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An Overview of Iranian Patent System

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ABSTRACT

Intellectual property protection is a one type of the protection to the innovator, rebelling from the creative efforts of the human Mind style exhibited by a virtuoso. The patenting system status in Iran is discussed using some recent statistics on the number of field and granted Iranian patents to resident and non-resident applicants. The Iranian patent laws differ from other countries. Patent system in Iran is briefly introduced and discussed in this paper to give the reader an overview of the status of the changes in the Iranian IP law. The Iranian patent legislation had a provision for registration of patent separately for resident and nonresident applicants.

Key-words: Iran, patent, patent filing, new patent law, ARIP, grace period, Plead, Opposition, Enforcability, Compulsory licence, non resident's requirements

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Introduction:-

The first patent system in the Iran is 1924 and 1931. It was come in to enforcement at same 1931 year and it was modified in 1958. The patent and trademark office of Iran is also known as "The Administration for The Registration of Industrial Properties" (ARIP) in the country. This is the part of administration for the registration office for pharmaceutical companies and industrial property Associate to "The Registration Organization for Deeds and Properties of Iran (RODP)". The entire system is under the oversight of the Iranian judiciary system (see Scheme1). The Iranian patent laws differ than the other countries. Hence an understanding of legal status of patent in Islamic Republic of Iran the Iranian patent laws assist the foreign innovators to utilize their unique patent rights effectively in Iran ².

What is a patent?

It is an exclusive right to the innovator to make, use and sell his new and useful discovery, design, process, machine, manufacturer, or other composition, or new improvement on it.

Is applying for a patent irremissible?

It is not an obligatory. But, obtaining of a patent gives the owner (patentee) the right and assurance to take legal action for preventing others from exploiting the patented invention or discovery without his consent ³.

Patent laws and granting process:-

The Iranian current law for the patenting system is based on the declaration and first person, who applies for the filing of an excogitation, Shall be considered the inventor of that particular invention, unless proved otherwise. Although the system is declared based, the subject matter is first explored in a database, which can solely be accessed by ARIP and is limited to Iranian patent information. As a next step the inventor will have to oppose the "scientific validity" of his invention in an oral proceedings, session, in which experts from the ARIP and Iranian Research Organization of Science and Technology (IROST) participate. The meeting is arranged for all the application to decide whether the applicant innovation is true innovation or not, checked by only a scientific background (and not based on a prior art search).

Switching to an examination based system:

In conformity with the previous law the Iranian patent system is declaration-based, and hence substantive examination of the the subject matter of the inventions is not practiced at present.

