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PATENTS, TRADE-MARKS AND COPYRIGHT
THE PROTECTION OF INDUSTRIAL PROPERTY IN LEBANON

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INDUSTRIAL PROPERTY

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PREFACE

Patents of invention, industrial designs and models and trade-marks constitute what is known in legal terms as "industrial property". The industrial property system, or "the patents system" as it is often called, plays a very important role in the industrial organization of production and marketing, and hence occupies an important branch of business law. The subject of copyright, although it is originally studied under "literary" property, has acquired such a great importance for the modern publishing, broadcasting, motion picture and television industries that it could not be separated any longer from the study of industrial property as a whole.

Since the industrial property system has become indispensable for industrially developed countries, underdeveloped countries aspiring for industrial development, like Lebanon, should put sincere efforts to develop their industrial property system in such a way as to best serve the purposes of their development.

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ABSTRACT

The aim of this thesis is to study the industrial property system of Lebanon and the development of this system in such a way as to serve the purposes of economic development.

The rationale of patent protection consists of two groups of arguments, one based on the individual rights theory and the other on social welfare theories. The second argument is given preference and hence the needs of economic progress are taken as our basic guidance.

Patent protection was first introduced in the Italian commercial cities and England as early as the 14th century. International conferences in the second half of the 19th century resulted in agreements establishing international protection of industrial property. In Lebanon, the first laws of industrial property were enacted under the last part of the Ottoman rule and were soon replaced under the French Mandate by Decree 2385 dated January 17, 1924 which is still the industrial property law of Lebanon.

Patents of invention and industrial designs and models are studied in chapters III and IV respectively. Patentability depends on the elements of novelty and industrial utility. Some inventions are unpatentable either for special social needs or because of the public policy.

Ownership of patents carries with it a number of rights and obligations the most important of which is the obligation to use the invention. Protection of patents is ensured by criminal law.

Trade-marks serve to identify products with a definite source of supply. A trade-mark must show novelty and distinctiveness in order to be eligible for registration. Registration serves only as a prima facie evidence of ownership, while priority of industrial use is the ultimate source of ownership. As in the case of patents, property rights are protected by criminal law.

In chapter VI, the provisional protection of industrial and commercial expositions in Lebanon and abroad is briefly reviewed.

The international protection of industrial property was first established by the Convention of the Union for the Protection of Industrial Property signed at Paris, 1883. Principles of international protection include equality of treatment for nationals and residents of Union countries and the rights of priority in all Union countries for any person applying for protection in a Union country. International registration of industrial designs or models and trade-marks is carried in the International Bureau for the Protection of Industrial Property in Berne, Switzerland.

Copyright is developing quickly into a very important form of industrial property. Nature, scope and

procedure of protecting copyrights are studied in chapter VIII. International protection of copyright is based on the Convention of Berne which was recently supplemented by the Universal Convention at Geneva.

Chapter IX is devoted to criticisms and recommendations. The present industrial property system of Lebanon suffers from a number of defects such as obsolescence, ignorance of economic needs, stressing formalities rather than principles, and unverified registration. Recommendations for a developed law of industrial property include clear principles, efficient procedures and effective protection means. This law should be coordinated with the general economic policy and enforced in an atmosphere which inspires security and confidence in order to bring the best results.

CHAPTER I

THE RATIONALE OF PATENT PROTECTION

A. Introduction

Patents were subject to a big debate in the second half of the nineteenth century. At the time when the patent system was gaining more acceptance and spreading into most parts of Europe, some thinkers, intellectuals and economists started to challenge strongly the validity and soundness of its existence. In response, other thinkers, intellectuals and economists began to defend the patent system by developing a number of arguments following different lines of reasoning.

The protection of industrial property was the center of a hard debate in the second half of the nineteenth century which is far beyond the aims of this introductory chapter. It is sufficient for our purposes to examine the main arguments presented in favor of the patent system, summarize each argument, evaluate its criticisms, and come out with a clear body of reasoning supporting the existence of patent protection.

These arguments may be easily classified into two groups. One group builds its case on the concept of individual rights, while the other is mainly concerned with the interests of the society as a whole.

B. Individual Rights Arguments

These arguments stress the concept of justice to the individual. It is mere justice that a number of natural rights

should be safeguarded for the individual by law. The most important of these rights are (1) the right to reward and (2) property rights.

1. The Right to Reward

A man has a right to receive reward for his services in proportion to the usefulness of these services to society. Inventors render useful services by supplying society with new industrial inventions which lead to an increase in national wealth and national production. A reasonable reward for such contribution takes the form of patent protection.

Patents assure to inventors a monopolistic position in the market which they can exploit; their reward equals the total net revenue they can derive from such a position. "The price that society is willing in this way to pay is taken as a measure of the usefulness of the invention to society".¹ Market price serves as a rough measure for this purpose.

The economic theory of patents could be viewed as an attempt to include the production of inventions in the same framework of pricing as the production of goods; this is done by the creation of scarcity through limiting the use of the invention.² Thus, an economic rent is created to enable the inventor to receive a return on his achievement.

1. Edith T. Penrose, The Economics of the International Patent System, The Johns Hopkins Press, Baltimore, 1951, p.26.

2. Ibid., p. 29.

2. Property Rights

The right of property is one of the oldest natural rights recognized by all religions and most economic theories. Inventions, like all ideas, are considered as intangible property which carry a right of ownership by the inventor. Since the essence of ownership in all forms of property is the exclusive use of the property, patents seem necessary to protect the ownership rights of inventors.

The legal basis of this argument is strongly supported by economists like Lewis who maintains that "if a source and its fruit could not be protected against the public at large, it would certainly be misused, and hardly any person will find it worthwhile to invest in its improvement."¹

The international conference of Paris in 1878 held such "intellectual property" to be a sacred property right indistinguishable from material property by including in its resolutions the following principle:

"The rights of inventors and of industrial creators over their work or of manufacturers and businessmen over their marks is a right of property; the civil law does not create it, it only regulates it."²

However, this principle occupied an important part of the 19th century debate. Some economists refused it entire-

1. W. Arthur Lewis, The Theory of Economic Growth, George Allen & Unwin Ltd., London, 1955, p. 57.

2. Congres International de la propriete Industrielle tenu a Paris du 5 au 17 Septembre 1878, Comptes Rendu Stenographiques, p.250, as quoted in Penrose, op. cit. p. 32.

ly. Max Wirth, a German economist, wrote in 1863: "Inventions do not belong in the category of intellectual property, because inventions are emanations of the current state of civilization, and, thus are common property... Inventions are merely blossoms on the tree of civilization".¹ These counter-arguments were so strong that those who searched for reasonable justifications for patents turned to other arguments to strengthen their position.

Nevertheless, the legal status of industrial property rights today is a compromise between the two opposing views. Inventions are now recognized as property, but they differ from other property rights in that they have a limited life time, after which they expire and become a common property of the society as a whole.

C. Social Welfare Arguments

This group of arguments views patents as a tool of economic policy which may be used for the material welfare of the society. Justifications for the patent system should spring from the economic interests of the social group.

The main arguments here are two:

- 1) The flow of scientific knowledge argument, and
- 2) The economic incentives argument.

(1) Maintaining the Flow of Scientific Knowledge:

In the absence of patent protection, an inventor will keep his invention a secret which will die with him.

1. Max Wirth, Vierteljahrschrift für Volkswirtschaft und Kulturgeschichte, p. 222, as quoted in Penrose, op. cit. p. 23.

This way society is placed at a disadvantageous position and stands to lose useful scientific knowledge. The patent system steps in to encourage the inventor to disclose his invention in return for patent protection and so maintains the free flow of scientific knowledge.¹ Thus inventions become available for the use of present and future generations.

The theory has been put frequently in the form of a "social contract". The inventor enters into a contract with society according to which he agrees to disclose his secret, in order that it will be available later to the society, in return for a social obligation granting him the exclusive use of this invention for a period of time. However, a limitation arises from the fact that an inventor may not be ready to disclose his secrets unless he is in a position to exploit his invention materially.

Nevertheless, this argument remains a very popular one for the justification of patents.

(2) Economic Incentives

The essence of this argument lies in providing economic incentives for the exploitation of new knowledge. Inventions must become private property to encourage inventors to invent and private interests to finance invention research and development.

1. Lewis, op. cit. p. 173.

If industrial progress is the aim of economic policy, inventions and their exploitation are necessary to secure such progress. Two sub-arguments may be distinguished clearly in this context: one relating to the attitude of inventors and another to the attitude of businessmen.¹ Inventors are credited for their inventions, but businessmen alone are able to turn these inventions into successful innovations. But due to the fact that most modern inventions are made by salaried research teams and call for considerable expenses which may be financed only by businessmen, the two subarguments may be reunified for the favor of the latter group.

It is patent protection that induces entrepreneurs to introduce innovations which result in new patterns of production or consumption in the society leading it to economic progress. Without this protection entrepreneurs are not sure of being able to regain the high initial expenses of developing and promoting the novelty in the market before new competitors step in, thus adding to their manipulations an element of high uncertainty.

In this way patents function both as an incentive to invent and to exploit the invention for the economic advantage of the society.

1. Penrose, op. cit. p. 35.

D. Conclusion

The above arguments help to throw a strong light on the question of patents. But they do not constitute a definitely conclusive case for introducing patents if patents did not exist before. It is probably impossible to figure out how adequate the flow of inventions would have been if there were no patent privileges of any kind. According to one authority on the subject, "The patent system in its present form is a highly artificial creation emerging from a process of legislation in which the role of pressure groups and muddled thinking has been unfortunately only too prominent; and no convincing argument has been put forward to show that the abolition of the present system... would be unjust to inventors or diminish the flow of invention".¹

In the absence of definite certainty in such a hard debate, we may resort to the most solid of our arguments: the social welfare argument. The interest of the society and the needs of its economic progress should be taken as our basic guidance. It is from this angle that we are going to evaluate the patent system of Lebanon and recommend amendments thereto.

1. Lionel Robbins, The Economics Basis of Class Conflict, p. 73, as quoted in Penrose, op. cit. p. 41.

CHAPTER II

ORIGIN AND HISTORY OF THE PATENT SYSTEM

A. Early Beginning

Long before any organized patent system was known anywhere, a number of early patents appeared in different countries. These early patents give a good illustration of the beginnings. Four of them are known over a period of two hundred years and have no predecessors in their respective countries. The earliest patent is dated March 2, 1236. This was a grant by King Henry III of England, also ruler of Western France, confirming a grant by the Mayor of Bordeaux to Bonafusus de Sancta Columba "whereby he and his fellows alone in Bordeaux were permitted to make cloths of divers colours after the manner of the Flemings, the French, or the English, for a term of fifteen years, at the end of which period anyone is to be at liberty to make any and as many clothes as they please and the said Bonafusus and his fellows are to have no advantage."¹

The next known patent can be traced to Florence, Italy, where a privilege was granted in 1421 to Filippo Brunelleschi, an engineer, for a method of transporting heavy loads on the Arno and other rivers which would operate

1. A.A. Gomme, Patents of Invention. Published for the British Council by Longmans' Green & Co., London, 1948, p. 5.

at a lower cost, for a period of three years.¹ "Because Brunelleschi did not want to give the invention to public use for fear of being robbed of the reward for his labours, the privilege is granted with the express intention not only that the invention may be made useful as well for himself as for the generality, but particularly also that he himself may be urged to further exertion and stimulated to achieve great inventions; the government agrees to protect against unauthorized working and to grant the author an immediate monopoly for the period stated by prohibiting the use of every form of transport ship not in use at the date of the privilege unless it be built by Brunelleschi himself or with his consent."²

The third and fourth instances were in Venice, 1444 and England, 1449. The latter one was given to John of Utynam "because his art of making coloured glass has never been used in England" and he intended to teach the country many arts which were never known then before.³

These privileges were given as grants by the King in England and the Senate in Venice or other Italian republics. Patents were issued in Italy or England as

1. Ibid., p. 6.

2. G. Gaye, Carteggio Inedito D'Artisti dei Secoli XIV. pp. 547-9, referred to in Gomme, op. cit. p. 6 and p. 46.

3. Ibid., P. 6.

monopoly privileges for a period of time under no system or statutes.

B. Patent Organization in England and Venice.

The first regular practice of granting patents in the world is probably that which began in Venice about 1475 upon a declaration of the Senate.¹ This declaration provided for the protection of all inventors not known previously on Venetian territory for a period of ten years and prohibited infringements of protected inventions subjecting infringing machines to destructions. This seems to be the earliest official legislation directly related to the subject of patents.²

The development of patents in England and Italy, and later in the sixteenth century in other parts of Europe, was clearly a result of the economic progress towards industrialization achieved by those countries. England managed to attract new industries to its shores by giving government protection through patents to foreign workers bringing to the country their expert knowledge of new craft. This practice was well established by the middle of the fourteenth century. The first law of patents in England was James I proclamation of 1610. But the Statute of Monopolies came in 1624 to limit the powers of the crown and lay down conditions on which patents may be allowed. This statute remained in force with few amendments till the late

1. Ibid., p. 7.

2. Ibid., p. 8.

nineteenth century.¹

We may conclude this section by noting that the originating and development of patent legislation and practice in England and Italy, representing other industrial European countries as well, was a result of the economic growth and industrial development of these countries.

C. International Conferences and the Development of the International Protection of Industrial Property

By the second half of the nineteenth century, the patent system had spread into most parts of the civilized world. Difficulties started to take place from the conflict of different patent laws on the one hand, and from the fact that patent protection within each country was confined to its national boundaries, on the other. The interest of patentees in the use of their inventions frequently extended beyond the jurisdiction of any one country.² What was considered an invention in one country was excluded from protection according to the laws of another country. As a result of that, demands from various quarters for the adoption of international regulations increased.

Patent lawyers, jurists and manufacturers joined in the demand for international legislation.

1. Ibid., P. 16

2. Penrose, op. cit. p. 42.

1. The Vienna Congress of 1873

The first conference to deal with the protection of industrial property rights on an international level met in Vienna in 1873. This conference was held at a time when the controversy between the patent and anti-patent forces in Europe was still lively.¹

Though it was unofficial, 13 countries were represented in the conference. The resolutions were very general, stressing the necessity of patent protection. The conference's final resolution called upon the governments "to bring about an international understanding about patent protection as soon as possible", and empowered a preparatory committee to continue the work began by the conference.²

2. The Paris Conference of 1878

Although representatives from eleven governments and 48 chambers of commerce attended it, this conference was also unofficial. Its resolutions reflected almost exclusively the patentees' point of view.³ Some of the important principles adopted by the conference are the principle that foreigners should have equal rights with nationals in each country; that the importation of patented products by a patentee should not cause revocation of his patent; that it

1. Ibid. p. 46.

2. Ibid. pp. 47-48.

3. Ibid., p. 49.

should be possible for a patent claim to be made simultaneously at the appropriate national office and the consulates of other nations at the same time.¹

This conference revealed a big obstacle to agreement on uniform patent laws presented by the question of the previous examination of the invention. According to French law, patents were issued on the claim of the inventor without any examination of the validity of this claim. But the laws of many other countries required an examination of the novelty and utility of an invention before granting it patent protection. Since delegates from French chambers of commerce and societies constituted a majority, the conference eventually adopted the French point of view.²

Due to this and similar differences, the conference did not reach a final agreement on the nature of an international patent law. A "Permenant international commission was charged with the task of carrying out the resolutions of the conference and of preparing for a new conference called officially by a government for the purpose of reaching a uniform international legislation".³

3. The Paris Conference of 1880 and the International Union for the Protection of Industrial Property
Upon the invitation of the French government, repre-

1. Ibid., p.53.

2. Ibid., p.54.

3. Ibid., p.57.

sentatives from 18 governments met in Paris in 1880. A draft convention presented by the French government was adopted with some amendments. In 1883 ratifications of the convention after it was finally approved and signed were exchanged at a brief conference. The next year, eleven countries joined in the International Union for the Protection of Industrial property.¹

Later, the convention was revised by six conferences held at Rome, 1886-88, Madrid, 1890-91, Brussels, 1897-1900, Washington, 1911, The Hague, 1925, and London, 1934.² The text at present in force is that revised by the Conference at London on June 2, 1934.

