foundation of global IP Law.

1.2 Main Treaties and Agreements:

A. The Paris Convention:

As it has been mentioned on the second chapter of the first part of this dissertation, The Paris Convention was made specifically for the protection of Industrial Property, and it is considered as the first international treaty and the constitution that dealt and still dealing with the protection of Industrial

Property including patents, trademarks, industrial designs, service marks, trade names, geographical indications, and anti-unfair competition.¹

This latter Convention have three main substantive provisions that can be presented on:

- National treatment,
- Priority right,
- Common rules

I. National treatment:

Based on the articles 2 and 3 of this Convention, every nationals that belongs to the Countries of the Union or any other nationals of countries outside the union that they are domiciled or have a effective IPR in the union territory, as regards the protection of industrial property have a protection to their works in foreign nations that belongs to the Union with the same advantages that is giving by the Convention and they shall have the same protection as nationals of these countries and be treated fairly and equally and the same legal remedies against any distress.² In other meaning any applicant files an application for an IPR in foreign country of the union, the latter

¹ “ Paris Convention for the protection of Industrial Property”, Wikipedia, accessed April 17, 2025, https://en.wikipedia.org/wiki/Paris_Convention_for_the_Protection_of_Industrial_Property#:~:text=The%20Paris%20Convention%20for%20the,in%20force%20as%20of%202024.

² “ Paris Convention for the protection of Industrial Property”, March, 20, 1883, 828 U.N.T.S. 305, Arts. 2-3

receives the same protection and treatment as the national of this foreign country if the IPR is granted.¹

II. Priority Right:

According to the article 4 of the Paris Convention, anyone who has filed, in accordance with the law of one of the union countries an application for a patent or the registration of a utility model or design should along with his successor therein, enjoy the right of priority. Any filing in other countries of the union is concerned with this right within the specified time limits (12 months for patents and utility models, and 6 months for trademarks and industrial designs).² The aim of the union right of priority is to give the applicant or the inventor in one of the countries of the union time to determine the other countries in which he wishes to protect his invention. This is a remedy for the risk of creating secrecy of an invention, which is what makes the countries of the union treat each other as one country.

III. Common Rules:

The convention have made some forcing rules that the union countries must respect and follow, and some of the important rules are:

¹ “ Paris Convention for the protection of Industrial Property”, Wikipedia, accessed April 17, 2025, previous reference

² “ Paris Convention for the protection of Industrial Property”, March, 20, 1883, 828 U.N.T.S. 305, Arts. 4

i. Regarding Patents:

A patent granted in several countries of the Union for the same invention is treated independently. A patent granted in one country does not obligate other countries to agree to its issuance. Rather, a patent may not be refused on the grounds that the products for which the patent was issued are subject to restrictions imposed by national laws.¹

ii. Regarding Marks:

Article 6 of the Paris Convention specifies the conditions for creating and registering a trademark for each country of the Union, based on the national legislation of each country. As noted by the Convention the country of origin means any country of the Union in which the applicant for registration is a serious and active commercial or industrial establishment. Therefore, the Convention does not address the conditions and procedures for registering trademarks, which remain subject to the national legislation of each member country. This is in an applicant of the legal rule regarding trademarks, which is regional or national. Therefore, an existing registration may not be refused or invalidated because of that the trademark has not been applied for in the country of origin.²

¹ Belkacemi Kahina, « The Independence of the legal system of Intellectual Property », Master's thesis, Faculty of Law, University of Youssef Ben Khedda, Algeria, 2008-2009, page 70.

² Abdel Fettah Bioumi Hijazi, « Introduction in Intellectual Property Rights and Consumer Protection in E-Commerce Contracts, First Edition, Dar Al Fikr El-Jami'i, Alexandria, Egypt, 2005, p.17

iii. **Regarding (Industrial Designs, Trade Names, Indication of Sources and Unfair Competition) :**

According to the Convention, Industrial Designs must be protected in each contracting country, and protection may not be forfeited on the ground that articles incorporating the design are not manufactured in the country. And for Trade Names, protection must be granted to trade names in each country of the Union without being obliged to file or register the names. And about Indications of Source, measures are obliged by every country of the Union to be taken against direct or indirect use of a false indication of the source of goods or the identity of their maker, producer, manufacturer, or trader. And for the unfair competition, the Convention obliged every member country to provide protection anti-unfair competition by making national effective Laws to fight the illegal competition.¹

B. The Berne Convention:

As its been known about The Berne Convention for the protection of Literary and Artistic works, this Convention was preceded by several meetings and conferences, the most important conference was the Brussels of 1858, which established an essential principle: Universal recognition of ownership of literary and artistic production. After then, The Berne Convention came on

¹ “Summary of the Paris Convention for the protection of Industrial Property (1883)” , WIPO, accessed April 18, 2025, https://www.wipo.int/treaties/en/ip/paris/summary_paris.html

1882, which aimed to unify the issue of conflict of laws between many countries and on the basis of protecting literary and artistic works.

