



Namir Sioufi

# Enforcement of patents in the MENA region

Namir Sioufi, Saba IP, explores the increased interest in intellectual property in the Middle East and North African region, specifically considering Egypt, Saudi Arabia, and the United Arab Emirates.

Over the past few decades, the Middle East and North Africa (MENA) region witnessed an increased interest in intellectual property (IP). This is primarily evidenced by the urge to ratify outdated IP laws, introduce new IP laws for the first time, and/or issue and update implementing regulations.

With the exception of countries such as Libya, the current laws and regulations governing IP rights are in line with expected international practices. The law's provision for the basic filing and priority rights, allowed subject matter, clear definitions of the patent owners' rights and, most importantly, the legal recourse for asserting and enforcing these rights.

Despite the hesitation and doubt by foreign IP owners of the adequate enforcement of the related rights, it is too early to pronounce a verdict on this subject either way.

As is the case whenever there is an attempt to discuss IP matters for the MENA region, it is not possible to describe the various articles and provisions in every country without boring the reader! There are certain statements that can be made generally; however, in this article, the focus will be on one or two countries based on their market size and also based on country experience in such matters. As an example, it would not be of interest to

discuss here patent enforcement in Kuwait or Tunisia, considering that there has not been one reported case of infringement or invalidation. It is this author's opinion that readers would be more interested in Egypt, Saudi Arabia, the United Arab Emirates, or maybe even Iran.

## Legal provisions on enforcement

In order to take legal action on any matter, including IP matters, the laws have to define the IP owner's rights and which actions are considered an infringement against these rights. The provisions in these laws and the related guidelines will also provide a roadmap and determine the venues, the process, the duration, and the escalation options (i.e. appeal).

In most countries in the MENA region, the following expected actions are considered as acts of infringement: making, using, marketing, selling, and importing. In brief, any act which results in the commercialization of a patented product or process. The exceptions are rare. For example, pursuant to the laws in Egypt, it is possible to file and obtain a marketing authorization for a pharmaceutical product without this being considered an infringement.

## Résumé

### Namir Sioufi, Saba IP

Namir joined Saba IP in 2012 and currently holds the position of Regional Head of Patents. Namir works alongside a team of professional experts with various specialized backgrounds and provides technical and legal support across all Saba IP branch offices. Namir and his team manage several key patent portfolios from pre-filing recommendations and strategy through prosecution and grant. Namir has participated in several Global IP conferences as an attendee or a presenter. Saba IP is the oldest and leading IP firm with offices throughout the Middle East and North African countries. Saba provides all type of IP-related services including prosecutions, procurement and litigation.

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Accordingly, and importantly, all the patent laws in the region clearly define what is considered as an act of infringement, thus providing a patent owner with the extent of the related rights. The laws also provide for a mechanism by which the patent owner may request an injunction, temporary or permanent, in order to stop such activities until a court decision is issued.

Similarly, most of the laws provisions include a minimum penalty. The provisions further require the losing party to pay the fees for the publication of the decision in the official gazette. Most laws also provision for a doubling of the penalty and imprisonment in case of a repeat offense.

A court ruling may be executed by the relevant authorities to ensure proper enforcement of the decision. However, enforcing patent-related court decisions is rather difficult, especially for process patents.

### Local experience on enforcement

In an earlier paragraph, we made the following statement: “[I]t is too early to pronounce a verdict on this subject either way.” An important reason for such a statement is the lack of statistically significant cases on which to base such a verdict. In addition, there has yet to be specific case laws on which to base precedence or jurisprudence.

The region’s experience in enforcing patents is extremely limited to a small number of cases in total. It is not possible to even estimate the average number of cases per year. In some countries, it is simply zero: Is this equal to no enforcement?

Whereas the region has little to no experience in patent enforcement, there is a wealth of experience from documented cases relating to other IP rights. Not to say that enforcement of trademarks, for instance, correlates directly with patent enforcement, but the conclusion to draw from these relates to the existing systems and procedures.

In the absence of specialized courts for handling IP matters, and in particular patent matters, solutions have been proposed and utilized. In the few cases brought before the courts, sworn experts were appointed to address the technical aspects of the infringement or invalidation case. The expert, an individual or a panel, were brought in to weigh in and issue an expert technical opinion to go in conjunction with the legal opinion.

In other countries, such as Saudi Arabia, patent law provisions are for the formation of a Patent Committee, which will hear and issue a decision on a case. In the next section, the author focuses on the handling of such legal cases in Saudi Arabia.

### Patent enforcement in Saudi Arabia

Both Saudi patents as well as Gulf Cooperation Council (GCC) patents are enforceable in Saudi Arabia. The GCC patent system provides for a unitary system which includes all six GCC member countries; but it does not provide for a unified court system. Pursuant to the GCC patent law, infringement matters are to be handled directly in each country pursuant to the country’s own national patent laws.

Accordingly, in case of a suspected infringement against either a Saudi or a GCC patent, the patent owner should file a claim to the Patent Committee. The committee consists of three lawyers and two technical experts designated by the president of King Abdul-Aziz City for Science and Technology (KACST). As a reminder, the Saudi Patent Office also resides in KACST, which acts as a major hub for science and technology in Riyadh.

The committee system involves lower costs than those associated with filing a court case. A complaint is initiated by filing a written claim with the committee. In these proceedings, the committee acts as a jury and reads both sides of the issue. In case the committee decides that outside expertise is required, then such expert is brought in. A decision issued by the committee is binding, but may be appealed.

The Patent Committee’s decision may be appealed within a prescribed period of time to the Board of Grievances. The Board is headed by a judge who, although is not an IP specialist, is generally knowledgeable in all IP matters. The Board of Grievances decision is final and no further appeals are possible.

Patent law in Saudi Arabia provides for several courses of action. The Committee for instance has jurisdiction over all infringement and invalidation matters. It can issue injunctions and authorize the seizure and destruction of infringing products. It can issue the decision to publish the outcome and set out damages.

The Committee is also the authority which hears invalidation cases. If invalidation proceedings are used as a defense in an infringement case, the latter is put on stay until the outcome of the invalidation case.

### Concluding remarks

As a whole, the patent system in the MENA region is still in its infancy, maybe rather in its adolescence to maintain the same simile. Enforcement of patents in this case is in its infancy.

The few cases which have been reported in the region involved local firms allegedly infringing on patent rights for foreign multinational companies. The local industries are primarily imitators or me-too companies with little internal R&D. The limited technologies and capabilities have not created instances where local industries have been considered as major threats to these multinationals. This is changing, however, and with time we will see more local firms challenge such patents, and begin filing their own patents.

The current status of the laws and regulations provide local innovators with all the rights to be able to protect their own inventions and encourage further investment in developing innovative products and processes. Local and foreign investments have already catalyzed such developments and, in combination with growing markets and needs, it is only a question of time before certain local industries become pioneers in their fields.

Creating the right protection and enforcement environment is crucial to these developments. The region is growing in that direction and certain key countries such as Egypt, Iran, Morocco, Saudi Arabia, and the UAE are poised to take advantage of these developments.

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