4. Other Conferences and Agreements

After the convention of the International Union for the Protection of Industrial Property was signed at Paris, a number of international conferences were held which resulted in a number of important agreements. The most important conferences and agreements are listed as follows.

a) The Conference at Madrid:

This conference was held in 1891 and resulted in two agreements signed on April 14, 1891. The first is the Agreement on the Suppression of False Indications of the Origin of Goods and the second is the Agreement Concerning

1. Ibid., p. 57.

2. Revue Egyptienne de Droit International, published by the Egyptian Society of International Law, Cairo, 1950, p. 11.

The International Registration of Trade-Marks. Both of these agreements were later revised at several international conferences.

b) The Conference at the Hague:

As a result of this conference, which was held in 1925, the Agreement Concerning the International Registration of Industrial Designs or Models was signed on November 6, 1925. A revision was also signed of the agreements made at Paris and Madrid mentioned above.

c) The Conference at London:

This conference, which ended its works on June 2, 1934, resulted in a final revision of all international agreements reached before on the subject of industrial property. In addition, the conference adopted regulations for the execution of the agreements concerning the international registration of trade-marks and industrial designs or models. The conference at London is by far the most important conference which dealt with the subject of industrial property until now. The revisions which took place in it gave the international agreements on industrial property the final shape which will be the subject of our detailed consideration.

D. The Development of Industrial Property Legislation in Lebanon:

The first regulation for the protection of industrial property known to Lebanon was issued in the second half of

the nineteenth century when the country was under Ottoman rule. The French occupation brought with it in 1920 new regulations which were declared by the Mandatory Authorities. Under the Mandate, Decree No. 2385 dated January 17, 1924 was issued as a permanent statute for the commercial, industrial, artistic property rights and copyrights. We shall consider these three stages in the development of patent legislation briefly as follows.

1. The Ottoman Period:

The first Ottoman law relating to the protection of industrial and commercial property rights was issued about 1872.¹ This was a statute organizing the protection of trade-marks. Before that there was probably no legal protection whatsoever given to marks of trade. This statute was replaced in October 8, 1888 by a new law fixing a 15 years period of protection for trademarks renewable indefinitely by following a simple procedure.²

Under these regulations, applications for obtaining a trade mark patent were presented to the Department of Trade which had the exclusive right of issuing such patents.

The law of patents of invention was issued about 1880.³ This law introduced a modern system of patents

1. 24 Jamadi Al-Akhar 1288 Higerieh.

2. The Trade Mark Statute of October 8, 1888, Article 4, Majmouatul Qawanin. Published by Yusuf Sader, Beirut, 1929, V. 2, p. 280.

3. 10 May, 1292 Maliah.

which defined clearly the conditions and procedure of obtaining patents of invention. Under this law, patents were given for periods of 5, 10 or 15 years depending on the fees paid for each period.¹ All pharmaceutical products were not patentable.² The rights of the holder of a patent of invention were lost in one of the following three conditions:

- 1- If he did not pay the annual fees.
- 2- If he did not use his invention within a two year period or ceased to use it for two consecutive years.
- 3- If he imported to Ottoman territory products of foreign countries similar to the products protected by the patent.³

The third condition was meant to prohibit merchants from trying to acquire a monopoly of importing some foreign products by patenting the same products locally.

The Copyright Law followed in about 1909.⁴ Under this law, the copyright belonged to the author for the whole of his life time and to his heirs thirty years after his death, then it becomes public property.⁵ As a condition for that, three copies of the intellectual product to be

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1. The Law of Patents of Invention, Article 4, Majmouetul Qawanin, published by Yusuf Sader, Beirut, 1930, V. 6, p. 397.
 2. The Law of Patents of Invention, Article, 3, Ibid., p. 387.
 3. Law of Patents of Invention, Article 38, Ibid., p. 393.
 4. 10 March 1326 Maliah.
 5. Copyright Law, Article 6, Majmuatul Qawanin, Published by Yusuf Sader, 2nd print, Beirut, 1930, V. 4, p. 295.

protected should be deposited in the Department of Education against the payment of a certain fee.

Hence, by the end of the Ottoman period, Lebanon had a modern, though inefficiently applied, system for the protection of rights of Industrial and Commercial property and copyrights.

2. The French Occupation and the Beginning of the Mandate

The first addition the French Mandatory authorities made to the existing patent laws was the decree No. 769 dated March 19, 1921. This decree instituted temporary protection for all the goods exposed in a fair for the duration period of this fair.¹

Another decree, No. 865 dated May 27, 1921, introduced a new system for the registration of trade-marks. The main difference between this system and the Ottoman statute was the establishment of a patent office (Bureau for the Protection of Industries and Arts) and the provision for the registration of trade-marks in this office and in the office (Qalam) of the Court of Appeals at the same time (Article 3).² This decree was followed in September 1921 by special instructions from the French High Commisariat setting the detailed procedure for the registration of trademarks,³ and in December of the same

1. La Revue Juridique, published by Yusuf Sader, Beirut, 1921, p. 241.

2. Ibid., p. 242.

3. Ibid., p. 373.

year by decree No. 1136 amending some details of the first law.¹

But the Ottoman laws relating to the patents of invention and copyrights were left unchanged.

3. Decree No. 2385 and Its Amendments

In 1923, the French High Commisariat appointed a committee for the drafting of a new, comprehensive law for the protection of commercial, industrial, artistic, literary and musical property rights. On January 17, 1924, Decree No. 2385 containing the results of the work of the said committee was issued by the French Commisariat. This decree was amended later by many decrees, legislative decrees, and Lebanese laws. It constitutes, with its amendments, the law now in force regulating the patents and copyrights system of Lebanon.

This law, together with the judicial decisions of Lebanese courts, will be the basis of our discussion of the Lebanese patent system.

1. Ibid., p. 371.

CHAPTER III

PATENTS OF INVENTION

A. Introduction

Patenting of inventions presents a number of issues the most important of which is patentability of the subject matter. Many problems result from the question of patentability that are left for courts of law to resolve. Other issues relate to rights of ownership and exploitation, their transfer by all means, and their loss by expiration, acceleration or legal nullification. Still other questions relate to formal procedure of applying for patents, prosecuting the applications and paying the taxes due on them.

B. Patentability of Inventions

Which inventions are patentable?

Articles 1-3 of Decree 2385 define explicitly and implicitly inventions that may be granted patent privileges. The invention must be industrial, new and relating either to new industrial products, new means of producing established products or new applications of a known scientific principle or industrial process. Three classes of inventions are denied patent protection: financial combinations (combinaisons financieres), pharmaceutical products and inventions contrary to public policy.

These conditions of patentability and unpatentability will be studied in the following paragraphs.

1. Conditions of Patentability

a) Only Industrial Inventions are Patentable

The industrial utility of the invention is the primary criterion which decides its patentability. Scientific discoveries of new ideas, principles, formulae and natural phenomena are not patentable until they are applied to a certain industrial problem or used to achieve a certain industrial result. New ideas and theories are not patentable until they are applied to serve an industrial purpose. It is the industrial feasibility of the invention or its suitability for practical use in industry that decides whether it may be granted a patent or not. Its profitability from the business point of view does not make any difference because costs of production may change by time.

The discovery of Radium could have been patentable under no law in the world. So is the discovery of the law of gravity. The great scientific principles of electricity discovered by Thomas Edison can not be patented, but the various industrial inventions he based on those principles like the electric lamp, the phonograph and the motion picture projector were granted patent protection without any difficulty.

b) Only New Inventions are Patentable

The element of novelty is another basic condition for an invention to be patentable.

The subject of a patent application should not be

known, used or published before. Slight changes or variations in an old product are not enough to constitute the element of novelty in an invention subject of a patent application. The invention should be new in the sense that it embodies a radical change from what was known before. The element of novelty in it should be so strong as to give the invention a separate entity distinguishable from all other established products and methods.

Article 44 of Decree 2385 stipulates that an invention to be considered new must not have been published before in Lebanon or outside the country. Such publishing, to render an invention unpatentable, should not release information enough for the practical application of the invention. Exceptions from this rule are provided for inventions granted special certificates from expositions in which they were placed.

2. Kinds of Patentable Inventions

Decree 2385 specifies three kinds of patentable inventions:

- 1) Industrial products,
- 2) New Processes of producing an established product and
- 3) New applications or uses of a known scientific principle or method.

1) Industrial Products: To be patentable, the invention should result in a new industrial product suitable

as such for industrial uses. Patents issued for such inventions are called "brevets de produit" or product patents. They give the patentee a monopoly to manufacture the new invention. The monopoly means that nobody is allowed to manufacture the same product even by applying different methods or procedures.

This is the strongest kind of patent protection available under any patent law.

2) New Processes of Producing an Established

Product: Here the industrial product is already established and well-known. Inventions of new processes or means to produce such a product are patentable under Lebanese law. However, these patents are not effective until the product patent has expired and everybody is free to produce that product. A patent issued for such inventions is called "brevet de procede" or process patent.

New methods of treating wool to prevent its shrinkage when washed, of producing paper from rags and worn materials, or of manufacturing unbreakable glass are some examples of method patents.

This kind of patents makes a second defence line behind product patents. After product patents expire the patentee may seek to extend his monopoly by obtaining a patent of the manufacturing method unless he finds it more practical to keep his method a secret.

3) New Applications or Uses of a Known Scientific

Principle or Method: The scientific principle

or even the industrial method may be known, but their utilization in a new way or application to a new use constitutes an element of novelty which justifies patent protection.

The Conseil d'Etat (the supreme administrative court of Lebanon) held that an electrical machine used for the carrying-out of a lottery is considered an invention although it is an application of the known principle of alternating electric current if a novel device is used in it to apply that principle.¹

Even the industrial result may be known. But the application of the known principle or method to achieve this known result constitutes the novelty. An example of this is the use of electricity to establish a wireless telephone system. Another example is the use of cement in the manufacturing of tubes and pipes.

3. Unpatentable Inventions

Article 3 of Decree 2385 declares three classes of inventions as unpatentable: a) financial combinations, b) pharmaceutical products and medical prescriptions, and c) inventions contrary to public policy.

By "combinaisons financieres", as quoted in the law itself, is meant all financial methods, arrangements, or combinations. This provision was embodied also in the

1. Revue Judiciaire Libanaise, a monthly review published by the Ministry of Justice, Lebanon, Beirut, 1946, p. 312.

Ottoman law of patents of invention.

Although the term used is a little vague, we may easily derive from it a number of applications. The invention of a new accounting system is not patentable. So is the invention of a new method of book-keeping or of inventory accounting. Furthermore, techniques of doing business or handling transactions are not patentable however novel and inventive they may be. Since talent and success are very difficult to borrow or imitate in business, the financial methods they employ need not be patented.

b) Pharmaceutical Products and Prescriptions

The unpatentability of this class of inventions in Lebanese law is more strict and comprehensive than in many other laws in the world. The aim of this provision is to prevent the formation of monopolies injuring social interests. Prescriptions, or methods of medical treatment, should not be patented for the same reason.

In the United States compositions for medical treatment are distinguished from methods, and the inventions relative to the former only are patentable. But the U.S. Patent Office requires evidence that the patented composition is safe in use, effective for its purpose and dependable.¹

The Egyptian law takes a middle position between Lebanese and American patent laws. Methods of producing

1. Robert Calvert, Patent Practice and Management, Reinhold Publishing Corporation, New York, 1950, p. 28.

pharmaceutical products are patentable without the products themselves.¹ A patent may be granted for a method of manufacturing quinine, for example, but not quinine itself. Methods of medical treatment are also unpatentable in Egyptian law.

c) Inventions Contrary to Public Policy

Inventions such as those relative to gambling machines or contributing to an immoral purpose or a purpose prohibited by law are not patentable. This is an obvious reason for unpatentability for one can not separate the invention itself from the purposes it is meant to serve.

C. Application for a Patent

1. Who May Apply

Any one may apply for a patent (article 5 of Decree 2385). This means that no guarantee for the applicant's ownership of the invention is required. Foreigners may apply through an attorney domiciled in Lebanon. The application letter should be in Arabic but the technical description of the invention may be in a foreign language. The letter must contain the name of the invention, the name of the inventor, his profession, nationality, domicile or the name of his attorney, and a summary of the subject of the invention. The applicant should indicate whether

1. Moustafa Kamal Taha, Al-Qanoun At-Tijari (Commercial law), Remsis Press, Alexandria, 1956, p. 849.

he applied for a patent in another country and whether he was granted such patent or not.

2. Application Procedure

Applications may be filed for only one invention at a time. They must be accompanied by a closed envelope containing two copies of the following papers: a) a description of the invention, b) plans and drawings necessary to understand the invention, and c) a list of the enclosed documents.

Before filing the application, the annual dues of the first year of the patent should be paid in advance. However, should the applicant be willing to pay the dues of five years in advance he will benefit from a 5% discount. A discount of 7% is applicable for the payment of the dues for ten years, and of 10% if the dues for the whole period were paid at once.

The day and hour of the filing of the application is recorded in a special register signed by the Director of The Patent Office. After a period of 8 days, the patent certificate is issued without any guarantee as to the accuracy, validity or novelty of the invention.¹ All disputes arising from that are left for courts later to resolve.

However, the patent application may be rejected for one of the reasons of unpatentability. In this case the applicant has the right to appeal before the Conseil

1. Article 44 of Decree 2385 as amended.

d'Etat within a thirty-day period from the date he is notified of the rejection decision.

If the application is considered incomplete as to form or lack of sufficient documents, it is turned back to the applicant to complete the missing requirements within a period of two months, or else the application will be considered as withdrawn.

Finally, if the invention is found by the Patent Office to be in reality a number of separate inventions, the Office may ask the applicant to present a separate application for each of these inventions, but the patent protection will be applied to all of them beginning from the date of the original application.

D. Ownership of the Patent

1. Rights of a Patentee

A patentee has a right of ownership in his patent. This property right means exclusive exploitation rights of the patented invention by all means. But the lifetime of the patent protection, and so of the rights springing from it, is limited. This period is defined by Lebanese law at 15 years beginning from the date of filing the application to the Patent Office.¹ The Egyptian law fixes a similar period for the validity of patents with two exceptions:

a) The patentee may apply in the last year for the lengthening of the period for a new term of five years provided he

1. Article 3 of Decree 2385 as amended

proves that his invention is of special importance and that he did not receive from it a return proportional to efforts spent and expenses incurred by him for that purpose. b) Patents of pharmaceutical methods are granted for a period of only ten years.¹ The period of protection in France, Belgium and Spain is 20 years.²

2. Obligations of a Patentee

In return for the monopoly rights secured for him by law, a patentee is under two basic obligations:

- a) To put his invention into industrial use, and
- b) To pay annual dues on his patent.

a) The Obligation to Put the Invention into Industrial use

If it is the material welfare of the society and its industrial progress that justify the granting of patent protection, then this protection must contribute directly to its purpose within a reasonable time limit. This rule is adopted by most patent laws of world.

