



The patent legal system in Iraq: The path to efficiency of its statutes



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A B S T R A C T

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Iraq is estimated to play a key economic role in the future of its region, and its patent system is a significant component in that industrial progress. This article outlines the Iraqi patent system to assess its worthiness as legal protection for industrial property: a brief history of the legal system in Iraq is also given with a focus on the history of the patent system. Three main issues are addressed in the patent system. Patentability is the first and the most significant issue in the patent system and is examined in some detail. The duration of protection is considered as the second point. The article explores compulsory licences in the third point. It also explains the currently limited availability of information on Iraqi patent applications and patents, and notes that electronic databases are being developed. In the last section of the paper, the efficiency of the patent legal system in Iraq as an instrument to protect industrial innovation is discussed.

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1. The outlines of the Iraqi legal system

Iraq's legal system has been influenced by multiple countries which sought to have an impact on its development [6]. Iraq is thought to be the first country to have had a form of legal documentation. The Code of Hammurabi, although it was not a systematized legal code such as the present systems, reflected a developed legal thinking [5]. Iraq also played a key role in the history of the Islamic Empire. The majority of leading schools of Islamic jurisprudence, in particular Hanafi, Shafi and Imami, originated and matured in Iraq [3]. Thousands of Islamic jurisprudence manuscripts were written in Iraq.

Nevertheless, the modern legal system was brought to Iraq by the Ottoman empire which controlled the country for more than three centuries. In the Ottoman Era the "Mejelle" was the most influential legislation in the entire Empire, fundamentally, it was a codification of the Hanafi jurisprudence [6]. The Iraqi legal system, however, has been a mixed system based on both civil law, and common law systems. The duality of the legal system in Iraq is due to Ottoman rule from the 1500s until the First World War and the British Mandate from 1915 until 1932. The civil law influence was brought by Ottoman rule which based its laws on the French civil law and procedure. British rule impacted penal codes and criminal procedure.

It is interesting to know that many of the current Iraqi Acts were enacted by the Iraqi National Assembly during the monarchy, most notably the 1951 Civil Code [6]. After the Ba'athists reached power they started legal reform that began with the 1968 laws based on subordinating the private rights of individual citizens to the socialist priorities of the State. After the US-led invasion had a profound impact on many aspects of life, a new philosophy of the Iraqi state and the government was introduced. The legal system *inter alia* is thoroughly being reformed.

The sources of legal rules in Iraq are categorised into two groups of sources; the classification is based on the adequacy of such sources to be relied on by courts. The first type is authoritative sources; these sources are legislation, custom, Islamic law and equity. It is noteworthy that they follow Article 1 of the Iraqi Civil Code No. 40 1951, which is the backbone of the Iraqi legal system, which states in its Sections 1 and 2:

- 1 Legislative provisions are enforceable in all matters that these provisions address in their wording
- 2 If there is no applicable provision, the courts shall adjudicate in accordance with custom and, if custom is not found, accordance with Islamic Shari'a principles which are most consistent with the provisions of this code, without confinement to a specific school. If Shari'a principles are not found the court shall adjudicate in accordance with equity principles.

The second sort of sources is called interpretive sources, judicial decisions and juristic opinion that can be used as guidance about

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how to derive legal rules from the authoritative sources. Article 1(3) of the Iraqi Civil Code elucidates that by stating:

“Courts, in all cases, shall be under the guidance of rules which are approved by courts and jurists in Iraq, and then in other countries whose laws converge with Iraqi laws.”

The Iraqi judicial system has not been substantially changed, although in the pre-2003 era the Ministry of Justice oversaw three different court systems: civil courts, courts of personal status, and criminal courts. The Minister of Justice was at the same time the head of the Supreme Judicial Council which is the highest judicial body in the Iraq, there were however many special courts which were in *de facto* out of control of this council such as revolutionary courts, Ba'ath Party courts, intelligence service courts, and military courts. With the 2003 Iraq invasions a new power came to power, the Coalition Provisional Authority “CPA”, which was formulated by the USA and became the new ruler of Iraq for almost one year; the CPA moved quickly to establish an independent judicial system. To ensure the separation of power, the Supreme Judicial Council has been entirely under the control of the Judges, and there has been no governmental involvement in the judiciary administration.