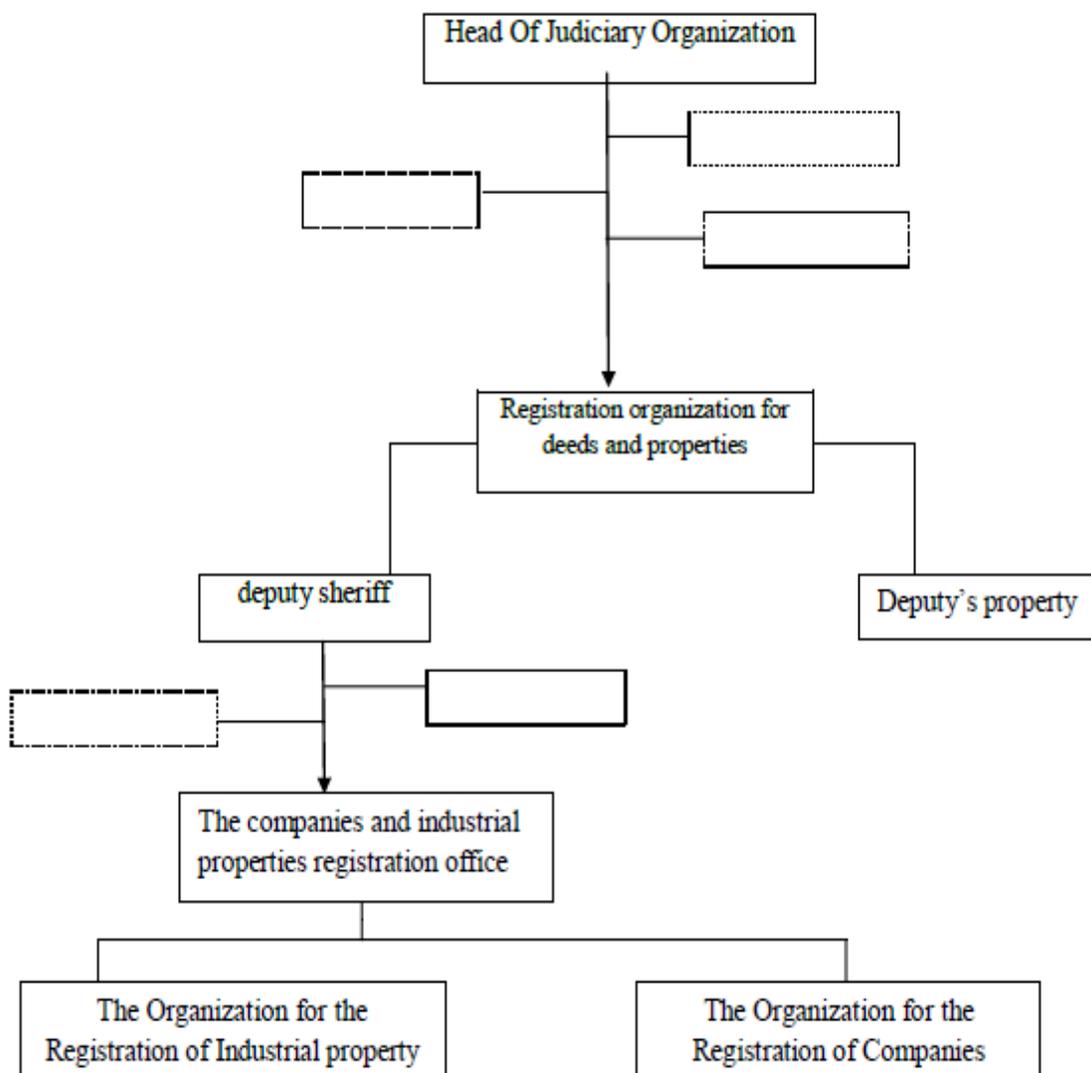
Art.13 of the new law, states that the Iranian Administration for the Registration of Industrial Properties (ARIP) shall examine the applications with respect to their compliance with the patentability requirements. It should be noted that this is discretionary, Adverse to the explicit acknowledgment of the new law to an examination based system, and the displacement is not expected to take office in the near future due to the lack of infrastructures and expertise needed.

Grace period:

Patent is granted in 10, 15, and 20 according to the circumspection of the applicant. Most of the applicants choose the maximum grace period 20 years. Any Additions or improvements may later be included and are protect able for the duration of the principal patent.

What types of invention are consider as patentable?

Excogitation of any novel industrial product, which intends, that it should not have been published or utilized in Iran or abroad before the date of application for the patent.