Hence the patentee is under a legal obligation to exploit his invention and put it in to actual use within a period fixed by Lebanese law at two years. It is the

1. Taha, op. cit. p. 861.

2. Calvert, op. cit. p. 314.

industrial exploitation of the invention that counts to find out whether the patent is put into use or not. The patentee may licence the production of his invention to some other party or go ahead with it on his own.

If this obligation is not fulfilled within the legal time limit, the patentee loses automatically his patent rights and the invention becomes a common property of the public. Laws of some other countries do not provide for an automatic cancellation of patent rights in this event. Instead, they provide for an arrangement of compulsory licencing (licence obligatoire). The Egyptian law gives the Patent Office the authority to issue compulsory licences for the exploitation of the invention in the following cases:

1) if the patent is not exploited in the country within a three-year period from its granting,

2) if the exploitation of the patent is later discontinued for a period of two years,

3) if the patentee is unable to exploit the patent in a way which fulfils the needs of the country.

4) if the patented invention is needed to complement another patent considered to be of vital importance to national economy. In this case a compulsory licence may be given to the second patentee.¹

The compulsory licence is given against a suitable compensation for the original patentee. However, if the new

1. Taha, op. cit. p. 864.

licencee fails to exploit the patent within a period of two years from the date of his licence, he may lose his rights together with the patentee. The patent then is declared cancelled, and the invention becomes a common property of the public.¹

But Article 46 of Decree 2385 provides for the temporary relief of the patentee from the obligation to exploit his patent if he proves that he offered his patent for exploitation to capable industrialists and that he did not refuse licencing demands for such exploitation on reasonable terms. However, this provision is now being misused and missinterpreted. The only proof provided by patentees for this purpose is the annual publication of an advertisement in a local newspaper containing an exploitation offer put in general terms. Such a proof is being accepted by the patent authority as fulfilling the legal provision of article 46.

b) The Obligation to Pay Dues

Through-out the life time of the patent, a patentee must pay annual fixed dues to the Patent Office. These dues are progressive and increase gradually from 15.00 L.L. in the first year to 57.00 L.L. in the fifteenth year as shown in table I. Annual dues are payable before the beginning of each year. Failure to pay within a period of

1. Ibid., p. 865.

six months from the beginning of the year will lead to the loss of patent rights.

These dues are useful to determine which patents are still worth anything and which ones are worthless. Defaults in the payment of dues beyond the legal limit are an implication that the patentee has lost interest in his invention or that the invention itself has become obsolete.

TABLE I

ANNUAL DUES ON PATENTS OF INVENTION IN LEBANON

YEAR	DUES IN L.L.
First year	15
Second year	18
Third year	21
Fourth year	24
Fifth year	27
Sixth year	30
Seventh year	33
Eighth year	36
Nineth year	39
Tenth year	42
Eleventh year	45
Twelvth year	48
Thirteenth year	51
Fourteenth year	54
Fifteenth year	57
Total dues	540

Source: Article 10 of Decree 2385 dated Jan. 17, 1924 as amended.

Thus unnecessary protection is removed from worthless or neglected inventions.

Another alternative to face default in the payment of dues would be to place an attachment on the patent and offer it for sale in public auction. This method is not provided for in Decree 2385 but there is nothing that prevents its application in accordance with general legal principles. It may look ineffective for worthless patents, but it may result in a useful reallocation of patents which are neglected by patentees for one reason or another while others may be able to exploit them successfully.

3. Transfer of Rights in Patents

Property rights of patents may be transferred by sale or gift, wholly or partially. The right of ownership may be retained while transferring the rights of exploitation only.¹ The patent may be used as a security, pledged, or presented as an advance in kind for a corporation.

Decree 2385 created a procedure for the registration of transfers of rights to patents similar in many respects to the land registration system. All transfers are not considered valid in the face of third parties unless recorded with the required details in a special register in the Patent Office. All interested parties may obtain copies of these records upon the payment of a certain fee.

1. Article 30 of Decree 2385 as amended

Compulsory registration of transfers may take place by court decision. A unique rule different from the land registration system provides for publishing all transfers of patents in the Official Gazette.

4. Attachment and Forced Sales of Patents

Creditors of a patentee may place an attachment on the patent in a way similar to attachments on real property. The patent is blocked from the time the Patent Office receives an official notification of the attachment judgement or a written request enclosing a copy of the instrument of credit, and until the forced sales of the patent in public auction is ordered by court.¹ Any transfer of rights concluded during this period is invalid.

5. Improvement Patents

Supplementary patents may be issued for improvements in an invention protected by an original patent. A patent of improvement has the same life duration as the patent of the original invention and expires by its expiration. But the improvement patent has a separate entity. It may be owned by a different patentee in which case the patentee of the original invention may not use the improvement without the former's consent. Patents of improvement are subject to annual dues which are as progressive as those of original patents but ranging from 9.00 L.L. in the first

1. Articles 35 and 37 of Decree 2385 as amended.

year to 51.00 L.L. in the fifteenth year.¹

The procedure of applying for patents of improvement are the same as for original patents. Furthermore, holders of those patents may request that their patents be changed to original patents upon the payment of the annual dues on original patents. Nullification of an original patent for lack of novelty does not affect improvement patents related to it as long as the annual dues on the latter patents are regularly paid through-out the remainder of the life duration of the nullified patent.

E. Nullification and Acceleration of Patents

As we have seen before, patents of invention are given in Lebanon for all patentable objects without any guarantee as to the accuracy, novelty or validity of the invention. No investigation is conducted in advance to determine the patentability of the invention under application like the one carried out by the Patent Office of the U.S.A. and some other countries. This principle is obviously of French origin and was adopted by the French-influenced Paris Conference of 1878.²

So it becomes the responsibility of courts to settle all disputes or claims that may result from unverified patenting.

1. Article 29 of Decree 2385 as amended.

2. See pp. 12-13

1. Who May Demand Nullification?

All interested parties are entitled to file law-suits for the nullification or acceleration of patents. At the same time, public prosecution may either interfere in the pending law-suit or bring a separate law-suit requesting a judgement to nullify or accelerate a patent.

Such suits should be made in the face of all registered beneficiaries of the patent under consideration.

2. Causes of Nullification

A patent is considered null and void and having no effect what so ever in the following events:

- a) If the patented invention, is not a novelty. The element of novelty was discussed thoroughly above.¹
- b) If the invention is in reality unpatentable.²
- c) If the discription, plans and drawings of the invention are not sufficient to put it into actual use.
- d) If the name given to the invention implies deliberately something other than the invention itself. This is by large a measure to prevent later fraud.

In these cases, a judgement declaring the patent as null is considered effective beginning from the date the the patent was issued by the Patent Office.

1. See pp. 21-22 above.

2. See pp.24-26 above.

3. Causes of Acceleration

The life duration of a patent may be accelerated and patent rights lost in a number of events some of which have already been discussed before but ~~are~~ reconsidered here for sake of comprehensiveness.

- a) Default in the payment of dues for a period of six months.¹
- b) Failure to exploit the patented invention for a period of two years.²
- c) The importation by the patentee from foreign countries of products similar to those protected by his patent, subject to provision of international agreements applicable in Lebanon.

In these cases, the termination of patent rights by acceleration does not have a retroactive property. All cases of infrⁿg_Aement which take place before the date of acceleration may be prosecuted as usual, while this is not true in the event of nullification as we have seen above.

F. Protection of Patent Ownership

A patent monopoly is not of much value if the law does not provide effective measures to protect it. In this context, Lebanese law, like most other laws, maintains two possible approaches, the civil approach, and the criminal approach.

1. See pp.31-33 above

2. See pp.29-31 above

1. The Civil Law Protection

According to civil law, all those who commit an unjust or illegal act are responsible for the full damages resulting from such act. In addition to the damages' claim a patentee may present before a court, he has the right to request the Justice of Urgency to order the stopping of all production operations resulting in an infringement of the patented invention. Furthermore, an attachment may be placed on the stock of products produced through infringement to prevent its disposal before the law-suit is decided.

There are no special legal provisions organizing the civil law protection of patents as such but the general principles of law apply in connection with the provisions of Decree 2385 here.

2. The Criminal Law Protection

The Lebanese Penal Code provides for two kinds of penalties which are applicable to infringements of patents: a) general penalties b) special penalties.

a) General Penalties

General principles of criminal law may be applied for patent protection. According to one principle, all those who use with no legal right something that belongs to others, in a manner which causes harm to the latter ones, are subject to a prison penalty up to six months

and a fine penalty ranging from 25 to 100 L.L., or one of these two penalties.¹

b) Special Crimes

The Penal Code contains special provisions for the crime of infringing patents of invention and the crime of fraudulent competition.

1) Infringement Crime

The crime is provided by law in general terms penalizing all acts that cause harm to rights derived from a patent of invention granted and published according to law. Two kinds of penal responsibility are stipulated by law. The first is the responsibility of those who were either employed by the patentee or assisted him in whatever capacity, then took a part in the infringement of his patented invention. The penalty for this responsibility ranges from three months to three years of imprisonment and 250 to 1000 L.L. as a fine or either one of the two penalties. The responsibility of people other than those mentioned above carries only a fine penalty of a 100 to 500 L.L.

In addition to the above penalties, the infringers, who are repeatedly accused of infringement crimes, may be penalized by prevention from doing the industry or trade in which the crime was committed, and by prevention from exercising some civil rights.

1. Article 651 of the Lebanese Penal Code.

2) The Crime of Fraudulent Competition

Article 714 of the Penal Code stipulates that the act of using fraud and false information in competition constitutes the crime of fraudulent competition which is subject to a fine penalty of 50 to 500 L.L.

3. Conclusion

The protection provided by Lebanese law for patent rights is still, as we have seen, far from being sufficient or effective. Penalties set by criminal law are very light and all stipulated prison sentences are replacable by fines which do not rise to more than 500 or 1000 L.L. Using the criminal approach is faster and results in immediate judicial action. The civil approach seems to be more secure, but its procedure is slow except for the orders of the Justice of Urgency which may bring quick results sometimes.

This problem shall be left at this stage only to be dealt with again in the chapter on criticisms and recommendations.

CHAPTER IV

PATENTS OF INDUSTRIAL DESIGNS AND MODELS

A. Introduction

Industrial designs and models are works of art used on articles of manufacture. They include all sorts of drawings, forms, and designs used on industrial products either for adding value to the product itself or for differentiating it from products of competitors in a way that appeals to consumers' tastes and preferences. These designs and models are classified under industrial property and are, therefore, patentable. Patents of industrial designs and models are similar to patents of invention in many respects, but they differ from them as to the duration of protection together with other respects. The protection of industrial designs supplements that of inventions and serves similar purposes in the economic life of the society.

Many countries of the world still consider the protection of industrial designs and models as an indivisible part of copyright. This was the case in the U.S.A. until recently when a separate act for design patents was introduced in an effort to provide more adequate protection for design originators.

In this chapter, we shall study the nature of patentable designs and models, their registration and depositing procedure, property rights, and protection measures

applicable to them.

B. Nature of Patentable Designs and Models

Under this section, the nature of patentable designs and models shall be explored both directly by studying tests of patentability and indirectly by differentiating them from inventions, on one hand, and artistic property, on the otherhand, giving illustrations thereof.

1. Tests of Patentability

The conditions of patentability for designs and models are very similar to those for inventions. However, some differences may be found from studying these conditions as follows:

a) Industrial Utility

The design or model must be industrial, that is prepared for use in industrial purposes. It must form an indivisible part of the industrial product it is applied to.

b) Novelty and Originality

The design or model must be novel and original. The elements of novelty and originality are already discussed under patents of invention. Novelty is defined by article 49 of Decree 2385 as consisting of the external appearance showing special characteristics which distinguish the design or model from other known designs and models. Originality is a feature of artistic creativeness which adds to novelty in giving the design or model a distinct entity.

Novelty and originality are lost by the reuse of the same design of model on similar products or on products manufactured by the same industry. A design used on cotton textiles may be considered novel and original if patented for use on wrapping paper, but is not considered as such if it is reused on silk cloth. Consequently, the same design or model may be patented for use on different products belonging to different industries but may nevertheless retain the property of novelty and originality in each instance. Hence it is the application to the particular article in question that matters for novelty and originality tests.¹ This is one of the few principles adopted by most patent laws of the world including Lebanese, Egyptian and American laws.

c) Unlike inventions, the publicizing of the design or model before it is deposited for patenting does not result in its unpatentability. If such previous publicizing is made by someone other than the patentee, it may only result in a legal dispute on the priority of ownership claims by either of the parties. This question will be discussed in a later section, but the ultimate owner will unquestionably enjoy all patent rights.

2. Difference Between Designs or Models and Inventions

As we have already seen, an invention contributes

1. Harverd Law Review, Published by Harvard University Law School, Cambridge, 1959, p.1523.

directly to industrial production of commodities, either by introducing new products or new means of production. Designs and models contribute only to the last stage of production, that is to say. Such contribution comes either in the finishing or the packaging stage to give the product an external appearance which appeals to consumers. The creation of a new kind of paper tissues may be considered an invention, but the original pattern of the tissues' appearance is a model and the drawing used on it is a design.

The differentiation between inventions and designs or models is useful for many practical purposes as we shall see. The Lebanese patent law stipulates that if the subject matter of a patent application can be considered an invention rather than a design, it should be then patented as an invention only. If the elements constituting the design may be separated from the elements constituting the invention or are distinguishable from them, the applicant may benefit from the protection provided by both patents (invention and design) on condition that he pays the dues required for each of them.

3. Difference Between Designs or Models and Artistic Property

A design or model remains a kind of artistic property until it is put into industrial use in connection with products and commodities. In the first part of its life period, it is under copyright protection, in the second part, it is subject to patent protection. So

1. Article 51 of Decree 2385 as amended.

the difference between an industrial and an artistic design is that the former is used for industrial production while the latter is used by itself for the satisfaction generated by its artistic beauty.

This differentiation is necessary because each of the two kinds of property has a different life time. Also, the protection of industrial designs comes only as a result of registration and patenting, while artistic works are protected by copyright laws without any previous registration.

However, the patenting of an industrial design does not prevent the patentee, after the expiration of the patent, from claiming protection of his work as a pure creation of art under copyright provisions.¹

4. Examples of Patentable Designs and Models

Article 50 of Decree 2385 states a number of illustrations of designs and models which may be patented. These include cloths bearing drawings and decorations, decorated paper covers for walls, new models of clothes, coats, hats, beauty supplies, shoes, covers of tubes, bottles of wines and alcoholics, bottles of drinks and perfumes, covers and packages of hard paper used for pharmaceutical products, and all external forms of commodities

1. Taha, op. cit. p. 884.

or products. These examples are given only for illustrative purposes and are not exclusive.

C. Registration and Deposit Procedure

Designs and models are deposited in the Patent Office for acquiring patent protection under the terms of either open or secret depositing. If secret depositing is elected, the design or model must be submitted to the Patent Office in a sealed box which may not be opened for the first five years without the request of the patentee. No actual "patent" is issued, but the deposited objects enjoy patent protection if they meet the tests of patentability. On the other hand, under the terms of open depositing the subject matter of the patent application is revealed to the patent authority and put under the disposal of the public. Any one may secure a photostatic copy of the deposited design or model upon the payment of a certain fee.