2. Iraqi patent legal system

The Ottoman Patent Act 1879 which was a translation of French Patent Law of 1844 was the authority for the patent system in Iraq. After independence Iraq maintained the enforcement of the prior Ottoman Empire patent Act 1880. A sequel patent Act No. 30 of 1930 was the first Iraqi step to set up the Iraqi patent legal system. In 1935, Iraq enacted the first Iraqi Patent Act. After the Baathists' came to power in 1968, the new rulers of Iraq reviewed all the legal systems of the country, including the patent law. A new Patent Act was passed by the revolutionary Command Council.¹ The Patent and Industrial Design Act No. 65 1970 stated in its mandating reasons that it was legislated to conform with economic, industrial and social development of the country, to protect industrial property rights, and to encourage inventors. We will examine all these Acts, regarding three issues: patentability, protection duration and compulsory licence.

2.1. Patentability

The Ottoman Patent Act 1879 introduced the granting of patents without examination. The Article 2 of the Act defined patentable ‘inventions or discoveries’ by enumerating three types of them, it states:

“It shall be considered as inventions or discoveries: The invention of novel industrial products, the invention of new ways or new application of known means to obtain a result or an industrial product”

Consequently, the criterion of patentability according to this Act was two-fold: the invention had to be new and to have an industrial character. There was no examination of whether applications met these requirements.

The Sequel Patent Act No. 30 1930 consisted of sole substantive Article which states:

“Patents registered in Turkey before 6 August 1924, and that have been registered in Iraq on 22 August 1928 or after this date, have the priority to be registered as they were registered in Iraq

in the same date they were registered in Turkey under the condition that the registration in Turkey is valid until the date of registration in Iraq, the valid laws in Turkey will be applied regarding the validity in that time”

This Act thus recognised all patented inventions that were registered in Turkey before 1924 – the year of formulation the first Iraqi government according to the first Iraqi constitution.

The 1935 Patent Act did not explicitly set requirement for patentability. Instead it accorded patents for every invention. Article 1 of the Act defined the action of inventing as:

“Producing novel thing by known processes or creating new processes to obtain known things, or creating new processes to obtain new results in industrial matters, the invention also encompasses repairing these things or processes”.

The Article 4 excluded some inventions from the patentability arena – it states:

“Patent shall not be awarded for pharmaceutical compositions, medical drugs, and the process which are used in financial and banking matters”

Article 5 in the Act deprived Iraqi tribunals of hearing any case concerning foreign patent unless such patent was registered in Iraq. Inventions, according to Article 7, would acquire 15 years protection. The 1935 Patent Act remained the central point of the Iraqi patent legal system for 35 years, Patent Order No. 16 1936 was legislated according to its provisions, the Act had been amended three times in 1940, 1949, and 1968.

The 1970 Act did not vary from its predecessor in the patentability clause, and there is no requirement set for an invention to be patented. Meeting the definition of *invention* is the sole prerequisite for patentability. Article 1 (4) defined the invention as:

“Any innovation industrially applicable related to either new industrial product, novel process and method, or both of them, or achieves a specific proportion of improvement thereby it falls out of copying”

Article 3 (1) of the Act excluded the patentability of inventions which exploitation thereof infringes the public moral or *order public*, or those inventions that conflict with the public interest. Medical and pharmaceutical compositions are excluded from patent protection according to Article 3(2).² The third section in the Article excluded building maps and solid drawings related to them. The Patent Act of 1970 has remained the central part of Iraqi legal system; it is still enforceable with its three amendments which were enacted in 1999 and 2002.

In the aftermath of the US-led invasion of Iraq, US administration formulated the Coalition Provisional Authority (CPA) to supervise the democratization and modernization of the country, and hence its rehabilitation and transition to a democratized country. It is crucial, thus, to reform the legal system of the civil law of the country. Coalition Provisional Authority Ordinance No. 81 created the Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Act of 2004. As we will see hereinafter, this act has met the legislative requirement of the patentability clause in the TRIPS Agreement. It was explicitly stated in the preamble of the 2004 amendment that the pre-2003 intellectual property legislation in Iraq did not comply with international standards of protection. It is vital for Iraq to become a full member in “the international trading system, known as the World Trade

¹ Baathists formed this council which, according to the temporary constitution of 1970, held all executive and legislative powers.

² This exclusion has been suspended in 2004 as we will see hereinafter.

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