This Convention was revised several times, until it was concluded on September 09, 1886, in the Swiss city of Berne. It included 10 countries when it was founded, and the number of its members gone up to 181 countries on November, 2022. This Convention took the responsibility for protecting everything related to literary and artistic works, such as novels, poems, musical works, paintings, audio works, and photographs, etc. The Berne Convention introduced the concept that protection exists the moment a work is created, that is, written or recorded on some physical objects or materials, and its author/creator is automatically having all copyrights on the work and to any similar works, unless and until the author get rid voluntary of this rights or until the copyright expires. A creator don't need to register or "apply for" a copyright in countries members of the convention. It also enforces a requirement that countries recognize rights held by the citizens of all other parties to the convention. Foreign authors are given the same rights and privileges to copyrighted material as domestic authors in any country that ratified the convention. The countries to which the convention applies created a Union for the protection of the rights of authors in their literary and artistic works, known as the Berne Union.¹ The Berne Convention addresses the

¹ « Berne Convention », Wikipedia, accessed April 22, 2025, https://en.wikipedia.org/wiki/Berne_Convention#

protection of works and the rights of authors. It is based on three basic principles and includes a set of provisions that specify the minimum level of protection to be granted, in addition to special provisions available to developing countries that wish to benefit from them.

I. Basic Principles:

This latter Convention has Three basic principles that follows in:

i. National Treatment:

Works originating in one of the Contracting countries (that is, works the author of which is a national of that country or works first published in that country) shall have the same protection in each of the other Contracting countries as the latter grants to works of its own nationals.¹

ii. Automatic Protection:

Protection must not be conditional upon compliance with any formality.²

The author have the right to enjoy his works, regardless of its value or type.

This principle is not subject to some formal procedures such as registration.

Once the natural right of the author's work is recognized , the State's right to determine the scope of protection for the work created, as well as the right to

¹“ Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)”, WIPO, accessed April 22, 2025, https://www.wipo.int/treaties/en/ip/berne/summary_berne.html

² “ Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)”, WIPO, same reference.

set appropriate conditions for granting protection, and to determine the means of judicial appeal to facilitate the author's protection of his rights.¹

iii. Principle of "Independence" of Protection:

Protection is independent of the existence of protection in the country of origin of the work. If, however, a Contracting Country provides for a longer term of protection than the minimum mentioned by the Convention and the work stops to be protected in the country of origin, protection may be denied once it stops in the country of origin.

II. Minimum Standards:

The minimum standards of protection relate to the works and rights to be protected, and to the duration of protection:

i. As for works:

According to the Article 2 of the Berne Convention, Protection must include every production in the Literary, Scientific, and artistic field, whatever the form of its expression, etc.²

ii. As for Exclusive Rights of Authorization:

The Convention had sited some Exclusive rights of Authorization for the creator that are like the following:

¹ Ben Didi Djamilia, "National and International Protection of Literary Works", Master's Thesis in Law, University of Hadj Lakhdar- Batna1- Faculty of Law and Political science, Algeria, 2016, p. 125

² " Berne Convention for the protection of Literary and Artistic Works", Article 2(1), 1886, revised 1971.

- 1- the right to translate,
- 2- the right to make adaptations and arrangements of the work,
- 3- the right to perform in public dramatic, dramatic-musical and musical works,
- 4- the right to recite literary works in public,
- 5- the right to communicate to the public the performance of such works,
- 6- the right to broadcast (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
- 7- the right to make reproductions in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
- 8- the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work
- 9- The Convention also provides for "moral rights", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in

relation to, the work that would be prejudicial to the author's honor or reputation.¹

III. Duration of The Protection:

The Berne Convention granted a legal period for copyright protection of 50 years after the author's death, that's the general the general rule. But there are some exceptions to the aforementioned period in some specific cases, as the 50 years period expires in the case of publishing a work anonymously, or under a pseudonym, or in the case that the work is made available to the public, unless the owner of the work reveals his identity during that period, the Convention set a minimum period of 50 years for the protection of Audiovisual works from the day of their creation, and the minimum period of protection for works of applied art and photographic works is 25 years from the date of their creation. The Berne Convention did not restrict developing countries to a minimum standard of protection for the right of translation and reproduction.²

C. Patent Cooperation Treaty (PCT):

The PCT system is a service based in a WIPO Treaty, allows innovators to seek patents internationally through a single, rationalized procedure. Under that system, the inventor can file one PCT application in one language at one patent office, within 12 months from the date of the earliest patent application that he

¹ " Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)", WIPO, same previous reference.

² " Berne Convention for the protection of Literary and Artistic Works", Article 7, 1886, revised 1971.

had filed for the same invention. This one PCT application has the same legal effect as filing separate patent applications in the more than 150 PCT member countries known as “Contracting States”. By using the PCT system, the inventor can delay paying significant national patent-related fees while he learn about the likelihood of having a patent granted for his invention. The inventor benefit from more time and information to help him decide whether, and in which countries, to pursue patent protection.¹

The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting countries.²

A patent application filed under the PCT is called an international application, or PCT application.³ The PCT now has 158 contacting Countries.