We shall start by studying the application procedure as such, then consider the conditions of protecting designs and models under secret depositing and of changing this into open depositing by declaring the subject matter.

1. The Application

The patent application must be filed by the applicant or his authorized attorney. It should be written in Arabic with the following details:

- a) name, domicile and nationality of the applicant and his attorney if necessary.

b) Nature and number of the things to be deposited.

c) Duration of the demanded protection.

d) Nature and number of the things to be declared.

Enclosed with the application must be two copies or models of the subject matter and two copies of the statement pertaining to it. A number of objects as large as one hundred may be presented for protection through the same application. If these objects are turned in a sealed box, a copy of the seal used thereon must be provided with the application.

The dues required upon the filing of an application are a fixed payment of 18.00L.L. plus .75 L.L. for each deposited design or model. If the applicant presents more than one application at the same time, he is entitled to a discount of 50% on the fixed payment dues of the second and subsequent applications, and the dues on deposited designs or models fall to .45 L.L. on the next 100 designs or models and to .30 L.L. on all objects above 200.

The application is recorded in a special register together with the date and hour of filing. This register is used to decide the priority rights of applicants who request the registration of the same design or model at different times.

If registration under open depositing is elected, one copy of the presented design is then fixed to a page of the special register of designs and models. The other copy

is sealed under the date of its depositing, signed by the director of the Patent Office and given back to the applicant.

2. Secret Depositing and Declaration of the Deposited Objects

All designs and models presented to the Patent Office under the terms of secret depositing are kept confidential for the following five years. During this period, the patentee may request the declaration of the protected objects in which case the depositing becomes open.

At the end of the five year period, the patentee may request either changing the terms of depositing from secret to open, or keeping it unchanged. In both events, the granted patent protection is extended for a period of twenty-five years. This period may be renewed, on request, to another twenty-five years.

If it is decided to keep the depositing secret, the sealed box containing the protected objects is opened and their copies are sealed and authenticated. Then they are placed inside an envelop which is closed, sealed and shelved in the safe of the Patent Office.

At the end of the second twenty-five year period, declaration according to ordinary procedure becomes compulsory, and the patent protection expires.

However, if by the end of the first five year period the patentee does not show up to request the declaration of the deposited matter or the lengthening of secret depositing, declaration becomes a duty of the patent office.

If within the next month the patentee does not show up, his patent rights are terminated immediately. But the protection of the patented matter does not expire by that. The Patent Authority is obligated by law to offer such designs and models to industrial establishments and vocational schools for making use of them. No fee or compensation is required in this case. The same procedure applies to designs and models which are not renewed on the patentee's request for the last twenty-five year period.

For the declaration of matters protected under secret depositing, within the first five year period, a fixed due of 18.00 L.L. plus a due of 1.5 L.L. per design or model for the number of them below fifty, and .75 L.L. for any number above that is required. The first renewal of the protection period under open depositing is done against the payment of 18.00 L.L. dues. In the case of secret depositing the 18.00 L.L. dues are paid together with a due of 4.5 L.L. per each design or model kept secret. The renewal request for the last twenty-five year period requires for both kinds of depositing the payment of 27.00 L.L. fixed dues plus a due of 9.00 L.L. per deposited design or model.

3. Remarks

Unlike patents of invention, no patent certificate is issued for patented designs and models. Patent protection

becomes effective beginning from the date of registration. The authenticated copies of the patented designs and models turned to patentees serve as a patent certificate.

Also, we find that patenting here takes place on the applicant's own responsibility without any investigation or test by the patent authority to determine the patentability of the design or model. Like in the case of patents of invention, this question is left for the courts later to settle.

D. Property Rights

Patenting confirms for the patentee a right to claim the ownership of the patented design or model and exploit it for a period which may extend as long as fifty-five years depending on the procedure followed, as explained above. So it does not "create" the right of ownership nor cause this right to become definite and undisputable. Therefore we shall start this section by studying the source of property rights in patented designs and models.

1. The Source of Property Rights

The property rights of patented designs and models may be divided into two parts: the right of patenting and the right of ownership.

a) The Right of Patenting

This right is acquired by the act of originating the design or model and given by law to the originator or those who receive the right from him. The utility of

this rule comes from the fact that patenting takes place on the patentee's own responsibility without any previous investigation on the part of the Patent Office. Hence any one who can prove that he is the actual originator of a patented design or model may sue the patentee for the purpose of cancelling his registration and transferring the patented objects to the former's own name.

However, patent registration is considered by itself as a prima facie evidence that the patentee is the only originator of the patented matter until sufficient proof is presented for the contrary. This is the confirmation faculty of patenting designs and models.

b) The Right of Ownership

In the case of patents of invention, we have seen that failure of the patentee to exploit the patented invention within a period of two years makes him liable to the loss of his patent rights by prescription. But conditions of patents of designs and models are more strict. The right of ownership here is not bound to exploitation; it is derived from exploitation. Ownership is acquired only by putting the patented design or model into industrial use.

These provisions may seem likely to lead to contradictory results. But their real meaning is that patent protection does not become finally effective before the actual use of the patented objects. In accordance with

this principle, article 114 of Decree 2385 stipulates that no infringement suit may be brought by the patentees, before the declaration of the patented objects takes place, unless the bad faith of the defendant be evident. More consistency could have been shown by law if the condition of declaration had been replaced by exploitation. However, declaration is usually made when the design or model is put into actual use.

c) Conclusion

From this inquiry, we find that the process of patent registration of designs and models is a formality which does not create any property right by itself. It is only a medium for the development of the patenting right of the originator into an ownership right which becomes full by industrial exploitation alone.

2. Transfer of Property Rights

Decree 2385 does not specify any special procedure for the transfer of rights relating to patented designs and models. This leads to the application of the provisions of patents of inventions relative to transfers, attachments, and forced sales, as it is practiced now by the Patent Office.¹ Any transfer of patent rights is not valid in the face of third parties unless duly registered in the Patent Office. Similar rules are adopted by the Egyptian law.²

1. Interview with the Chief of the Patent Office.
2. Taha, op.cit. p. 889.

3. Termination and Nullification of Property Rights

Property rights are terminated by the failure to pay the necessary dues for the renewal of patent registration at the end of the first five years or the next twenty-five years. This is the only explicit cause of termination stipulated by law. Decree No. 2385 does not provide for the termination of property rights if the patented design or model is not exploited within a limited period, like patents of invention.

Nullification of these rights may be declared in one of the following two cases:

- a) If the patented design or model is contrary to public policy.
- b) If the elements of novelty or originality are not available in it.

The underlying principles here are similar to those of patents of invention already discussed.

E. Protection of Industrial Designs and Models

Fines and prison sentences similar to those relating to patents of invention are provided for crimes of infringing patented designs or models. Except where bad faith is evidenced, infringement suits may not be brought before the declaration of the deposited designs or models. Past assistants of patentees, in whatever capacity, who willfully indulge in any act which damages rights secured by patent protection are penalized by a prison sentence ranging

between two and six months in addition to a fine of 25 250 L.L.

Procedural alternatives available for prosecuting infringement suits are the same as those discussed under patents of invention.

What are the elements of infringement which must be found in a suspected design or model?

This question has been the subject of a great legal controversy. But the decisions of Lebanese and foreign courts have finally adopted the following principles.

The basic element which constitutes the act of infringement is the similarity of the suspected design or model to the patented one in such a way as to deceive the consumer or customer and lead him not to differentiate easily between the two designs or models.¹ In order to measure this basic similarity, points of similarity should be taken into consideration rather than points of variation.² These points should determine the basic features of the design or model since total similarity is not necessary to constitute infringement. Hence the addition of new names

1. The Lebanese Court of Appeals, Decision No. 454 dated August 30, 1949, Recueil de Jurisprudence, published by Chahine Hatem, V. 29, p. 63.

2. The Court of Appeals of Beirut, Decision No. 1207 dated November 8, 1952, Ibid., V. 15, p. 39.

or minor variations to the original design or model does not remove the infringement responsibility as has been held continuously by courts.

CHAPTER V

TRADE - MARKS

A. Introduction

Marks of fabric or trade¹ are devices of great social and economic importance. They are the most effective means that a manufacturer or merchant may use to distinguish his products from those of competitors and impress a certain identity of those products on the consciousness of the consumers. Consumers, on the other hand, are protected from fraud by being sure that similarly marked goods come from the same source and are up to the same standard of quality. This serves as a security against unfair competition and deception for the benefit of both suppliers and consumers.

Basically, trade-marks may be viewed as a sign of the goodwill of the supplier. In this and other ways they differ from patents which protect certain products regardless of the identity of their manufacturer or supplier. Trade-marks are in a sense a more precious form of industrial property because of the wider range of their use and the unlimited period of their life.

The industrial use of trademarks is very important in solving ownership disputes and determining priority rights. For this reason, the registration of a trade-mark

1. The term "trade-mark" is used to mean marks of both manufacturers and merchants.

does not mean that the registrant has acquired a definite property right of the registered mark.

We shall begin by studying how a trade-mark is acquired and which marks may be registered. Then we shall study their registration procedure, property rights and measures provided for their protection.

B. Nature of Protectable Trade-Marks

1. What is a trade-mark?

Marks of fabrics or trade are defined by law as names written in a distinct form, titles, codes, seals, letters, symbols, small drawings or figures, and in general all symbols meant for distinguishing goods from each other and revealing the distinctiveness and source of industrial, commercial or agricultural products or products of mines or forests, for the benefit of the consumer, manufacturer, or merchant.¹ According to this descriptive definition, trade-marks may be made out of a limitless range of symbols and compositions, the most important of which will be discussed as follows:

a) Names Written in a Distinctive Form

Personal names or titles of commercial companies or industrial establishments may be used as a trade-mark. But these names or titles must be written in a distinctive form. They may take various geometric frames and or their writing may take a certain type. But this

1. Article 68 of Decree 2385 as amended

should not necessarily amount to the inventiveness or origination required for patents. Well-known trade-marks like "Ford", "Coca-Cola" or "Procter and Gamble" may serve as a good illustration.

b) Original Titles

These titles may be either coined, i.e. composed of words that have no independent meaning in the language, or arbitrary, i.e. consisting of a common word that is arbitrary as applied.¹ Examples of coined trade-marks are "Kodak", "Caltex" and "Croxley". "Swan" soap or "San-nine" detergent are good examples of the second kind of marks. But both kinds should reflect a certain originality in respect to the goods they identify.

Foreign languages are the source of an unlimited variety of words which may be applied for this purpose.

c) Letters and Figures

Letters like A.B.C. or figures like 555 may be used as a trade-mark. They may be initials of the manufacturer's name or commercial title, like "P. & G.", or just a new composition of letters like L.M.

d) Drawings and Symbols

These may be patented as industrial designs if they meet the required tests of patentability. But for use as

1. Harvard Law Review, Vol. 68, 1955, p. 823.

trade-marks, the only requirement needed is that they carry a distinctive feature. The figure of a lion, camel or just a simple arrangement of lines and colors will do for this purpose.¹ But the registration of a certain symbol includes implicitly the name relating to it, like the figure of a camel and the word camel, and protection is spread to both the symbol and the noun.²

2. What Marks Can be Registered

The trade-mark must comply with two requirements in order to be acceptable for registration. It must meet the tests of novelty, for the first requirement, and show a distinctive characteristic, for the second. The latter requirement may be regarded as a substitute for the originality condition required for patenting inventions.

a) Novelty of a trade-mark is determined by the priority in use. Such priority may be defined in terms of time, place, and kind of products on which the trade-mark is used.

1) Priority in Time: The trade-mark must not have been used or registered on a previous date. He who first uses a trade-mark for industrial purposes has a priority right of ownership in it. But if the previous registration

1. Taha, op. cit. pp. 899-900.

2. Alexandria Court of Appeals, November 7, 1950, Al-Mouhami, a monthly review published by Fuad Rizk, Beirut, 1952, p. 11.

of a trade-mark is not renewed, the rights of the registrant expires, as we shall see in a later section, and others may apply for the registration of the mark anew.

2) Priority in Place: If a trade-mark is first used in Lebanon, it may not be used again anywhere on Lebanese territory. But the same trade-mark may be freely used and registered in any other country. This condition is, however, subject to two limitations:

- (a) The provisions of international conventions for the protection of industrial property must be complied with.

We shall deal with these provisions later.

- (b) There must be no fraud or ill-faith on the part of the local manufacturer or merchant in the use of a foreign trade-mark which results in deceiving the public and making consumers unable to distinguish between local and foreign goods bearing the same trade-mark. This may be specially true of foreign trade-marks with international-wide reputation like "Kodak".¹ The imitation of such trade-marks is considered as an act of unfair competition.

1. Taha, op. cit. p. 907.

3. Priority in Products: The main purpose of trade-marks is to distinguish products of the same kind coming from different sources of supply. Hence priority in the use of a trade-mark is determined in terms of industries producing similar or closely related products. Thus the use of a certain trade-mark on watches establishes a priority right for the user not only on watches but also on clocks and all sorts of chronometers. But the same trade-mark may be used freely on radios, household appliances, or writing paper.

However, the similarity or close connection of different products must be judged very narrowly on the basis of preventing confusion between different sources of supply. Thus a trade-mark used on radios may be registered again for use on T.V. sets unless it is found that the reputation of the supplier using the first trade-mark may be unjustly exploited by the new user.

b) The Requirement of Distinctiveness

Identification is the essence of a trade-mark. It is not provided by trade-marks which are descriptive of the products they are used on, or their qualities, or merely indicate the geographical origin of such products. Distinctiveness is determined either by the identification of the trade-mark itself, or by the association of the mark with a certain product or class of products.

1. Identification of the Trade-Mark

A common noun or a familiar symbol is denied registration as a trade-mark for lack of distinctiveness. A cedar tree is an illustration of familiar symbols that may not be registered as trade-marks. The figure of a woman's head is not distinctive for use on hair dyes.

The element of distinctiveness may be found either in the words composing the trade-mark or in the form or design of the trade-mark itself. Many examples of distinctive trade-marks have been already furnished under the previous section.

If the words of a trade-mark are not distinctive by themselves, i.e. common nouns, descriptive words or words indicating the geographic origin of the products, they are denied registration unless they are written in a distinctive type or form or are put in a distinctive frame or design. In such a case, registration does not result in protecting the words themselves but the distinctive form they take. Hence it remains possible for others to register the same words under a new, original form. However, a trade-mark which contains words distinctive by themselves is protected whatever shape or form it takes.

2. Association of the trade-mark with a Certain Product

A trade-mark may be composed of common nouns, descriptive words or words indicating the geographic origin of

the product, which are denied registration as such. But the association of this trade-mark with a certain product for a long time is considered as giving it a secondary meaning which constitutes an element of distinctiveness sufficient for granting it protection through registration.¹ This secondary meaning is manifested by the special significance created in the public mind as to referring the products bearing the mark to a single source.

The trade-mark "Honey Krust" used on bread is by itself descriptive of certain qualities of the bread. But after a time, the public begin to think of "Honey Krust" only as indicating that the bread comes from a particular source of supply, the bakery producing it.²

Thus the association of these marks in the minds of the public with a single source serves the primary object of trade-marks which is distinguishing competitive products from each other for preventing unfair competition.