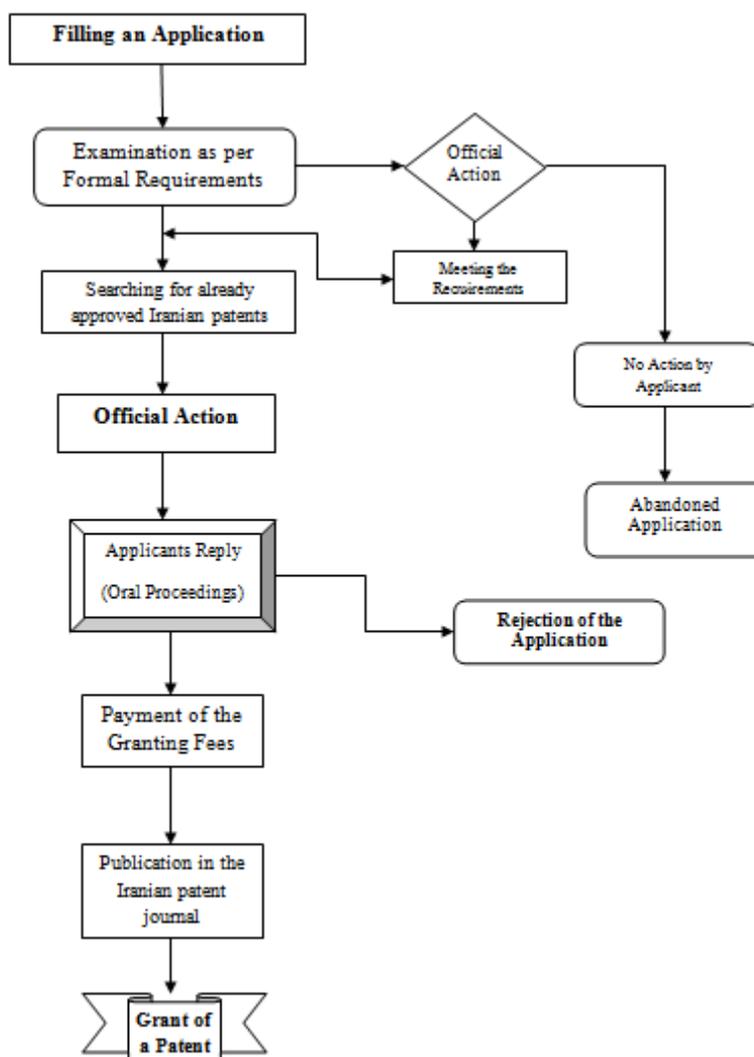
Scheme1. The structure for registration of industrial properties in the Iranian administration

In the following cases patent may not be applied:

1. Invention is harmful to the public order and law, or public health or ethical motive.
2. Pharmaceutical formulae or compounds;
3. Financial scheme;
4. Fiscal plan related to pharmaceutical manufacture.
5. After issuing patent certificate to the patentee if he has not made to use within five years.

The application for registering a patent must have a detailed description of the invention, and drawings if necessary for comprehension of the invention. The application for registration of a patent must be made in Persian. If the applicant is not practicable to prepare it in Persian, he may prepare it in Persian or English, and its annex summary in Persian. After filing and converting the experts in the oral proceeding, the committee will ask the applicant to publish an advertisement in the "Iranian Official Journal" comprising the following points: title of the innovation, patent registration number, patent validity period, complete name and address of the applicant. "Iranian Official Journal" is published in

Farsi. Later on there are a number of stages requires for granting a patent to the applier. Schematic representation of patent granting process (scheme2)



Scheme 2 the general procedure for getting an Iranian patent

Plead, Opposition, and Enforceability:

Plead:

If the patent application is turned down by the government during the granting process the reason must be distinctly expressed. In such case the patentee has the legal right to file petition before the “First Instance Court of Tehran” within ten days from the date of rejection of his application. The court’s judgment is also subject to plead to the higher court ¹. The day of session will be fixed by the court, and will notify the applicant, as well as the officer in charge of the ARIP, so that they present themselves on the specified day. The day of the session will be fixed by the court, and will Notify the applicant, as well as the officer in charge of the ARIP, so that they present themselves in the specified Day. On the day of meeting court will discover the oral argument of both the parties and gives the reserves verdict. In this example, the finding of fact against the absent party will be deemed as pronounced in his presence ⁴.

Opposition:

The invention related objection is not yet granted it submit to the ARIP. The ARIP shall advise the applicant for registration, if the confrontation is based on an overlap with a previously granted patent, within 10 days after reception of the alphabetic character of opposition. In the notice, explicit a warning must be made that if he surrenders to the opposition of the objector, he must withdraw his application. If the applicant cannot withdraw his application, the objector must refer to the Court of First Instance in Tehran within 60 days from the date when his opposition was notified to the applicant. After the grant of a patent, interested parties may apply in the "First Instance Court of Tehran".

The "First Instance Court of Tehran" has no branches in other cities or towns and all of the cases should be referred to the same branch in Tehran.

Enforceability:

The status of enforce-ability of the patent rights in the Current law and previous is analyzed under the three following sub- classes.

i) Criminal remedies:

According to the provisions of Art.249 Of the previous Iranian general criminal Law the penalty of patent right infringers may be 3–6 months of Imprisonment or fines, however the courts have proven to be Reluctant to render such judgment.