There is no such thing as an international patent nor can an inventor apply for one. Patents are national, and have force in the territories of the countries to which they exhort only. Therefore if the inventor wishes to be granted a patent

¹ « PCT Summary for new users », WIPO, accessed April 23, 2025, <https://www.wipo.int/pct/en/users/summary.html>

² « Patent Cooperation Treaty », Wikipedia, accessed April 23, 2025, https://en.wikipedia.org/wiki/Patent_Cooperation_Treaty#cite_ref-ART1_6-0

³ «Patent Cooperating Treaty (PCT) », Article 1, WIPO, accessed April 23, 2025, <https://www.wipo.int/documents/d/pct-system/docs-en-texts-pct.pdf>

must, sooner or later, request it from the authorities who are competent to grant patents for that country.¹

When making a PCT application it is common to go through some procedures that should be in the application. Even so, it is possible for the claim that is eventually granted to cover matter that does not fall within the claim of the PCT application.² And the PCT application should contain the following :

- **Elements of a PCT application:**³
 - i. **A request:**

The request must include the following:

- The Title of the invention;
- Bibliographic data about the applicants and any appointed representative : Names, addresses, nationality, residence indication and contact details;
- Data about any patent application previously filed for this invention (“**priority claim**”): application number, filing date, country of filing;

¹Oxonica Energy Ltd v Neuftec Ltd [2008] EWHC 2127 (Pat) (05 September 2008), England and Wales High Court (Patents Court) Decisions, Accessed April 23, 2025, item 45, <http://www.bailii.org/ew/cases/EWHC/Patents/2008/2127.html>

² Oxonica Energy Ltd v Neuftec Ltd [2008] EWHC 2127 (Pat) (05 September 2008), England and Wales High Court (Patents Court) Decisions, Accessed April 23, 2025, item 48, same previous reference

³ « PCT Summary for new users », WIPO, accessed April 23, 2025, the previous reference

- **Selection of an eligible International Searching Authority (ISA):**
a leading patent office associated with the inventor receiving Office will conduct an international search on the inventor's invention. He must indicate in his PCT application which ISA he would like to conduct this search (Note: fees and language requirements differ between ISAs)
- **Signature:** either an applicant or an appointed representative should sign the PCT application; if signed by a legal representative, a power of attorney is required.

ii. **The application body:** It must contain:

- **Description:** a written explanation of the invention clear enough that a person with a background in the inventor invention's particular technical field invention could reproduce the invention from the information provided (**Note:** certain States also require the description to contain information on the best method for carrying out the invention);
- **Claims:** a set of numbered paragraphs that define the scope of the invention;
- **Drawings of the invention:** required only if necessary to understand the invention;
- **"Abstract":** a short summary of the invention.

- **The PCT process:**

- I. **International phase:**

- i. **International search:**

The ISA selected in the PCT application will produce a search report (identifying published patent documents and technical literature that may influence whether the invention is patentable) and a written opinion detailing the invention's potential patentability. The inventor receives a copy of these two documents about 4 months after filing the PCT application. The findings and opinions in the report provide both the applicants and patent offices with helpful information on the likelihood of having a patent granted, but are not obligated.¹

- ii. **International publication:**

As soon as possible after the expiration of 18 months from the priority date, WIPO publishes the inventor's international application together with the search report on WIPO's patent database. After publication, the inventor will have additional time to consider the information in the search report and decide if he wants to continue pursuing patent protection.

¹ « PCT Summary for new users », WIPO, accessed April 23, 2025, the previous reference

iii. Supplementary International Search (Optional):

A second ISA identifies, at the inventor's request, additional published documents that may not have been found by the first ISA in the main search, because of the diversity of prior art (in different languages and different technical fields) and produces a Supplementary International Search Report. Additional costs apply to a request for supplementary international search.

iv. International Preliminary Examination:

an International Preliminary Examining Authority (one of the ISAs) carries out an additional patentability analysis, usually on the amended application (amending the invention in light of the search report and written opinion of the ISA). The final outcome is an examination report providing an opinion on the potential patentability of the invention based on PCT standards. Additional costs apply for this examination. This report, like the search report, provides helpful information but is not obligated on offices in the national phase.¹

II. National phase:

At the end of the PCT procedure, the inventor must decide whether to continue pursuing protection for his invention and in which countries. If he decides to move forward, he will need to “enter the national phase” with his PCT application, where each national or regional office he selects will assess

¹ « PCT Summary for new users », WIPO, accessed April 23, 2025, the previous reference

his patent application. which follows the international phase in which rights are continued by filing necessary documents with the patent offices of separate contracting states of the PCT. ¹

i. Time limit:

The time limit for entering the second phase is generally 30 months from the priority date. To enter the national phase, some national or regional Offices will require the inventor to translate his PCT application. He must also pay filing and processing fees to each office, and in most countries, appoint a local patent representative to support him. ²

ii. Procedure:

In the national phase, the national and regional patent Office estimates the inventor's patent application regarding to their national laws and procedures, taking into account the results of the PCT search and examination received from WIPO.

D. Madrid System – The International Trademark System:

Madrid System, also known as the Madrid Protocol, is the major international system for making the registration of trademarks in various jurisdictions around the globe easier. It was established pursuant to the many-sided treaties Madrid Agreement Concerning the International Registration of

¹ « Patent Cooperation Treaty », Wikipedia, accessed April 23, 2025, previous reference

² « PCT Summary for new users », WIPO, accessed April 23, 2025, the previous reference

Marks of 1891 and the Protocol Relating to the Madrid Agreement on 1989, which has been the only governing treaty since 2016, the System consists of 114 members covering 130 countries, known collectively as the “Madrid Union”, they represent more than 80% of world trade. Commitment to the convention or the protocol includes membership of the “Madrid Union”. As of June 2019, there are 104 members made out of 120 countries. The original treaty has 55 members, all of which are also party to the protocol (when Algeria joined the Madrid Protocol on 31 October 2015, all of the members of the Madrid Agreement were also members of the Madrid Protocol and many of the aspects of the Madrid Agreement ceased to have any practical effect). The term “Madrid Union” can be used to describe those jurisdictions party to either the agreement or the protocol, or both.¹

1) Advantages of The Madrid System:

- In simple terms, the main advantage of the Madrid System is that it allows a trademark owner to obtain trademark protection in any or all member states by filing a single application in a single jurisdiction and paying a single set of fees. They can also make any changes (such as a change of name or address) and renew the registration in all relevant jurisdictions through a single administrative process and payment of a single fee.