This principle is adopted by Continental and Egyptian jurisprudence but is not provided for explicitly in Lebanese law. It was stipulated in U.S. law by the Lanham Act after it was already acceptable by common law.³

3. Which Trade-Marks are Denied Registration

As we have already seen, trade-marks which lack the

1. Harvard Law Review, Vol. 68, 1955, p. 833.

2. Ibid., p. 823.

3. Ibid., p. 826.

elements of novelty or distinctiveness are denied registration or protection. In addition to that, two classes of marks can not be registered:

a) National Symbols and Symbols of Foreign Nations

The U.S. eagle may not be used as a trade-mark to identify a brand of soap. National flags, seals, or decorations of whatever sovereign state in the world bear a national significance which may not be exploited for commercial purposes through a trade-mark monopoly. Also, these things enter in public property and as such can not be owned exclusively by any one. Religious symbols, like the cross, are also included in this category.

b) Marks Contrary to Public Policy

Symbols, words, and all marks which are revolutionary, contrary to public order or violate the rules of politeness are denied registration.¹ All marks containing false or infringing commercial titles, untrue statements as to degrees of honor received by the manufacturer or other false information are included under this category.

C. Private and Joint Trade-Marks

There are two kinds of trade-marks that may be registered under Decree 2385 and most laws of the world: private trade-marks and joint trade-marks.

A private trade-marks is the usual kind which is

1. Article 71 of Decree 2385 as amended.

owned privately for use on certain products. So we need only to study the other kind of marks in the following lines.

A joint trade-mark may be used and registered by professional associations and industrial and agricultural companies provided these associations or companies obtain a special licence from public authorities for this purpose.¹ A group is formed whose members alone are entitled to use the joint trade-mark side by side with their private trade-marks.

This mark or label may be divided into two types, collective marks and certification marks. Collective marks are labels which serve to indicate membership in the group or to identify goods produced or distributed through its members. Hence they show to consumers the source of the goods and an assumed standard of quality enjoyed by them. Certification marks, on the other hand, are used as indications of quality by the group owning the mark. They indicate that a certain standard of manufacturing is complied with, that certain technical tests of approval are met, or that the goods come from a particular region. A good example of these marks is the well-known "Good House-keeping" seal.²

The rights and proceedings relative to joint marks

1. Article 70 of Decree 2385 as amended.

2. Harvard Law Review, Vol. 68, 1955, p. 823.

are the same as those pertaining to private trade-marks.

D. Depositing and Registration of Trade-Marks.

1. Advantages of Registration

The main purpose of registration is to declare the ownership of the trade-mark. But registration by itself does not constitute ownership. The owner of the registered mark gains a number of benefits from registration.

a) Registration is a Prima Facie Evidence of Ownership

If the ownership of a trade-mark is claimed by some one other than the registrant, he has to present sufficient written evidence to the validity of his claim. Until such evidence is presented, the registrant is considered to have a prima facie evidence of his right of ownership.

After a period of five years from registration, the ownership right of a registrant can not be challenged anymore, not even by the real owner who is able to present sufficient evidence for his claim, unless it is proved by means of written documents that the registrant was acting in bad faith.¹

This subject shall be further discussed when we come to the section on ownership.

b) Infringement Actions May Not Be Brought Before Registration

1. Article 74 of Decree 2385 as amended.

The owner of a trade-mark is not entitled to sue for infringement of his mark before he duly registers it in the Patent Office. Protection against infringement is provided only for registered marks. However, the unregistered owner of a mark may request civil law protection by bringing an action of unfair competition for that purpose.¹

c) Registration is an evidence that the registered owner started to use the mark beginning from the registration date. This evidence is important in the dispute that may arise on the priority of use of the mark.

d) Other advantages may also result from registration such as the increase in good-will of the mark owner and the feeling of increased security on the part of dealers handling the trade-marked products.²

2. Who May Apply for Registration?

Anyone may apply for the registration of a trade-mark. Like in the case of patents, no proof is required from the applicant for his ownership of the mark. Non-residents of Lebanon, whether Lebanese or foreign, must be represented by an attorney domiciled in the country for the purpose of registration.

3. Registration Procedure

The application for registration is presented to the Patent Office in writing by the applicant or an autho-

1. Taha, op. cit. p. 908.

2. Harvard Law Review, vol. 68, 1955, p. 827.

rized attorney. To be valid, the application should contain the following details:

- a) Name, title, nationality and domicile of the applicant and his attorney if necessary.
- b) Kind of business the applicant handles.
- c) A description of the products or goods on which the mark is used.
- d) A Brief description of the trade-mark.
- e) Previous registrations of the same mark in other countries, if any.

Enclosed with the application must be the following:

- a) Two copies of the mark.
- b) One cliché of the mark.
- c) The original copy of the power of attorney, if any.

If it is possible, copies of certificates of registration in other countries should be also enclosed.

In order to present the application, dues for at least the first registration term of fifteen years must be paid in advance. Should the applicant be willing to register for a term of 30, 45 or 60 years, he must pay the dues on them in advance. The dues for private trade-marks are 22.50 L.L. for each term of 15 years and are entitled to no discount on payment in advance. For joint trade-marks the dues are 60.00 L.L. for every term of 15 years. Should the applicant be willing to register the joint mark initially for a term of 30, 45 or 60 years he is entitled to a discount

of 50 0/0 beginning from the next term of 15 years. In both cases, the normal procedure of registration renewal is followed by paying the necessary dues at the beginning of every new term together with a special application for that purpose.

After the filing of the application the chief of the Patent Office checks its fulfilment of the needed formalities. Then he considers whether it may be denied registration for reasons discussed under section B-3 above. If he finds it so, he has to present his report to the Minister of National Economy to take the final decision. The acceptance or rejection of the application is then decided by a Ministerial Decree within a period of 15 days from the date of the Chief's report. Rejection decisions may be attacked before the Conseil d'Etat within a period of thirty days from the date of their official notification.¹

If the application is accepted, it is registered on the Register of Marks with all the required details together with the hour and date of filing the application, under a serial number. On the back of the page of the register, one of the copies of the mark is affixed, and both the applicant and the chief of the Patent Office sign beneath. Within a period of 15 days from registration, a certificate of Registration must be issued to the registrant containing all the information recorded on the register.

1. Article 81 Decree 2385 as amended.

The remaining copy of the mark is affixed and sealed on the back of the certificate.

The cliché, which must not be more than 10cm. long or wide, is then kept in the Patent Office for publication in the Official Gazette.

4. Nature of Trade-mark Registration

Registration is done, with the exception mentioned above, on the applicant's own responsibility. No proof is required for the ownership of the mark, and no investigation is carried to determine the availability of novelty and distinctiveness requirements in it. Like in the case of patents, these questions are left for the courts of law later to settle.

The Lebanese law in this respect is a compromise between two European laws, the French and the Swiss. The Anglo-saxon system, on the other hand, provides for a previous examination of the mark to determine whether it legally qualifies for registration or not and allows other interested parties to present oppositions to the registration application or petitions for its cancellation. In this context, the U.S. Patent Office enjoys wide authorities to accept, reject or cancel applications for registration.

In Lebanon, the role of the Patent Office is rather negative and the authorities vested in it are limited practically to formal proceedings. The ultimate responsibility of settling trade-mark problems is left to courts.

E. Property Rights

1. How a Trade-Mark is Acquired

The ownership of a trade-mark is not acquired by registration. It may be claimed without it. Provisions of Decree 2385 provide explicitly and implicitly for two ways of acquiring the ownership of a trade-mark:

- a) priority of usage and
- b) the unchallenged use of the mark by its registrant for a period of five years after registration.

a) Priority of Usage

The ownership of a trade-mark is derived essentially from the priority of usage in a given country. This rule is provided for implicitly in articles 72-74 of Decree 2385. The owner of a trade-mark whose ownership rests on priority of usage may bring actions for the nullification of all registrations in the Patent Office that are contrary to his rights,¹ provided that such registrations do not qualify for the second way of acquiring ownership to be discussed next.

The application of this rule leaves the position of registered owners of trade-marks unstable. This creates uncertainty and may present difficulties for business transactions. The principle of registration on the applicant's own responsibility may be credited for such an unfavorable

1. The Court of Appeals of Beirut, Decision No. 1611, Recueil Du Jurisprudence, Vol. 29, 1956, p. 63.

situation. The German law, which adopts the rule of examining the trade-mark before accepting its application, considers registration as the only source of trade-mark ownership, thus guaranteeing the position of the registrant against all possible attacks in the future.

b) The Unchallenged Use of the Mark for the Five Years Following Registration

The registrant can not be left without security as to his claimed rights indefinitely or else this will not be in the interest of the society. Hence the same principle provided for in the Land Law, that the peaceful and continuous possession of real estate for a certain period of time leads to ownership, is applied in the case of trade-marks.

The registrant becomes the sole owner of the registered mark if, within the five year period following depositing, his ownership is not faced by any challenges through law-suits or warning notices. Ownership then becomes definite and can not be attacked in any way except if it is proved by written evidence that the registrant was acting in bad faith. Bad faith is here manifested by the registrant's conception of the existence of the real owner whose rights rest on prior usage.

2. The Right of Exploitation Resting on Prior Usage

An exclusive right of exploitation is derived from

the trade-mark's ownership with one exception. This exception is found in the case of ownership acquired through the unchallenged use of the mark for the five years following registration. If the original owner, whose rights are derived from usage prior to registration, fails to interfere within the five year period, he loses his ownership right but retains by law a limited exploitation right. The exploitation right expires after a period of fifteen years beginning from depositing. It may be transferred with the transfer of the business concern and is protected through unfair competition actions.

3. Characteristics of Trade-Mark Ownership

As intangible property, trade-marks are subject to full ownership rights. Unlike patents of invention, their life time is unlimited since their registration may be renewed indefinitely.

However, the subject of these rights is limited. The trademark is protected only in relation to particular products or a certain field of business, and is limited in general to a certain country.¹ As we have already seen, a trade-mark used on radios may be reregistered for use on watches, and a trade-mark used in Lebanon may be registered for use in U.A.R. within the provisions set by international conventions thereof.

1. The Court of Appeals of Beirut, Decision No. 1611 dated November 23, 1956, Receuil Du Jurisprudence, Vol. 29, 1956, p. 63.

4. Transfer of Property Rights

Ownership of registered trade-marks may be transferred by succession, sale, or gift. Unlike Egyptian law, a trade-mark may be transferred with or without the business concern (fonds de commerce).

All transfers are not valid unless registered upon their declaration to the Patent Office. A due of 7.50 L.L. is required if the declaration is presented within a period of one month from the conclusion of the transfer. Delay in filing the declaration increases the dues required at a rate of 4.50 L.L. for every two months.¹

On January 29, 1960, the Minister of National Economy issued a decree concerning the exploitation of foreign trade-marks registered in Lebanon by Lebanese industrialists. According to this Ministerial Decree, a duly legalized authorization, transfer or licence from the original owner of the trade-mark should be obtained for both the mark and the industry related to it at the same time. The authorization, transfer or licence should define clearly the trade-mark and the industry on whose products it shall be used. But the package or container of the locally produced product should state that it is produced by "Lebanon Branch" under an authorization from the foreign concern.² This measure is

1. Article 76 of Decree 2385 as amended.

2. The Official Gazette of the Lebanese Republic,
Published by the Ministry of Information,
Beirut, Year 1960, issue 6, p. 49.

meant to maintain fair competition between local manufacturers who produce under national trade-marks and those who use foreign trade-marks with international-wide reputation by revealing to the public that the products of latter ones are manufactured locally though they carry foreign names.

5. Loss of a Trade-Mark

Although Lebanese Law does not state explicitly any cause for the loss of trade-marks, we can find three causes which are legally valid to bring this result.

a) Nullification of Registration

Courts may declare a trade-mark registration null and void if the mark is not novel or distinctive or if it belongs to the class of marks that are denied registration by law as we have already found.

Such nullification cancels out registration in a retroactive manner resulting in the loss of all infringement actions brought in the past for the protection of the mark.

However, nullification is relative to a particular registration only. If another registration of the same mark is made for a totally different use in a way that removes the cause of nullification, the new trade-mark is considered valid.

b) Abandonment of the Mark

According to Lebanese law, a registered trade-mark

may be considered abandoned if registration is not renewed at the proper time, and if at the same time it is proved that the mark is not in use. But the result of this abandonment is subject to a controversy. Can the abandoned mark be registered again or does it become a public property of the society?

According to some thinkers, the second alternative should be selected.¹ This opinion is justified if the abandoned mark loses its distinctiveness for one of the reasons to be discussed later. But if it does not, there is nothing that prevents others from claiming the exclusive use of the mark by presenting a new registration application.

In the U.S.A., the Lanham Act provides for two tests of abandonment. During the sixth year of registration, the registrant is required to present an affidavit showing continued use of the mark. Also, the discontinuation of use for a period of two years constitutes prima facie evidence of abandonment.²

Mixed courts of Egypt held in many of their decisions that abandonment may be evidenced by the competitors' use of the registered mark for a reasonable time without the opposition of the registrant or by the registrant's abandonment of the business or industry in which the mark is used.³

1. Taha, op.cit. p. 918.

2. Harvard Law Review. Vol. 68, 1955, p. 832.

3. Taha, op. cit. p. 918.

The Egyptian law, unlike Lebanese, provides for the loss of a mark upon the unjustified discontinuation of its use for a period of five years.¹

c) Loss of Distinctiveness

The distinctiveness of a mark is lost in the following two cases:

1) If the mark becomes significant in the public mind as the name of the product itself, the identification of the trade-mark is lost and so its ownership rights. "Cellophane" was originally a trade-mark. But this name came to refer generally to the type of the product and not to a particular brand or one source of supply. Hence U.S. courts held that no manufacturer is entitled to its exclusive use.² A similar example may be "Aspirine". "Tide" trade-mark is being taken in Lebanon for the type of the product and as an equivalent of the word "detergent". Hence there is a real danger that it may lose its distinctiveness soon.

2) If the mark was originally associated with a patented product, the expiration of the invention patent may result in the loss of the trade-mark if it is taken as the generic name of the product.

In both cases, the mark is lost if it becomes the common descriptive name of an article. Distinctiveness

1. Ibid., p. 919.

2. Harvard Law Review, Vol. 68, 1455, p. 832.

then disappears and the mark no more serves to indicate a common source of the goods, the trade-mark becomes then unprotectable under article 68 of Decree 2385.

F. Protection of Property Rights

Special protection is provided by law for registered marks only. Marks which are not registered may be protected through unfair competition actions.

The procedure and approach of protection is essentially the same as for patents of invention, but the crimes and penalties are somehow different. They are determined by articles 701-706 of the Penal Code which correspond to articles 105-110 of Decree 2385 as follows:

1. The Infringement Crime

A penalty of 50-500 L.L. fine and three months to three years of imprisonment or either one of the two is pronounced for the following acts of infringement:

- a) The indication in whatever form or way that a certain mark is registered, while it is not.
- b) The willful imitation or use of a registered mark without the authorization of the mark's owner.
- c) The conscious sale or offering for sale of a product bearing an infringed mark.
- d) The surrender or sale of a product other than the product demanded under a certain mark.