The vaguest sections of the current law with respect to enforceability are the criminal remedies, since no penalty has been mentioned, and the penalties are renvoi (the action or process of referring a case or dispute to the jurisdiction of another country) to the criminal law ⁵.

ii) Civil remedies:

The patent holder the right to take the court for provisional injunctions to halt the production and sales, or significance or import of false or infringing products, and the courts are bound to do this and address this issue properly.

iii) Interim and border measures:

The current law also includes effective provisions with regard to The interim and border actions, which go further than security orders for the defendant, or provisional injunctions for the seizure of Alleged infringing products or to prohibit the production or sales of An infringing product, and even lets the customs agents seize any alleged Infringing products without court rules.

The above- cited provisions of the current law in interim and border measures issues seem to be in complete conformity with international standards, e.g. those of TRIPS and may yet Even Be considered to have higher standards from these aspects.

Compulsory license:

The current law, having merely focused on the economic rights of the inventors, lacks provisions to meet the demands and rights of the society Thus, in accordance with Art.5 of the Paris Convention, and the standards of Art. 31 of TRIPS contain provisions on compulsory licensing, to overcome this deficiency. Based on the provisions of Art 17 of, the government shall have the right to grant a compulsory licence under the following conditions:

- The rights granted by the compulsory licence are only to be practiced in Iran.
- The decisions of the committee can be objected to through the Public Court of Tehran.
- The diligence of the invention shall not overstep the limits mentioned in the compulsory license, and can be performed after paying a reasonable license fee.

- in Case the patent holder claims In case the patent holder claims that the grounds according To which the compulsory license has been issued do not apply anymore, Or that the government and/or people appointed by the committee did not act according to the provisions of law, the license can be terminated.
- If national emergency or other circumstances of extreme urgency, the public interest, the growth of other vital sectors of the internal economy of the country require the application of an innovation.

Foreigner's patent registration requirements:

In Iran it is also possible for foreigners to apply for a patent, any artificer or discoverer who holds an unexpired patent certificate outside Iran, is ennobled to apply for a patent in Iran valid for the remaining duration of the original one. The following documents required to obtain patent in Iran:

1. Name and address of the applicant
2. Entitle of the invention and discovery.
3. Certified copy of the corresponding patent certificate.
4. A certified copy of the transferable document.
5. Specifications, claims, plans and drawings related three copies. The same documents submit within six month to patent office Iran.

After filing and converting the experts in the oral proceeding, the committee will ask the applicant to publish an advertisement in the "Iranian Official Journal".

Implementation in Iran:

Iranian policy makers paid more attention to the Intellectual property rights (IPR) and IP system in Iran. Due to changes in the attitude new edition of the Iranian patent and trademark law in accordance with the WIPO model has been prepared. The all the changes are to be ratified and are considered in the future in the parliament.

The Iran acquiesced to the Paris convention (December 16, 1959), WIPO convention (March 14, 2002), Lisbon agreement for protection of appellations of origin and their international registration (March 9, 2006), and is also considering the accession to the Patent Cooperation Treaty (PCT). Madrid agreement and protocol refers to registration of marks (December 25, 2003). These all this Iranian government upgrade the present IP system to modern one.

Iran joining WIPO, afterward different issues related patent, trademark, IP system, etc. in several conferences and seminars have been held with support of WIPO ⁶. Currently there are many inventor protect their invention in Iran by Iran patenting system. Now a day's many foreign companies.

Conclusion:

There are many changes introduced with respect to current law, patentability requirements, grace period, novelty, exclusion from patentability, and also new issues like new patent law, civil remedies, compulsory licensing, patent requirements for nonresident's and resident's, criminal remedies, interim and border measures these are compatible with international intellectual property agreement and standards thereof. These facts are to be added in the future for implementing and allows the foreign companies to register the patent application in Iran.

Iranian patent system which opens new purview for those interested entering and keeping their business in Iran, it is advisable to the inventor they seek the protection and enforcement in country which strictly follow.

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