- The Madrid System provides a mechanism by which a trademark owner who has an existing trademark application or registration “basic application” or

¹ « Madrid Protocol », Wikipedia, accessed April 28, 2025, https://en.wikipedia.org/wiki/Madrid_Protocol#cite_ref-1_4-0

“basic registration” in a jurisdiction that is a member of the System can obtain an “international registration” for his trademark from the WIPO.

- The trademark owner can extend the scope of protection granted to the international registration to a jurisdiction in one or more Member States.

- The most important feature of the Madrid System is that the protection can be extended to additional jurisdictions at any time, so that international trademark protection can be extended to new jurisdictions that subsequently join the Madrid System, or to other jurisdictions at the trademark owner's option.¹

2) Disadvantages of The Madrid System:

- One disadvantage of the Madrid system is that any refusal, withdrawal or cancellation of the basic application or basic registration within five years of the registration date of the international registration will lead to the refusal, withdrawal or cancellation of the international registration to the same extent.

If the basic application is rejected as a whole, the international registration would also be totally refused.²

¹ اتفاق مدريد بشأن التسجيل الدولي للعلامات¹, Wikipedia, accessed April 28, 2025,

https://ar.wikipedia.org/wiki/%D8%A7%D8%AA%D9%81%D8%A7%D9%82_%D9%85%D8%AF%D8%B1%D9%8A%D8%AF_%D8%A8%D8%B4%D8%A3%D9%86_%D8%A7%D9%84%D8%AA%D8%B3%D8%AC%D9%8A%D9%84_%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A_%D9%84%D9%84%D8%B9%D9%84%D8%A7%D9%85%D8%A7%D8%AA#%D8%A7%D9%84%D9%85%D8%B3%D8%A7%D9%88%D8%A6

² « Madrid Protocol », Wikipedia, accessed April 28, 2025, previous reference

3) The Process of The Madrid System Registration:

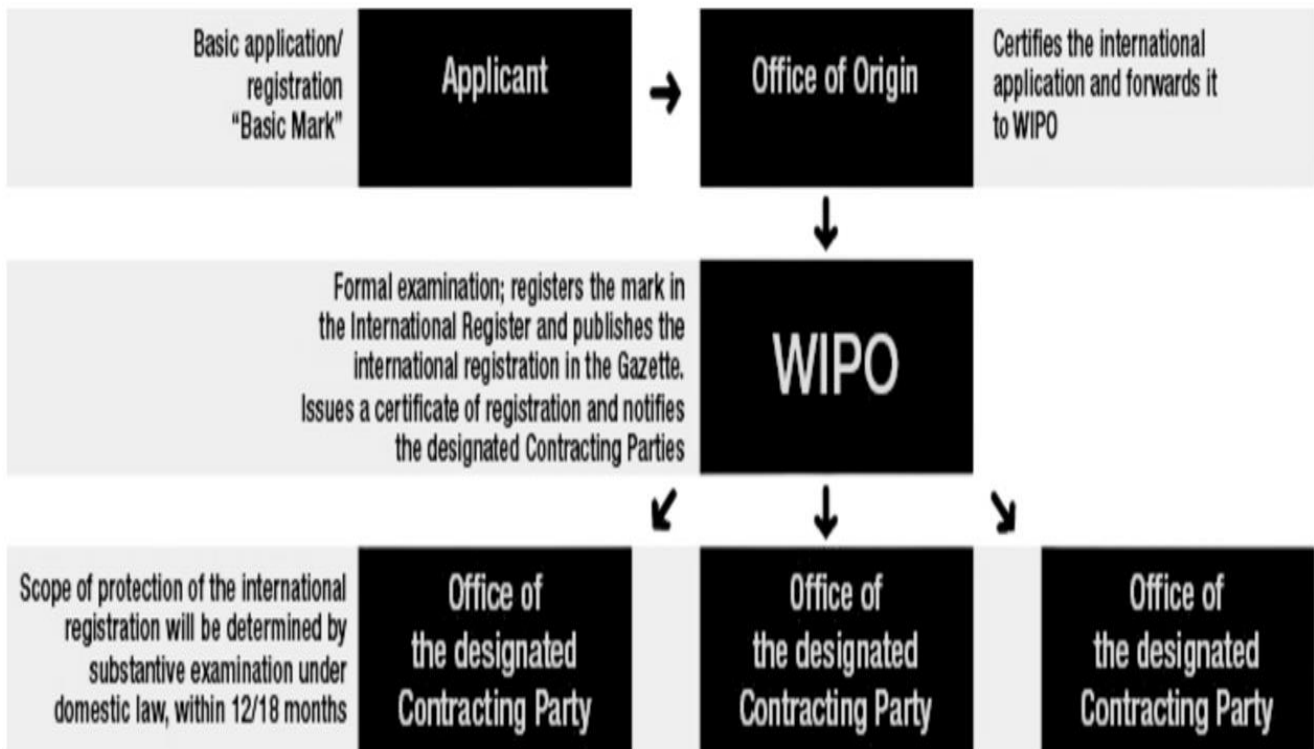


Figure 5.IP Global. (2025). International Trademark Registration Process. LinkedIn.