2. The Imitation Crime

A penalty of 50-250 L.L. fine and two months to two

years imprisonment or either one of the two is provided for the following acts of imitation:

a) The manufacturing of a mark which resembles another mark for a fraudulent purpose or if the first mark is made in such a way as to deceive consumers.

b) The use of such a mark on products similar to those of the original mark.

c) The conscious sale or offering for sale of products bearing such a mark or information leading to deception of the public as to the type of product offered.

3. How is Imitation Determined?

To find whether imitation exists in the case of two marks, two elements are taken into consideration:

a) The attitude of the public and

b) The general similarity of the two marks

a) The Attitude of the Public

Since the aim of imitation is to deceive the public, then the right approach would be to study the attitude of the public towards the imitation. Imitation prohibited by law is that which results in deceiving the consumer as to the source of the product. Hence what matters is the ability of the average consumer to distinguish without much thinking between the product bearing one trade-mark and that bearing another.

The Civil Court of Beirut held that the similarity between the mark "LANCO" and the mark "LACO" is so close

that the ordinary consumer can not distinguish between the two and hence "LACO" was considered an illegal imitation of "LANCO".¹

b) General Similarity of the Two Marks

It is the general similarity which matters rather than particular variations, that exist between two marks, if this similarity is sufficient by itself to deceive the public.

The Lebanese Court of Cassation held that the general similarity between the mark "Opitica" and the mark "Opticus" is sufficient to constitute illegal imitation without taking into account the particular variations that existed between the two marks.² Another court held that the similarity in the size and colors of two tin containers was so comprehensive that the replacement of the figure of sheep on one by the figure of goats on the other plus some minor variations in writing were not enough to prevent confusion on the part of the public.³

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1. The Civil Court of Beirut, Judgement No. 316 dated 11/2/1961, La Revue Juridique, 1961, p. 300.
 2. The Lebanese Court of Cassation, Decision No. 8, dated Jan. 8, 1960, La Revue Juridique, 1960, p. 117.
 3. The Civil Court of Beirut, Decision No. 1889 dated 14/11/1960, La Revue Juridique, 1961, p. 379.

CHAPTER VI
PROVISIONAL PROTECTION FOR COMMERCIAL EXPOSITIONS
IN LEBANON AND ABROAD

A. Introduction

Innovations and new brands of goods are often exposed in international fairs before their owners have time to apply for patent protection in many parts of the world. Such innovations might not even possess the priority of usage, so that the danger of infringement or illegal imitation is evident.

Hence it was found in many countries of the world that a sort of temporary protection must be available for such a situation to give those who own the protectable innovations or brands enough time to apply for and receive patent protection in relevant countries.

The Lebanese law provides for this provisional protection in chapter four of Decree 2385. Its provisions are briefly discussed as follows.

B. Conditions of Provisional Protection

All inventions, designs and models and trade-marks may be granted provisional protection in expositions or fairs held in Lebanon or abroad on the following conditions:

1. The inventions, designs and models or trade-marks should qualify for patenting or registration in Lebanon under Lebanese law.

2. Lebanon should be represented officially in these fairs or expositions, if it is not the sponsoring country.

3. An application for protection should be presented officially within a period of three weeks from exposing the object to be protected.

C. Application for Protection

The owner of a protectable object should submit a written application to the official representative of the Government of Lebanon describing the subject matter (invention, design, trade-mark, etc.) and requesting protection. Enclosed with the application must be a certificate from the direction of the exposition indicating that the same object is truly exposed therein.

The Lebanese official should then record the application in a special register and issue a certificate of provisional registration to the applicant. A fixed due of 7.5 L.L. is required against the certificate.

D. Nature of Provisional Protection

Since provisional protection is only a step towards final protection, its life duration should not be long. Lebanese law provides duly applied for provisional protection for the whole period of the fair or exposition in addition to one year after its closure.¹

Registrants under these rules enjoy all the property rights and protection privileges pertaining to corresponding inventions, designs or trademarks which are protectable

1. Article 92 of Decree 2385 as amended.

under Lebanese Law.

E. Granting of Permanent Protection

Registrants under provisional protection must present an application for regular protection to the Patent Office in Beirut within the legal period in order to change their temporary registration into a permanent one, or else they lose their priority rights therefor. These applications should be filed as usual together with the certificate of provisional protection. Ordinary proceedings of the Patent Office are then followed until final registration is performed.

The beginning of the period of protection for the regular registration is considered, however, the same as that of provisional protection, that is, the opening of the exposition or fair.

F. Conclusion

Brief as they are, the provisions of temporary protection for expositions in Lebanon and abroad are comprehensive enough to perform the functions designed for them. The growing importance of international fairs and expositions makes the spreading of protection to them on provisional terms a desirable economic objective.

CHAPTER VII

International Protection of Industrial Property

A. Introduction

The international protection of industrial property was established by the Convention of the Union for the Protection of Industrial Property signed at Paris, March 20, 1883. This convention was later revised at Brussels (1900), at Washington (1911), at the Hague (1925) and finally at London, June 2, 1934. It was supplemented by the Agreement Concerning the International Registration of Trade-marks and the Agreement on the Suppression of False Indications of Origin of Goods, which were both signed at Madrid, April 14, 1891 and revised at Washington (1911), the Hague (1925) and finally at London, June 2, 1934.

As we see, the final revision of all these agreements was at London, June 2, 1934. This was a result of the international conference held there between May 1 and June 2, 1934 for the purpose of amending the said agreements and putting the international provisions for the protection of industrial property in final shape.

The London Conference adopted also regulations for the execution of the agreements concerning the international registration of trade-marks and industrial designs or models.

The Government of Lebanon was represented in the London Conference through French mandatory authorities and consequently signed all the agreements which were passed by it. But the only agreements which were officially ratified

in Lebanon (July 19, 1939) are the Convention of the Union for the Protection of Industrial Property and the Agreement on the Suppression of False Indications of Origin of Goods.

B. Principles of International Protection

The main principles for international protection of industrial property are provided by the Convention of the Union for the Protection of Industrial Property. These principles may be summarized as follows:

1. Equality of treatment is guaranteed for nationals and residents of Union countries.
2. A right of priority is granted in all Union countries for any person applying for protection in a union country. But this right should be exercised within a limited period.
3. Patenting or registration in one Union country is independent of patenting or registration for the same subject matter in other Union countries. Hence the loss of protection rights in one country does not result in a similar loss in other countries.
4. The right of each country to take measures to prevent abuses of protection is established under certain conditions.
5. The importation of patented objects manufactured in other countries is allowed under certain conditions.

We shall now proceed to study each of these principles by itself.

1. Equality of Treatment for Nationals and Residents of Union Countries

Article 2 of the Convention reads as follows:

"(1) Nationals of each of the countries of the Union shall, in all other countries of the Union, enjoy as regards the protection of industrial property the advantages that their respective laws now grant, or may hereafter grant, to their own nationals, without any prejudice to the rights specially provided for by the present convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any formalities imposed upon nationals.

(2) Nevertheless, no condition as to the possession of a domicile or establishment in the country when protection is claimed can be required of those who enjoy the benefits of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the legislation of each of the countries of the Union relative to judicial and administrative proceedings and to competent authority, as well as to the choice of domicile or the appointment of an authorized agent, which may be required by the laws of industrial property, are expressly reserved."¹

1. Revue Egyptienne de Droit International,
Vol. 8, 1950, p. 363.

Article 3 considers as nationals of Union countries all non-nationals residing in a Union country or owning actual industrial or commercial establishments therein.

This means that the internationally recognized principle of reciprocity does not any more exist as far as industrial property is concerned. With the wide differences in the protection systems of different countries and the rights granted thereunder, reciprocity of treatment could result in the unjustified denial of protection for many foreigners for the simple reason that no similar protection is granted under the laws of their countries. As long as industrial property laws of different countries are not uniform, inequality of treatment would have been dominant. The industrial property laws of the world today are particularly ununiform regarding taxes, conditions of granting protection, duration of protection, and compulsory licencing of patents.

But the equality of rights granted to foreigners should not amount to a more privileged treatment. Foreigners who benefit from this equality must abide by the laws and regulations of the country like nationals.

2. The Right of Priority

This right is the most important principle introduced by the Convention. It provides protection against important risks which face applying for protection in many

countries at different intervals of time. Since no one can file an application for protection in most countries of the world at the same time, it is only fair that a registrant in one country should be given a chance to apply for similar registrations in other countries within a reasonable period.

According to article 4 of the Convention, any person who has duly applied for protection in one of the countries of the Union enjoys a right of priority for the purposes of registration in other countries within limited periods. These periods of priority are twelve months for patents of invention and six months for industrial designs or models and trade-marks beginning from the date of filing the original application.

During priority periods, all subsequent applications in other countries of the Union may not be invalidated by filing new applications by other parties, by publication of the invention or the registered work, by the sale of copies of the industrial design or model, or by use of the trade-mark. Furthermore, such acts by third parties cannot give rise to any right of their own since they are subsequent to the original filing. But the rights they acquire before the day of the original application are reserved for them.

This means the suspension of another important principle governing international relations, the principle of

territoriality. Under the territoriality rule, the protection granted in any one country can not be extended beyond the jurisdiction of that country. Hence the right of priority may be viewed as a step towards universality of protecting industrial property.

For exercising the right of priority, the applicant must present a declaration giving particulars as to the date of the first registration and the country in which it was made. No other formalities are required for priority claims.

The principle underlying the right of priority is that the patentee or registrant should receive protection from competition in all countries in order to get the utmost benefit from his industrial property rights.

3. Independence of Patents

The Convention provides that the patent issued for an invention in one country of the Union is independent of the patents obtained for the same invention in other countries, whether or not such countries are parties to the Union. This independence is stipulated by the Convention to mean that patents applied for during a period of priority are independent as regards the causes of refusal and revocation as well as their normal duration.

Hence the rejection of a patent application or the invalidation of the patent in one country must not necessarily have a similar result on patenting the same invention

in other countries. In the absence of this provision, laws of many countries may require that the validity of a patent issued to foreigners be dependent on the validity of the original patents granted in their countries. Also, the expiration of the original patent should not affect the duration of other patents of the same invention in different countries. Though covering the same invention, each patent should be dependent for its basic conditions on the internal laws and regulations of the respective country. This is what is meant by independence.

It is thought that the dependence of patents is inconsistent with the principle of equality of treatment and brings unjust results as far as foreigners are concerned. Failure to comply with a requirement in one state should have no effect in the other unless the laws of the latter provide for the same.

4. The Right to Take Measures for Preventing Abuses of Protection

This concept defines the conditions under which a country may impose restrictions on the patents it grants for protecting national interests. The important abuse recognized by the Convention is the failure to use. Industrial designs and models are not included under this concept.

Failure to use is considered as contradicting the main purpose of patenting from the social point of view. As we have seen, the material welfare of the society is the

most important rationale for patent protection. Therefore a patent must serve its purpose by promoting industrial production bringing economic benefits to the society.

"The question as to whether the patentee ought to work his invention in all countries in which he has obtained a patent and whether, in case of non-working, the patent ought to be revoked or not, has occupied first place in all the discussions that have taken place since the international protection of inventions was first spoken of".¹ Though the Convention adopted the right of countries to prevent abuses of patents, this concept has been and still is the subject of a great controversy.

The laws of most countries of the world provide for some measures for obliging a patentee to exploit his patent. Some countries, like Lebanon, resort to the measure of cancelling patents in the event of failure to use them within a limited period. Other countries, like Egypt, adopt the measure of compulsory working or licencing of the unused patent.

Article 5 of the Convention provides for the right of the Union countries to take the necessary legislative measures to prevent patent abuses on the following conditions:

- a) provocation of patents may not be provided for

1. Actes de la Conference de Londres, "Expose des motifs et propositions", p. 173, as quoted in Penrose, op.cit. p.78.

except if the granting of compulsory licences does not suffice to prevent abuses.

b) The issuance of a compulsory licence is not possible before the expiration of three years beginning with the date of patenting.

c) Compulsory licences can be issued only if the patentee does not produce acceptable excuses.

d) No action can be taken for the cancellation or revocation of a patent before the expiration of two years beginning with the issuance of the first compulsory licence.

The same right is provided in the case of trade-marks within the following limits:

a) The registration of a trade-mark may be canceled only after a reasonable period, and if the registrant can not justify the inaction by acceptable reasons.

b) The use of a trade-mark in a different form without altering its distinctive characters does not result either in invalidating it or in diminishing its protection.

c) The simultaneous use of the same trade-mark on identical or similar products by industrial or commercial establishments considered as joint owners of the mark according to the legislation of the country when protection is applied for does not prevent registration nor diminish in any way the protection granted to such mark in any country of the Union, provided such use does not induce

the public into error and is not contrary to public interest.¹

Finally, it is of great importance to make sure that provisions for the prevention of patent abuses are not, themselves, abused.

5. The Regulation of Importing Patented Objects Manufactured In Other Countries

Cancellation of patent rights was provided by the laws of many countries as a penalty for importing patented articles manufactured abroad. This penalty was provided for by the Ottoman Law of Patents and is still contained in Decree 2385 as we have already seen. The reason for such a penalty is to force the local manufacturing of objects patented locally and to prevent the establishment of trade monopolies on the basis of patents. This would also strengthen the compulsory working of unused patents.

This concept was attacked by those who supported the freedom of international trade. After a hard debate the contrary view was accepted and inserted in article 5 of the convention. According to paragraph A-1 of this article, the introduction by a patentee into the country where he enjoys patent protection of objects manufactured in any of the countries of the Union does not entail forfeiture.

1. Manley O. Hudson, ed., International Legislation, Washington, 1937, Vol. VI, pp. 877-879

Furthermore, the use of locally patented articles on ships, or in the engines of airplanes or land locomotives does not constitute infringement of the rights of the patentee if these ships, airplanes or locomotives enter the country temporarily. This provision is intended to remove possible inconveniences for transport which may result from the presence of ships, airplanes or locomotives equipped with patented devices which may either be denied legal entry of the country or be subject to legal disputes on patent ownership which could bring attachment or seizure of the transportation means. Obviously, the establishment of this provision is of considerable economic importance.

C. The International Registration of Industrial Designs or Models and Trade-Marks

Although the agreements relative to the international registration of trade-marks and industrial designs or models are not signed by Lebanon, it is of considerable importance, for the sake of comprehensiveness, to throw a glance on their basic provisions. In fact, international registration is an innovation of great value to all countries of the Union alike for the protection of their Industrial Property rights.

Since the international registration of trade-marks was decided earlier than it was for designs and models and took the form of a separate agreement,

we shall proceed to consider each of the two types at a time.

1. International Registration of Trade-Marks

The Agreement Concerning the International Registration of Trade-marks provided for the international protection of trade-marks upon due registration both in the country of origin and in the International Bureau for the Protection of Industrial Property, in Berne, Switzerland. The registration in the country of origin should take place first. Only a citizen, resident, or a person who owns business interests in the country of origin may apply for international registration.

The application must be presented through the Patent Office of the country of origin according to formalities specified by the executive regulations of the Agreement. This office will indicate that the subject matter is already duly registered in it, then the application is sent to the International Bureau at Berne for final acceptance. International registration is made on the basis of the provided information and form of the trade-mark, then it is published in the periodical issued by the Bureau. The necessary cliché of the trade-mark must be supplied by the registrant.¹

As a result, the registered mark enjoys equal protection in all the countries of the Union, which are parties to these agreements.

1. Ibid., pp. 888-889.

2. International Registration of Designs and
Models

This registration, unlike that of trade-marks, is made directly in the International Bureau at Berne. The application must be made in accordance with the formalities of the Executive Regulations of the Agreement, and submitted together with two copies of its subject matter. The deposited design or model is registered on a special record, then the registration is published in the periodical issued by the Bureau.

Registration in the International Bureau for the Protection of Industrial Property may be done under either the terms of secret depositing or open depositing. After a period of five years, secret depositing must be changed into open. Protection is granted for a term of fifteen years renewable. This registration has the same effects as the local registration in each Union country. It does not insure a final right of ownership, but it is considered a prima facie evidence of property until sufficient evidence is provided to the contrary.¹

1. Ibid., pp. 894-895.

CHAPTER VIII

COPYRIGHT

A. Introduction

Just as a patent protects the exclusive right of the patentee to put his invention into industrial use, a copyright protects the exclusive right of the author in the publishing or the performance of his literary or artistic work through different media. Like patents, the new ideas contained in the copyrighted work are not themselves subject to protection. It is the expression of these ideas which is protected by copyright laws, or, the act of "copying" them by whatever means.

The scope of copyright has widened greatly since the beginning of this century. Protection was granted to literary and artistic products of the human intellect taking the form of books, periodicals, lectures, dramatic and dramatic-musical compositions, musical compositions, maps, works of art, models, drawings, plastic works and photographs. But the modern age brought with it new channels of communicating ideas like the cinema, radio and television. So protection had to be extended to include motion pictures, broadcasting programs and televised works. These new channels have proved to be of a greater importance than classical means, and are still growing more and more important.

Thus copyright came to protect rights which have acquired great economic importance in the world of today.

Publishing has developed into a great industry from which a composite of dependant industries derive their existence. The same is true of the motion picture industry and broadcasting and television services. What is in essence only literary property has turned to have such a rich variety of industrial uses which compare easily to those of industrial property.

We should not forget that advertising, the great business innovation of this century, could not have existed had it not been for these modern media of communication. In order to be able to sell an advertisement, one has to supply a framework of literary and artistic compositions which attract buyers. It is beyond question how much modern business is indebted to copyright from this viewpoint alone.

Hence we are going to proceed with the study of copyright as a property right wearing an industrial garment over its literary body.

B. Nature of Copyright

1. What Literary or Artistic Property is Protectable?

Literary or artistic property is derived from the mere creation of new pieces of literature or art. The act of originating such works gives the author or creator an exclusive right of ownership in them.

According to article 138 of Decree 2385, all productions of the human intellect, whether in writing,

pictorial illustration or sculpture are protectable. This definition includes books, pamphlets, journals, periodicals as well as other works like dramatic and dramatico-musical compositions, dances, silent acting, drawings, pictures, prints, maps, geographical drawings and solid illustrations, drawings and pictures relating to architect engineering, advertisements, pictorial postal cards, paintings, statues, photographs, motion films, discs, perforated rolls for music machines and plastic works. The right to make translations of such works or adaptation for certain arts, arrangements or compilations is also protected for the original author. Collections of selected works or of works that have already entered the public domain in such a way as to acquire a new, special and original characteristic are protected for the benefit of the collector.

2. Scope of Protection

What is protected by copyright is not the idea of the work, but the expression or presentation of this work. Protection does not prevent others from expressing similar ideas in original works of their own; it prevents only the "copying" of the copyrighted work.¹

Accordingly, the owner of a copyrightable work has an exclusive right to put his work into the following uses:

- (a) To print, reprint and sell the work in all forms.

1. Ralph R. Shaw, Literary Property in the United States, Scarcrow Press, Sturgis, Michigan, 1950, p.13.

- (b) To authorize copying it wholly or partially.
- (c) To translate or authorize a translation of it.
- (d) To dramatize or authorize its dramatizing if it is a non-dramatic work.
- (e) To adapt or convert it into a novel if it is a drama.
- (f) To authorize its use in motion picture, radio, or television.
- (g) To perform or represent the work publicly.
- (h) To record it, if it is musical, on discs or mechanical music instruments.²

3. Unprotectable Works

Not all literature is protectable. The following may not be protected under literary property:

- (a) Official documents issued by public authorities and judicial decisions.
- (b) All speeches delivered in public meetings, debates or parliamentary meetings. But collections of speeches which were made by any one man may not be gathered and published in one collection except by him.
- (c) Literary, political or scientific articles published in journals or periodicals may be copied, translated or adapted provided a reference is made to the source.

1. Article 145 of Decree 2385 as amended.

- (d) Daily news published in newspapers which have no special significance other than that of usual reporting.

C. Deposit of Protectable Works

Deposit of works in the Office of Protection does not result in the creation of any property rights. It is merely a formality required for the exercising of the property rights as when an infringement suit is inevitable for their protection.

An application must be presented for this purpose to the office of Protection. The following information is required in the application:

- a) Title and type of the work
- b) Name and address of the author
- e) If the application is presented by someone other than the author, the name, address and capacity of the applicant.
- d) If the applicant is different from the author, the contract of the applicant must be specified (transfer contract, printing contract, etc.)
- e) Name and address of the party responsible for the material realization of the work (e.g. printer), if necessary.

Together with the application either three copies of the work or three photographs, or non-photographic illustrations, from three angles of works which have only one

origin like sculpture or painting, must be submitted. In the case of motion picture works, three copies of a pamphlet containing a summary of their subject in addition to photographs of scenes, lights and the most important people who appear in the film are required.

After necessary dues are paid (see table II), the application is registered in the Protection Office and a certificate of registration is issued accordingly. One of the three copies, illustrations or pamphlets presented is dated, sealed and signed by the Director of the Protection office and turned back to the applicant. The Certificate of Registration is issued free, but additional copies of it may be obtained for 1.50 L.L. per copy.

D. Property Rights

I. Extent of Property Rights

The property right of the author extends for the whole period of his life and, for the benefit of his heirs, fifty years after his death.¹

If the protected work is a result of the cooperation of many authors, all of these authors share equally the property rights of such work.

1. Article 142 of Decree 2385 as amended.

TABLE II
DUES REQUIRED FOR THE DEPOSIT OF LITERARY
OR ARTISTIC WORKS

Type of Work	Due (in L.L.)
Unillustrated printed literature or	
Musical compositions	12.00
Illustrated printed works	15.00
Dramatic and Dramatico-musical composition	18.00
Motion picture, dances and dramatized dances	22.50
Daily newspaper, per issue	.75
Daily newspaper, annually	45.00
Weekly, monthly or seasonal periodicals, per issue.	1.50
Weekly, monthly or seasonal periodicals, annually	22.50
Picture, drawing, or postcard	4.50
Discs, perforated rolls, and other instruments of mechanical music	7.50
Painting, engineering work or sculpture	13.50

Source: Article 162 of Decree 2385 as amended.

In this case the fifty years period begins for the benefit of all heirs only after the death of the last of the joint authors. Should any of such authors die leaving no heirs, the heirs of the rest of them shall inherit the whole of the rights unless otherwise expressly provided.

The property right does not depend for its existence on any formality. Deposit in the Office of Protection becomes a necessity only in the event of bringing infringement actions for protecting this right. However, the author retains the right to file actions against all infringements taking place before depositing.

Works which carry the name of a corporate body or false name and works which are published only after the death of the author are protected for a period of fifty years. In the former case, the declaration of the actual identity of the author results in the extension of protection for the whole period of his life in addition to fifty years following his death.

2. Transfer of Property Rights

Literary and artistic property is a kind of intangible

property which is transferable under ordinary legal rules. But this property enjoys such a unique characteristic that it may not be subject to legal attachment.¹

All transfers should take place in writing or else they are not valid. No formalities are required except if the transferred work is already deposited in the Office of Protection. In such event, the transfer must be notified to the Office within a period of fifteen days. If the transfer is made by succession, the same procedure must be followed.

The transfer of a part of the author's right is effective only as far as this part is concerned. Thus the transfer of the right to print the work does not affect the author's right to sue against the infringement of his work, to supervise its printing and to prevent any change therein without his consent.

No part of the property right may be transferred by any one of a group of collective authors or their heirs alone. The unanimous consent of all the collective owners is required for putting the work into any use, unless otherwise expressly agreed. All disputes on this subject are solved by the courts which may decide on the manner of exploiting the work.

3. Exceptions to the Exclusivity of Rights

Parts of protected works may be reprinted without the consent of their owners in the following conditions.

- a) If brief passages are used in the composition of school books.
- b) If short quotations are used for criticisms or for references in articles or critical books.

In both cases, the source of the copied passages must always be indicated.

E. Protection of Property Rights

Infringements of literary or artistic works are penalized against whether the infringed work is still a property of the author or his heirs or has passed into the public domain. In the first case, action is requested by the property owner, while in the second it is taken directly by public prosecution whether the Director of the Protection Office interferes or not.

Prosecution of infringements is carried through criminal procedure and leads to a penalty of three months to three years of imprisonment together with a fine of 50.00 to 500.00 L.L. or either one of the two. The following acts of infringement are subject to the said penalty.

1. Putting, or inducing others to put, for a fraudulent purpose a cheated name on a literary or artistic work.
2. Imitating, for the purpose of deceiving the public, the signature of the author or the

initials or symbols he uses.

3. Imitating a literary or artistic work as such.
4. The conscious selling, keeping, offering to sale or submitting officially an infringed work or a work carrying a name other than that of its author.

All other violations of copyright law are penalized only by a prison sentence of one month to one year plus a fine of 25.00 to 250.00 L.L. or either one of the two penalties. In all events, the repetition of the infringement acts leads to a penalty of one year to five years of imprisonment in addition to a fine of 50.00 to 1,000.00 L.L. The plaintiff is entitled to appropriate damages after removing all the effects of infringement.

F. International Protection

Modern means of communicating literary and artistic works are no more confined to national boundaries. They are quickly approaching universality, since national protection is not sufficient to cover the new horizons, an appropriate form of international protection is urgently needed.

1. The Convention at Berne

The first international convention for the protection of literary and artistic property was signed at Berne on September 9, 1886. This Convention was later completed at Paris (1896), revised at Berlin (1908),

completed at Berne (1914), revised at Rome (1928) and put in final shape at Brussels, June 26, 1948.

According to article one of the Convention, a Union for the protection of the rights of authors over their literary and artistic works was established at Berne, Switzerland in which the contracting states are members. The Government of Lebanon has ratified the Convention and consequently acquired the membership of its Union.

The basic provisions of the Convention are discussed as follows:

a) Equality of Treatment

Article 4 of the Convention provides for authors, who are nationals of any of the countries of the Union, the right to enjoy in other countries of the Union the same protection for their works that their respective laws grant to their nationals as well as the rights specially granted by the Convention itself. Provisions of this article apply for both published and unpublished works. The same protection is granted to non-nationals of the Union country who first publish their works in a Union country unless the country they belong to fails to protect adequately the works of authors of the Union countries. In this event, the Union country may restrict the works of non-nationals belonging to such a country.

b) Necessary Formalities

The enjoyment and exercising of the aforesaid rights is not subject to any formality. But the means of redress afforded to the author to protect his rights are governed exclusively by the laws of the country where protection is claimed.

c) Duration of Protection

The term of protection granted by the convention extends for the life-time of the author and fifty years after his death. When a term of protection in excess of this is granted by any Union country, the duration shall be subject to the law where protection is claimed.

The rest of the provisions of the Convention as to different conditions and events of protection agree completely with Lebanese law governing copyright. The Convention seems to have been the main source of this law.

d) The International Bureau

An International Bureau is established for the Union at Berne which is entitled to collect information of every kind relating to the protection of the rights of authors over their literary and artistic works, co-ordinate and publish such information for the common benefit of authors.

2. The Universal Copyright Convention at Geneva

This Convention was adopted by an intergovernmental conference held on September 6, 1952 at Geneva,

Switzerland. It was put into effect on September 16, 1955,¹ but it is not ratified yet by Lebanon. The Convention explicitly provided that it shall not effect in any way the provisions of the Berne Convention or membership in the Union created by it (article 17 of the Universal Convention). Furthermore, the states which were members of the International Union for the Protection of Literary and Artistic Works signed the new Convention on the basis of two conditions which were reserved by them in an appendix ~~d~~declaration:

(a) Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the Berne Convention, after January 1, 1951, shall not be protected in the countries of the said Convention.

(b) The Universal Copyright Convention shall not be applicable to the relationships between countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the Berne Union.²

1. Arpad Bogsch, Universal Copyright Convention, an Analysis and Commentary, R.R. Bowker Co., New York, 1958, p.v.

2. Ibid., p. 196.

a) Jurisdiction of the Convention

The jurisdiction of the new convention was, thus, limited to relations of Berne countries with non-Berne countries on the one hand, and to the protection of works having a Berne country as origin in non-Berne country or works having a non-Berne country as origin in Berne countries, on the other hand. The reason for this rather complicated arrangement, and for the existence of the Universal Convention itself, is that the U.S.A. refused continuously, together with a group of American nations, to join the Berne Convention which was ratified by about forty countries. Americans managed to draft a new convention on the basis of their own viewpoints which were acceptable to Berne nations only on the basis of the described reservations which limited greatly the utility of the Convention from the international point of view although they saved American purposes.

b) Duration and Terms of Protection

The Convention provides that the duration of protection is governed by the law of the country in which protection is claimed provided that its term is not less than the life of the author and 25 years after his death. Protection of all published and unpublished works of nationals of any contracting state is provided in all other contracting states without following formalities

required by any state other than their own, provided that the published work bears the symbol © accompanied by the name of the copyright proprietor and the year of first publication. Any state may assimilate to its own nationals non-nationals which are domiciled in it.

c) Compulsory Licencing of Translation Rights

Of the most important principles introduced by this Convention is the principle of compulsory licencing of translation rights. Any contracting state may restrict by domestic legislation the exclusive right of translation enjoyed by authors through compulsory licencing obtainable in one of the following conditions:

1) If no translation in the national language of the respective country is published within a period of seven years from the publication of the original work.

2) If a translation into the national language is published but all its editions are out of print within the same term of seven years from the publication of the original work.

Licencing, in one of the above conditions, may be obtained only in the following situations:

a) If the owner of the right of translation denies authorization in spite of the request presented to him by the applicant.

b) If the applicant is unable to find the owner of the right neither directly nor through the publisher of the work to be translated or the diplomatic or consular representative of the country of which the owner is national.

d) The Intergovernmental Committee

An intergovernmental committee was created by the Convention to study the problems concerning the application and operation of its provisions. This committee is the executive body of the Convention and operates now under the patronage of U.N.E.S.C.O.

CHAPTER IX

TOWARDS A DEVELOPED SYSTEM OF INDUSTRIAL PROPERTY IN LEBANON

A. Introduction

In this study, an effort was made to produce a clear picture of the Lebanese system of industrial property as determined by domestic legislation and international conventions entered by Lebanon. The system has been displayed as it actually operates, with all its deficiencies and defects. It was left for this stage of the study to deal with these deficiencies and defects at length and make the necessary recommendations thereof.

Hence, we shall begin by stating our main criticisms of the present system. Next we shall present our recommendations for developing the system in such a way as to better-serve the purposes of economic development.

B. General Criticisms

Almost any law or system in the world can be subject to criticism on various grounds. It is not our purpose from the following criticisms to stress minor defects or errors as much as it is to discover the main deficiencies and detect their causes if possible so that we may be able to present sound recommendations later.