Retrieved from: <https://www.linkedin.com/pulse/international-trademark-registration-process-ip-global-hquhc>

E. Hague Agreement Concerning The International Deposit of Industrial Designs:

The Hague Agreement concerning the international deposit of industrial designs is an agreement focusing only on (IDs) the same as the PCT treaty on Patents, same mechanism that aim to registering industrial designs in multiple countries through one application, and this agreement is also administered by

the WIPO. The Hague System has 81 members covering over 98 countries over the year of 2025.¹

Process of The Hague Agreement:

i. Qualifications to use the Hague system:

The Hague application is available for these categories of applicants:

- the applicant must be a national of a Contracting country.
- the applicant must be domiciled in a Contracting county.
- the applicant resident and has a real and effective industrial or commercial establishment in one of the Contracting counties.
- An applicant who does not fit into one of these classes cannot make use of the Hague system.
- The quality of reproductions.

ii. Application requirements:

The application may be made in English, French, or Spanish at the choice of the applicant. The application have to contain one or more representations of the designs concerned and may settle a maximum of 100 different designs provided the designs are in the same class of the Locarno Classification of the

¹ « Hague System Overview », WIPO, accessed April 29, 2025, <https://www.wipo.int/hague/en/>

International Classification of Industrial Designs. The application fee has three types of fees: a base fee, a publication fee, and an every-designated Contracting country designation fee.¹

iii. Procedures of applying to The Hague System:

a) Filing:

First things is filing the application directly with the WIPO using their platform “eHague”, it’s simple, modern, and efficient to guarantee an international protection for designs.

b) Formality Examination:

Secondly, The WIPO administration check the application to ensure that it has all formal requirements mentioned above, after the checking they will notify the applicants of any irregularities if there was, and the applicants have three months to fix those irregularities.

c) Publication:

The WIPO administration will publish the accepted designs in the International Designs Bulletin 12 months after the international registration date (the date on which WIPO received the international application).

¹ “Hague Agreement Concerning The International Deposit of Industrial Designs”, Wikipedia, accessed April 29, 2025, https://en.wikipedia.org/wiki/Hague_Agreement_Concerning_the_International_Deposit_of_Industrial_Designs

d) Substantive examination:

Once the international registration are published in the International Designs Bulletin, the IP office of each designated contracting country may perform substantive examination, checking whether the designs comply with their own domestic laws. Each designated contracting party has the right to refuse protection within its own territory, notifying WIPO within 6 months (in some cases 12 months) of the date of publication of the international registration. The WIPO administration will notify the applicants if protection is refused. In case of no refusal is issued by a given IP office, protection is deemed to be automatically granted in that given jurisdiction, under its established laws.¹

The duration of protection under the Hague system is estimated by 5 years, it may be renewal twice after the first 5 years, so it can be protected under the Hague system over 15 years with 2 renovations.

F. The TRIPS Agreement:

The TRIPS Agreement is an abbreviation of Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement is considered one of the most important and strongest agreements reached, It is an Agreement that includes 73 articles. Through its general framework in which it came, as well as the content of its texts that it adopted, included general and

¹ « About The Hague System », WIPO, accessed April 29, 2025, <https://www.wipo.int/en/web/hague-system/about>

detailed provisions that made it unique from any other agreements. It is clearly evident within the scope of the objective stated in the content of its preamble, which emphasized the need to strengthen the protection of IPRs and ensure their effectiveness.

Generally The TRIPS agreement is a global legal agreement that includes all member countries of The World Trade Organization (WTO)¹, and it was agreed upon on April 1994, at morocco, and it came into force as part of the (WTO) agreement on January 1st, 1995.

*i. **Basic Principles of The TRIPS Agreement:***

*1) **The Principle of National Treatment:***

This principle is contained in the content of the second article of The TRIPS Agreement, which stipulates that each member country is obliged to grant nationals of other member countries treatment same as which it grants its own nationals with regard to the protection of IP, taking into account the exceptions already provided for in each of The Paris and The Berne Conventions. With regard to performers, producers of phonograms, and broadcasting organizations, this obligation applies only regarding the rights provided for in this agreement, and any member country and benefiting from the possibilities provided for in Article 6 of the Berne convention and the 1st paragraph of Article 16 of The Rome Treaty is obligated to report it or notify

¹ « TRIPS Agreement », Wikipedia, accessed April 30, 2025, https://en.wikipedia.org/wiki/TRIPS_Agreement#

the Council of the TRIPS. And the Member countries may avail themselves of the exceptions permitted under paragraph 1 of the 3rd article of the TRIPS Agreement in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.¹

2) The Principle of Most-Favored-Nation Treatment:

Article 4 of the TRIPS Agreement encompassed the content of this principle, stating:

With regard to the protection of intellectual property, any advantage, favor, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favor, privilege or immunity accorded by a Member:

- i. deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

¹ “TRIPS Agreement”, Article 3 (both paragraphs), (WTO, 1994).

- ii. granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;
- iii. in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
- iv. deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.¹

Beside these principles, The TRIPS agreement has stated the term “Intellectual Property” on the 2nd paragraph of the 1st article, which means that this agreement was built to protect any kind or category of IP, and as it seems that from the Section 1 through 7 of its 2nd chapter are all the subject of IP.