Four main criticisms may be brought against the present system of industrial property in Lebanon:

1. The system is not adjusted to the needs of the Lebanese economy.
2. It is not brought up to date.
3. It stresses formalities rather than principles.
4. It creates much confusion as a result of unverified registration.

We shall proceed to consider these criticisms one at a time.

1. Ignorance of Economic Needs

Decree 2385 was enacted by the French mandatory authorities with the exclusive purpose of guarding French and foreign interests in Lebanon. The law was copied from the French laws of the late nineteenth century without taking into account the difference in economic functions and needs that exists between France and Lebanon.

The French economy was already developed and industrialized while the Lebanese economy was only a newly separated part of the primitive Ottoman economy. France was an exporting country while Lebanon was only a market for imported commodities. This, together with other differences of culture and scientific progress, made the new law irrelevant to the needs of the country in which it was enacted.

No definite economic principles or objectives are taken into account by this law. On the contrary, the fact of the extensive protection granted to patentees and registrants,

over 90% of whom are foreigners,⁽¹⁾ shows that the main purpose of the law was to give foreign industries a favorable exporting position in Lebanon and to keep the country a profitable market for their products.

This favorable position reveals itself particularly from the easy conditions put for the working of patents in Lebanon and the complete absence of compulsory licencing. We have seen how the requirement of working patented inventions came to be met by the simple formality of publishing a theoretical offer in a local newspaper once a year.

Trade-marks and industrial designs or models have become an effective tool in the hands of foreign industrial producers through which they maintain consumers-preferences for their benefit and monopolize a big share of the local market.

So it is only natural that over 90% of total registrations in the Patent Office for all kinds of industrial property belong to aliens, the majority of whom are not domiciled in the country but represented by lawyers or professional middlemen. The only advantage that Lebanon receives from these foreign registrants is the dues they pay which hardly cover the costs of operating the Patent Office!

(1) Research in the Patent Office revealed that out of 1035 marks registered in 1961, 897 marks were owned by foreign concerns. Furthermore, less than 5% of all registered inventions are owned by Lebanese patentees.

2. Obsolescence of the Law

As we have already pointed out, the Lebanese law of industrial property was copied from the French laws of the nineteenth century. Since January 17, 1924, several amendments were introduced to Decree 2385, but most of these amendments were for the purpose of bringing the registration dues up to date with the drop in the purchasing power of the Lebanese currency. No radical change was ever attempted or suggested by any authority or advisory body.

The law should have at least been adjusted in the light of the several international agreements to which Lebanon adhered. Instead, general clauses providing for unprejudicing the provisions of international agreements were inserted in the law on different occasions.

In fact, the gap which initially existed between the law of January 17, 1924 and reality has widened greatly by time. This unfavorable situation calls for the introduction of a radical and comprehensive reform in the light of the economic needs of the country.

3. Stressing Formalities Rather Than Principles

More than 80% of the provisions of Decree 2385, as amended, are devoted to formalities, proceedings and registration dues whereas the rest are left to principles. The procedure of registration is much more carefully indicated than the principles of acquiring ownership. Rules of essential importance in solving probable disputes are either stated briefly or put in an indirect way.

This could result only in uncertainty and the creation of undue difficulties for patentees and registrants which are left for the courts of law to solve.

We find also that the text of the law is itself deficient. No provisions whatsoever exist for some important matters. The whole subject of the transfer of property rights was not touched as far as trade-marks and industrial designs or models are concerned. This leaves important issues without any solution. One of these issues may be the validity of the transfer of a trade-mark without making a declaration in the Patent Office.

This contributes to more and more uncertainty which it is one of the purposes of legislation to eliminate.

4. Confusions Resulting From Unverified Registration

As we have seen, the registration of all kinds of industrial property is done, with very few exceptions having to do with public policy, in the Patent Office on the applicant's own responsibility without carrying out any previous investigation or verification. This practice often results in the confusion of property rights which leads to legal disputes brought before courts.

No verification is done even to find out whether the subject matter of an application is already registered by other parties or not. A recent dispute which arose between a foreign concern and a national firm very well illustrates the danger of this rule.

The Ceasar Arida and George Shukair Company of Tripoli applied on 5/2/1962 for the registration of the trade-mark "FLASH" for use on detergents and soap products. They paid the required dues, and the mark was registered under their name in the Official Register of Marks. Shortly, the company began to advertise the new product on a large scale, while it started preparations for actual production. To the surprise of the members of this company, they received a notification letter from Procter and Gamble claiming the ownership of the mark and advising them to stop using it. Arida and Shukair checked again with the Patent Office, and found out that Procter and Gamble actually had an earlier registration of the mark "FLASH" dated November 9, 1960. The time difference between the two registrations was less than two years, but the second registrants were allowed to obtain a new registration, all the same, and to lose their money on advertising and preparations for actual production without having committed any mistake on their part.

In addition to the injustice this rule creates, it results in a lot of complications and difficulties which are left, in the express words of the law, for the courts to solve. This causes wide uncertainty to prevail which produces obvious damages to national economy.

Hence the need arises for a developed law of industrial property built on clear and definite principles and oriented for the fulfillment of fixed economic ends.

C. Recommendations for a Developed Law of Industrial Property

In the eager drive for development and industrialization in this part of the world, the system of industrial property is invited to play a conducive role. A new and developed law should be set for the organization of this system with the object of achieving desired economic purposes. This law must contain clear principles, which provide for the settlement of possible disputes, efficient and uncomplicated procedures for the registration of property rights and effective means for the protection of these rights. Its enforcement should be coordinated with the general economic policy and should take place in an atmosphere which inspires security and confidence. The law may create new forms of industrial property which suit the conditions and economic needs of the country.

1. Principles of Industrial Property

The main principles of industrial property which a developed law must provide for are three in number:

- a) The source of ownership.
- b) The requirements to use, and
- c) Variable periods of protection

a) The Source of Ownership

The present law defines clearly enough the principles of ownership for patents of invention and industrial designs or models. Under its provisions, we have already discussed the requirements of inventiveness, novelty and industrial

utility. In my opinion, these requirements need nothing other than their expression in clear and comprehensive phrases incorporated in the new law.

As for trade-marks, the case is different. The source of ownership is greatly confused and one has to resort to personal wisdom, court decisions and principles of logic in order to establish a definite opinion on disputes arising from the conflict between rights enjoyed through registration and those acquired by usage.

These disputes could be easily solved if the following rules are adopted:

1) The only source of ownership for trade-marks shall be the priority of industrial usage.

2) The ownership rights acquired this way must be declared by registration in the Patent Office within a period of one year from the beginning of production under the acquired mark or marks.

3) Registration of a mark before putting it into actual use shall create for the registrant a priority right to use the mark only. This right should be exercised within a period of one year from the date of registration or else it is lost.

4) Discontinuation to use a registered mark for a period of three years without acceptable reasons shall lead to the cancelation of its registration.

b) The Requirement to Use

One effective way to insure the workingout of patents locally is to cancel unworked patents within a reasonable period of time, from two to three years. Such a proposal may not be consistent with the provisions of the convention of the Union for the Protection of Industrial Property which have been considered above.⁽¹⁾ Consequently a choice has to be made between two alternatives: (a) to withdraw from the convention and related agreements, or (b) to reshape the requirement to use in conformity with the convention.

To elect the first alternative will be very revolutionary. Although Lebanon is not an industrial exporting country and hence does not benefit much from the international patent agreements, it may bring harm to its international relations and international political position to withdraw from them all of a sudden. At the same time, it is doubtful whether this step will have good effects on the national economy. It is well-known that the decision to invest or build a new industry in Lebanon does not depend mainly on the question of patents. Many other considerations should be taken into account, as we shall see later in this chapter.

Hence it is advisable to choose the second alternative. In conformity with the convention, the requirement to use should be subject to the following rules:

(1) See pp. 84-96 above.

1) If the patentee fails to work his patent within a period of three years, the patent shall be subject to compulsory licencing.

2) The Patent Office may then issue such licences for the benefit of industrial bidders who undertake to work the patent within a period of six months from licencing against a licencing fee fixed by auction.

3) If the licensee defaults in his obligation, the office then may issue, in the same way, another licence to another industrialist for an equal period. Failure of the second licensee to work the patent shall lead automatically to its provocation unless the patentee undertakes personally to fulfill this obligation within a new period of three months. If the patentee fails this time, the patent must be finally provoked.

4) "Working of the patent" should be taken to mean the production of at least 50% of the value added to the protected invention locally.

5) The state should enjoy a preference right in the licencing of patents for the needs of national economy. It should be able to obtain a licence for the working of any patent without complying with the above conditions if and when such a patent is needed by a government enterprise or a business organization belonging to the public sector against the payment of a reasonable fee to the patentee. Careful rules must be set to prevent abuse of this privilege.

c) Variable Periods of Protection

The period of protection of industrial designs and models should be, like that of trade-marks, dependant on actual and continuous use and so may be renewed indefinitely. The period of protection granted by the present law to patents, 15 years, is similar to that granted by many countries of the world. It is thought that this period should be varied to suit different types of inventions which require more or less time to regain their initial expenses. Hence it should be replaced by variable periods of 5, 10, 15, 20 and 25 years. Protection under one of these periods should be judged by the Director of Patent Office depending on the importance of the invention, its economic utility and the length of time required for regaining its innovation expenses. It must be subject to different rates of dues which increase in direct proportion with the length of the protection period.

2. The Registration Procedure

It may prove costly and impractical for Lebanon to apply the American system of previous "search" or investigation before registration is approved. At the same time, the present rule of performing the registration on the applicant's own responsibility has proved to cause undue complications and confusion. Hence an appropriate combination of the two systems may well serve our purposes.

In accordance with the above view, the application for registration should, after its filing, pass in the following steps.

a) Declaration of the Application:

The subject of the application must be declared through posting on the bulletin board of the Patent Office and publishing in the Official Gazette.

b) Investigation:

If no opposition is presented for the application by third parties within a period of one month from its publishing in the Official Gazette, a simple investigation must be carried in the files of the Patent Office to determine whether any registrations of similar matters were made in the past or not. The subject of the application should be itself studied on the basis of the information supplied by the applicant on his own responsibility, to determine whether it meets the basic requirements specified by law or not.

c) Oppositions to Registration:

Oppositions may be presented by all interested parties within the one month period following publication in the Official Gazette. If the Director of the Patent Office finds that the opposition is sufficiently documented to constitute a real threat to the applicant's claims of ownership, he can suspend the registration and order the petitioner of opposition to file a law-suit against the applicant to legalize his claims within a period of fifteen days for this decision or else the opposition will be considered void and the registration continued. If, on the

other hand, the Director finds that no sufficient documents in support of the opposition are submitted, he must reject the opposition and carry out the registration procedure. In this case, the petitioner of opposition should be entitled to attack the Director's decision only by means of a law-suit requesting the cancelation of registration which should be filed within a period of two weeks from the rejection decision.

d) Approval or Rejection of the Application

If the Director of the Patent Office finds that the application fulfils both the basic and formal requirements stipulated by law, according to the best of the information supplied by the applicant, he must decide to approve registration, or else, he must reject it. In the event of registration approval, the registered matter will enjoy protection beginning from the date of filing the application.

If registration is denied by a rejection decision, the applicant may oppose to it within a period of two weeks before the tribunal of competent authority. Such oppositions must be decided through summary jurisdiction. If the opposition is finally accepted and registration ordered, the registered matter must enjoy protection retroactively as from the date of filing the original application.

3. Protection of Property Rights

As a rule, penal tribunals must have jurisdiction over all suits of infringement and unfair competition. Acts

of infringement must be penalized by prison sentences rising from one year as a minimum to five years, in addition to fines equal to double the value of damages decided by the court, while unfair competition must be penalized by the last part of the penalty alone.

The enforcement of such severe penalties will make infringers fear the consequences of their illegal acts much more than they do under the relatively easy provisions of the present law.

4. The Industrial Adaptation Patent

The introduction of this revolutionary patent is expected to bring far reaching results in fostering the economic development of the country.

Since the problem of underdeveloped countries, like Lebanon, is more of adapting foreign industries and innovations to their local needs than of establishing brand new industries and working new industrial inventions or processes, successful adaptations of foreign industries, industrial processes or innovations should be encouraged by making them benefit from patent protection for a limited period. This period should vary with the time needed to regain the initial expenses of installing the adaptations or the greater part of them. Hence it should be fixed by a permanent expert committee which judges each case by itself provided that it does not exceed five years.

The application for this patent should be studied by the aforesaid committee on the basis of a complete

adaptation proposal provided by the applicant. Such adaptations, to be granted protection, should comply with the following requirements:

a) It should introduce for the first time in Lebanon a new invention, industry or industrial process.

b) The new invention, industry or industrial process should be adapted to fill a specific need deemed important for the economic development of the country.

c) The applicant should undertake to work his patent by starting operations within a period fixed by the committee in view of the time needed to make all the necessary preparations.

d) The applicant should pledge an amount of money or an equivalent surety fixed by the committee as a security for keeping his promises. This amount or surety will be appropriated by the committee for the benefit of the Patent Office if the applicant fails to complete his preparations within the fixed period without presenting an acceptable reason.

A waiting list may be attached to every adaptation registration on which the names of alternate applicants who propose to take over the adaptation project in case of the registrant's default are recorded. But before any of them can do so, he must comply with the same period and pledge requirements.

Adaptation applications may be rejected in one

condition only: when the invention to be adapted is already patented in Lebanon. It remains for the applicant, in this case, to apply for compulsory licencing if its conditions are available.

5. Existence of a Favorable Economic Atmosphere

Any successful industrial property system must form an integrated part of the economic policy of the country. Our main aim from the above suggestions, for the development of this system in Lebanon, was to induce foreigners and nationals alike to establish new industries in the country thus contributing greatly to its economic development. We are now going to find out whether the mere enforcement of these suggestions will lead us to the desired objectives or not.

In order that these proposed rules may be effective, a general atmosphere favorable to industrialization must exist. Security and order should be maintained all over the country. Political stability must be so strong as to hide away the fear of discrimination against foreign industrialists and the danger of sudden, unreasonable expropriation. Additional encouragement measures like tax exemptions may prove to be of a great help.

Most important of all is the existence of developed capital and money markets to supply new industries with necessary capital and credit. Foreign industrialists prefer to operate where they find a more appropriate supply of such facilities.

In short, the working of patents in Lebanon should prove to be economic enough for foreign industries to be encouraged to enter the local markets as producers rather than exporters. Actually, a foreign industrialist is interested in keeping his patents only for protecting his markets from competition. If the domestic market does not possess the potentialities for using these patents locally, he will not be afraid of competition any more and will not take the risk of local production to protect his patents.

The competitive threat to foreign patentees may be provided either by capable domestic producers or by other foreign producers who are willing to export to the country had it not been for the patents. It is under such circumstances that compulsory licencing and similar provisions included in our suggestions will force a foreign industrialist either to abandon the market or to establish a branch plant in it.

This way, our developed system of industrial property will help to attract foreign capital and encourage the establishment of new industries at the same time. The country has nothing to lose if a foreign producer-exporter loses control of his share of the local market due to the loss of his patent privilege. If these measures fail to induce exporters to change to local producers, they open new opportunities for local industrialists and other foreign producers alike.

Under the favorable atmosphere, a sound policy of industrial property should prove to be of a great help to the economic development of Lebanon.

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