1.3 Conclusion:

Concluding this chapter, it can be said that the International agreements and treaties that been mentioned on this chapter all came to protect IPRs. However, every agreement was unique in its way or side of protection, as for the Paris Convention came to protect Industrial Property rights, while the

¹ “ TRIPS Agreement”, Article 4 (WTO, 1994).

Berne Convention came to protect literary and artistic works, and after that the Madrid System was made to protect Trademarks Internationally, and then The Hague Agreement showed up to provide an International protection for Industrial Designs. However, combining all these with their basic principles but still The TRIPS Agreement one of the strongest agreements protecting IPRs, it included IPRs and established many means and procedures of legal protection. Its interest in the technical aspect of computer programs and databases by establishing some provisions related to them, all of this made it unique, strong, and distinguished from other agreements.

Chapter 2:

Enforcement mechanisms and dispute resolution

Chapter 2: Enforcement mechanisms and dispute resolution

1.1 Introduction:

Nowadays, IPRs represent valuable business assets. The commercial exploitation of IPRs through international licensing, patent gathering, technology transfer, research and development agreements, branding, copyright and design strategies can trigger major benefits. However, IPRs are only valuable as long as they can be efficiently enforced. Invasion of IP rights through copying or free-using can cause loss of market shares and considerably soil the business reputation of the IPR holders. With the multiplication of international IP transactions, the number of IP-related disputes has likewise grown. Modern challenges such as digitization and globalization contribute to an increase in IP related conflicts. IP disputes can involve a variety of subject matters, as well as large and small entities such as inventors, manufacturers, research institutes, pharmaceutical companies, software developers, fashion industries, joint venture partners, telecommunications companies, consultancy firms, employees and artists. However, IP disputes have common features to the extent that they are often international, involving technical or specialized subject-matter and confidential issues. They also often arise out of long-term business relationships. In times of economic recession it becomes even more important, and especially for all kinds and sizes of factories, to consider cost

and time efficient dispute resolution mechanisms and to develop a fully IP dispute resolution strategy.¹

1.2 Enforcement mechanisms:

Although the international treaties harmonize the laws, each country has its specific IP laws and enforcement mechanisms, For a functional enforcement, the first step the inventors must do is registering their IP in their own national institutes, as the (INAPI) for Algerian inventors, (USPTO) for Americans, and (EUIPO) for Europeans. And that is to protect the work or invention nationally and globally. The procedures are similar, commonly are all about filling an application with some necessary information, that is requiring:

A. Formal Requirements:²

- 1) **Submission of the Registration application:** is a specific form that the right holders or their representatives fill, including their information and a wild description of the work or invention, and the type of protection needed.
- 2) **Concerning the necessary documents:** as the commercial registry, identity documents, official power of attorney (if the inventor is from a

¹ “Efficient alternative dispute resolution (ADR) for intellectual property disputes”, WIPO, accessed May 06, 2025, <https://www.wipo.int/export/sites/www/amc/en/docs/euro.pdf>

² Dr.Khaldi Thamer, Lectures on Intellectual Property, Introduction for Third-Year Public Law, University Center of El Bayadh “ Nour El Bachir”, Institute of Law and Political Science, Department of Law, Algeria, 2022/2023, p44, p65, p75

from a foreign country so he needs an official representative), a copy or a design, or a plan, or an invention, or a brand.(it depends on the IP type).

3) **Paying fees:** registration fees differs depending on the type of IP.

4) **Announcement or Publication (if the application would be accepted):** in some cases, as trademarks will be published or announced on the gazette of the main institute. And that's for objections.

B. Objective Conditions:¹

1) **Novelty:** The work or invention must be new and not overly registered or published.

2) **Original:** It must contain an element of inventiveness.

3) **Distinctiveness:** It have to be special and distinctive specially for trademarks.

4) **Not contrary to public order or morals:** Works or inventions that violates the law or the social values are rejected.

5) **Industrial application:** As for patents, the invention must be applicable to an industry.

6) **Ownership:** The applicant must be the real owner of the right, or his duly appointed representative.

¹ Dr.Khaldi Thamer, the previous reference, p40, p62, p73.

After having the first step done and fulfilled, the creator or inventor can protect his works legally from any scams, copying, or stealing...

If the work got copied or stolen or used without the right holder's acceptance, he has all the right to use some legal ways to get his rights back, getting them back by litigation, arbitration, or mediation.

i. Resorting to the litigation:

Although an IP dispute can be brought before a court, litigation may not always be well equipped to take account of the particular features of IP disputes. Indeed, to date, IP legislation has not yet been fully harmonized on an international level. As IP rights are territorial, potentially lengthy and costly proceedings in several jurisdictions under different laws are sometimes initiated with the risk of conflicting outcomes and unsolved problems.¹ It is way too traditional for resolving IP conflicts, because it may take too long to dispute the problem, plus in some countries as Algeria there is no specialized courts for IP conflicts, but there is a way that guarantee IP rights holders, and this way consumes lot of time and costs a lot, and this way illustrated on normal courts under the Civil Remedies or Criminal penalties, that must be under national laws. And it defers whether it is a Civil court matter or Penal according to the case and type of IPRs and the damages caused..., But the

¹ "Efficient alternative dispute resolution (ADR) for intellectual property disputes", WIPO, accessed May 06, 2025, same reference.

WIPO had a different idea about resolving IP disputes by creating the Arbitration and Mediation Center, with specialized agents on IP Matters.

1.3 Dispute Resolution:

i. Resorting to Mediation:

Mediation is a form of assisted negotiation. In this informal procedure, the parties ask a neutral intermediary, the mediator (s) to assist them in reaching a settlement of the dispute. The mediator(s) will have the necessary skills and expertise to help the parties identifying the issues in dispute, their underlying interests and to determine a range of alternative options¹. Mediation has the following characteristics:²

- Any settlement which they achieve is enforceable as a contract between the parties.
- Mediation is a confidential procedure, as the parties cannot be forced to reveal information that they would prefer to remain secret.
- Mediation is a procedure based on the interests of the parties. They can choose what is best for their commercial and outcomes that's beneficial for the parties future commercial relationship.

- The procedures of Mediation:³

¹ "Efficient alternative dispute resolution (ADR) for intellectual property disputes", WIPO, accessed May 06, 2025, same reference.

² Houas Fatiha, "Resolving IP Disputes Under The WIPO Arbitration and Mediation Center", Academic Journal of Legal Research, Vol.14, No.1, Year 2023, p.404

³ Houas Fatiha, same reference, p405, p406.

1. **Requesting:** Mediation begins when one of the parties to the dispute submits a written request to the Arbitration and Mediation Center of the WIPO, and at the time sends a copy of the request to the other party (the opponent). The request for mediation includes names, addresses, phone numbers, or other information that allows contacting the parties, in addition to a summary of the dispute. Once the written request is submitted to the Center, the mediation process begins. It is conducted by the method agreed upon between the parties. If the parties do not agree on the method, the mediator determines it with the consent of the parties. The center helps the parties to choose the mediator and appointing him from a list of qualified mediators, and the center will also manage the financial aspects of the mediation, and will also determine the mediator's fees in consultation.

2. **The Mediator in the mediation process:** Once the mediator is appointed, he/she sets the schedule of appointments required by each party and the working procedures. The mediation process is conducted in accordance with the method set out by the parties in the mediation agreement. If the parties do not agree on this, the mediator determines the mediation method in accordance with the WIPO rules. The mediator can suggest to the parties the procedures or methods that are most likely to lead to resolving the dispute and proceeding in the most effective and cost effective manner.

3. **The end of mediation:** The mediation process ends, with one of the following options:

- I. The parties of the dispute sign and agree to a settlement agreement covering all or part of the issues raised during the discussion of the dispute.
- II. The mediator declares the end of the mediation due to the difficulty of resolving the dispute through mediation.
- III. One of the parties declares in writing that they have reached to a solution to the dispute before the mediator does so.

After the mediation ends, the mediator informs the Center, specifying the date of termination and whether the mediation has reached a full or partial settlement or failed to resolve and this termination remains valid and secret only for the parties. If a solution is not reached, the recourse is moved to arbitration.

ii. Resorting to Arbitration:

Arbitration is a procedure in which the dispute is submitted to one or more independent arbitrators who make a binding decision on the dispute. The decision of the arbitrator(s), the arbitral award, is normally final and not subject to appeal.¹ Arbitration is an exceptional matter, and the parties of the contract may not abide to it unless there is an explicit agreement between them to resort

¹ “Efficient alternative dispute resolution (ADR) for intellectual property disputes”, WIPO, accessed May 06, 2025, same reference.

to traditional or electronic arbitration methods instead of resorting to the regular courts. The arbitration is characterized by the following features: ¹

- Arbitration is a consensual procedure; it cannot be initiated unless the parties agree on it.
- The parties may agree to select one or more arbitrators.
- Arbitration is a confidential procedure; it ensure the confidentiality of the ongoing arbitration proceeding and the confidentiality of any information disclosed during those proceedings, as well as the arbitrator decision.
- Arbitration is a fast-track procedure.

- **The procedures of Arbitration:**

1. **Initiation of Arbitration:** According to the Rules of the WIPO

Arbitration and Mediation Center, the proceeding officially begins by the date the claimant sends a complaint to the Center, with a copy sent to the other party. The complaint must include a statement indicating that the dispute has been referred to the Center consideration. Here, the Center informs the parties of the receipt of the arbitration request and the date of initiation. The request must meet the formal requirements adopted in most arbitration systems, in particular that the Arbitration is subject to the WIPO system, the names and addresses of the parties and of the claimant's representatives, a brief presentation of the dispute and the claimant's arguments, and the appointment

¹ Houas Fatiha, same reference, page 407

of an arbitrator or a statement of his viewpoint in this regard. The request may be accompanied by a summons and documents, the submission of which has not yet affected the formation of the arbitral tribunal. The respondent must notify both the claimant and the Center of his response to the request.¹

2. Composition and Establishment of The Tribunal: The parties should have determine the number of arbitrators. If they remain silent, the arbitration should be undertaken by a sole arbitrator, unless the Center, in its sole discretion, influences the selection of three arbitrators, depending on the circumstances. The arbitrator(s) must be qualified, professional, neutral, and confidential. And for the parties choose the method of selecting arbitrators, and if the parties remain silent within 45days from the arbitration begin, the Center will select them according to the system.

3. The beginning of arbitration:² The Center must deliver the case file to the arbitrator immediately after his appointment. The arbitrator must adopt the procedures they deem appropriate, taking into account equality between parties, allowing each of them the opportunity to present their argument, and resolving the dispute quickly.

4. Issuance of the Arbitration award:³ The arbitration award conclusively on the subject of the dispute should be issued by the arbitration

¹ “WIPO Expedited Arbitration Rules, Schedule of Fees and Costs”, Articles 6.7.9.10.11.12, Effective from July 1st, 2021

² “WIPO Expedited Arbitration Rules, Schedule of Fees and Costs”, Article 31, Effective from July 1st, 2021

³ Houas Fatiha, same reference, page 413

panel by a majority of votes (if the dispute is decided by 3 arbitration) after deliberations conducted according to the procedure decided by the panel, unless the two parties to the arbitration agree otherwise. The arbitration claim should be heard and the proceedings should be declared closed within a period not exceeding 9 months after the submission of the statement of defense and the establishment of the arbitration panel. It should be noted that the arbitration award shall be clearly signed, unless the arbitration panel agrees otherwise, and should include the names and addresses of the parties, the names and addresses of the arbitrators, their nationalities and capacities, a copy of the arbitration agreement, a summary of the parties agreements, statements and documents, a copy of the award, the date and place of its issuance. The arbitration award may not be published, except with the consent of the two parties. The award should be communicated to the Center after sufficient copies of the original copies prepared for each of the parties and the Center.

1.3 Conclusion:

At the end of this Chapter, it is remarkable that IP's Enforcement Mechanisms are related depending on the regulation the power and regulation of the IP law of each country and their protection level (Developed or developing), and according to their participations in the international agreements, treaties, and organizations. And the WIPO came with the Arbitration and Mediation Center as a fastest and less expensive method to

dispute IP resolutions with some characteristics as choosing the jury, or the way of resolving the problem, or even the nationality of the mediators and arbitrators, and the place of the resolution, and even to choose whether to keep the operation and judgment secret from the public or not.

General Conclusion

General Conclusion:

The protection of Intellectual Property in International Law is an active and daily developing domain that stands at the link between innovation, trade, and international cooperation. This dissertation has examined the essential international legal frameworks regulating IPRs, most prominently the TRIPS Agreement under the WTO, and the WIPO conducted treaties. Together, these mechanisms seek to balance creators, inventors, industries, and public's competing interests, encouraging cross border harmonization and access to innovation. Although significant progress toward standardizing IP norms has been achieved, problems persist. Varying national priorities, unequal enforcement, and the pace of technological change still test the adaptability and justness of the international IP system.

Overall, while international law has placed a solid foundation under IP protection, its success is actually dependent on sustained cooperation, capacity building, and legal reform at the global and national levels. A more participatory and responsive approach, attuned to both innovation and public interest, is needed to provide IP as an instrument for sustainable development and world justice.

Results:

Over time, International Intellectual Property (IP) law become stronger and have advanced and improvement, especially with the progress of technology and economy, but it still struggles to keep up, every time IP law starts to catch up with the development , technology and economy move ahead again creating new gaps in the law. As results, this means the International IP law cannot fully protect new ideas, or what inventors and creators really needs.

Enforcement mechanisms are essential and important, without them the legal system can fail the protection of the works of inventors, creators..., which may lead them to quit creating when feeling used or unprotected.

The lack of strict laws and punishments represents the unethical acts as copying, stealing... which means the fall of innovation and creativity and that leads the community to backwardness which this last leads the country with its various fields to degradation whether its economy, technology, or even sociology.

When countries collaborate to unite their IP laws it could be helpful and protecting any IP works globally and it makes the mechanisms works effectively.

Some IP conflicts and issues cannot be resolved in courts due to the lack of experience of the judges, or the weakness of laws, or even the lack of specialized courts for IP, and that may lead to take wrong decisions, or

judgment on the disputants rights, and sometimes it may cost lot of money and time to fix the conflict, but, the WIPO had created the Arbitration and Mediation Center to deal with such situation with less time and costs less money, and that to keep the innovation growing.

So in general, strong and flexible mechanisms and protection drives societies to growth, creativity and innovation that helps countries to develop.

Recommendations:

Intellectual Property (IP) is a sensitive domain that can drive a country to development and progress, while at the same time it can degrade it and drive it to backwardness, and to assure for the progress and development it obliged to reinforce the mechanisms to have a perfect and strongest protection for IP rights and IP holders to encourage innovation and creation, and to reinforce it protection it must strengthening the cross-border IP enforcement, because one of the weaknesses of the international IP system illustrate in the uneven enforcement of rights across jurisdictions, and to strength this weakness it must to unite the IP law globally, and there is a growing need for enhanced international cooperation in fighting cross border infringement, specifically in digital environments. This could include the creation of digital enforcement platforms, joint investigations, and the harmonization of evidentiary standards for online piracy, counterfeiting, and trademarks violations. Also it is important to adapt Legal Frameworks to Technological Innovation especially when this

era is known with the digital era and Artificial Intelligent, so there is an urgent need for international instruments to be updated with new protocols that address the unique characteristics of digital technologies.

Future trends in International IP Law:

- The rise of AI and self Producing creation:

Artificial Intelligence is revolutionizing the creative and innovative process. It is able to compose music, produce written content, and design novels, raising a difficult questions about who should be named the legal “creator” or “inventor”. Some individual countries like Australia and South Africa have taken initial steps towards recognizing AI generated patents, but there is no global standard exists yet. This is a field that will be one of the most contentious fields of future IP law reform.

- IP governance in Virtual and Augmented Realities:

The emergence of the “metaverse” and virtual reality technologies will set a new frontier for trademarks, designs, and copyright laws.

Because of some issues in that side such as impersonation of characters “Avatars”, infringement of virtual goods, and jurisdictional complexity will pose great challenges for existing IP enforcement models.

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