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## AN OVERVIEW OF THE SRI LANKAN LEGAL FRAMEWORK ON PATENT APPLICATIONS

Having the assurance that a robust legal framework exists which secures the interest of an inventor can be a compelling reason to foster innovations and of course to steer efforts towards further engagement in research and development in any industry.

The evolution of Patent law in Sri Lanka is a tale of its own, with the first Patent being granted in Sri Lanka on the 22nd of November in the year 1860 under the British Inventor's Ordinance of 1859. Later in 1906, The Patents Ordinance of 1906 came into operation, which was based on the English Patent Law.

Today in Sri Lanka, Intellectual Property Law, inclusive of Patent Law is governed by the Intellectual Property Act No 36 of 2003 ("Act"). The government body entrusted with the duty of protecting and administering Patents in Sri Lanka is the National Intellectual Property Office. This article will provide an overview of the procedure followed in Sri Lanka when registering a Patent and the salient features which need to be fulfilled to proceed with a Patent application.

For an Invention to be eligible for protection under the Patent Law, it should fulfill three important aspects. These are: novelty, consisting of an inventive step and being industrially applicable. Failure to cater to these basic

criteria shall render any invention as incapable of obtaining IP protection. According to the Act the right to patent belongs to the inventor. In the event there is an involvement of two or more persons who have come together to bring forth an invention, then such right to a patent shall belong to all such persons jointly.

In instances where the inventor and the applicant are not the same, a statement should be provided by the applicant when submitting the application, justifying their right to the patent. It will be the responsibility of the Director General of the National Intellectual Property Office to forward a copy of such statement to the inventor. The inventor is vested with the right to inspect such application.



Unlike a Trademark application, formulating a Patent application consists of various aspects that require both legal and industrial expertise. The following basic details should be contained in a patent application or what we generally refer to as the Patent Specifications:

- i **A request for the grant of the patent –**  
This should be addressed to the Director General of the National Intellectual Property Office, including a petition requesting for the patent to be granted, the title of the invention, details such as the name, address of the applicant.
- ii. **A description of the invention –** This should be drafted in such a manner that will provide a clear and complete understanding of the invention and can be evaluated by an ordinary person. It must be noted that the title of the invention should remain unaltered in all documents pertaining to the application. The description should further provide details on the technical field which the invention relates to,



background art, clear explanations of the novelty, inventive step and the industrial applicability of the invention, advantageous aspects, best mode in which the invention can be carried out etc.

- iii. **Claim(s)** – It cannot be emphasized enough how crucial it is to ensure that the claims are drafted carefully and with utmost precision. This can be considered as the most fundamental aspect of a patent specification and will significantly influence the possibility of the patent being granted, if drafted poorly without proper understanding of legal and technical requirements. Claims can be considered as the boundaries of a patent. In the essence of it, a claim concisely and coherently explains to us what the applicant declares his invention to be.
- iv. **Drawing(s) if required** – Drawings are used to simplify the understanding and interpretation of the invention.
- v. **An abstract** – This is a summary of the patent specification which includes the description, claims and drawings. It should be concise and not speculative and should be accompanied by illustrative drawings.



It must be noted that in the event the applicant does not reside in Sri Lanka or does not have a principal place of business in Sri Lanka the applicant should file their application through an Agent resident in Sri Lanka. A duly signed Letter of Authority should be submitted along with the application appointing such a person as the Agent and this should be produced along with the application.

The National Intellectual Property Office provides clear guidelines on the supporting documentation that is required to be submitted along with the application. Once the application is submitted to the National Intellectual Property Office, it will go through several stages of

examination and evaluation prior to the patent being granted. It shall be the duty of the Director General to assess the application and to determine if it meets the patentable criteria to grant patent rights over an invention. The term of protection accorded to a Patent is 20 years from the date of filing the application.

A roadblock which many applicants face when filing Patent applications is obtaining accurate guidance on drafting the patent specifications. As mentioned previously, this should be a blend of both legal and industrial/technical expertise. Regardless of the innovation and what benefits it shall reap to the economy and the nation, a poorly drafted patent specification will not pass the procedural evaluation and will eventually be refused the status of a protected innovation. This will invariably discourage inventors and hinder economic growth as well as industrial and technological development of the country.

It will therefore be of collective advantage to collaborate between government agencies, research institutes, legal professionals, and industrial experts to bring together a more accessible, sustainable, and supportive environment for inventors who seek to protect their intellectual property rights.

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## UAE'S LEAP INTO INNOVATION: UNVEILING A GROUNDBREAKING IP ECOSYSTEM



Divyendu Verma  
Global Head of Patents Practice

In 2023, the UAE experienced substantial growth in IP applications, witnessing a 9.6% increase in trademarks and a significant 29.5% rise in intellectual work registrations. Marking a pivotal moment, the UAE has taken a bold stride towards establishing itself as a global hub for innovation and creativity with the launch of its new intellectual property (IP) system.

This comprehensive initiative comprises **11 interconnected programs** designed to empower inventors, creators, and entrepreneurs. The primary goals include fortifying IP protection, streamlining registration processes, and fostering a culture of innovation.

The system, introduced at a recent event attended by key government officials, academic institutions, and private sector representatives, aligns with the UAE's vision to become a knowledge-based economy by 2031, as emphasized by Minister of Economy Abdulla bin Touq Al Marri. He underscored the vital role of IP in driving economic growth and highlighted the nation's commitment to an integrated legislative framework that promotes creativity and innovation.

Minister Al Marri outlined the four main themes underpinning the new system:

- Comprehensive protection of intellectual property

- rights;
- Reducing violations faced by patentees and innovators;
- Resolving disputes, and
- Enhancing ministry services for patent registrations.

The system will leverage AI technology to support R&D-based projects, encourage the export of innovative products and services, and attract intellectual property investments.

The UAE has already seen promising growth in IP applications, with trademarks increasing by 9.6%, intellectual work registrations by 29.5%, and patents by 19.5% in 2023.

### Key Initiatives of the New IP System:

1. Comprehensive Protection: Prioritizing protection for trademarks, patents, and copyrights.
2. Infringement Minimization: Aiming to minimize infringement and empower innovators.
3. Dispute Resolution: Establishing streamlined mechanisms for resolving IP disputes.
4. User-Friendly Platforms: Introducing AI-powered solutions for easier registration and information access.

### The UAE Launched 11 Key Initiatives as part of the New IP System:

1. Innovation Hub: An online platform providing guidance during the patent registration process.
2. Patent Hive: Aiming to increase patent registrations by collaborating with research institutions.
3. Emirati Fahes: Upskilling Emirati talent in the IP space to create job opportunities.
4. InnovLAB: Boosting innovation incubators to foster competitiveness.
5. InstaBlock: Expediting the removal of infringing content through livestreams.
6. IPSport: Raising awareness of IP rights in the sports industry and boosting trademark registrations.
7. One Day TM: Offering same-day trademark registration certificates to accelerate the process.
8. IP Platform: A central platform integrating data for efficient enforcement.
9. Hayyakom: Enhancing the UAE's image and attracting global companies by hosting major IP

events.

10. IP School: Developing WIPO-endorsed training programs for diverse audiences.
11. Virtual Character 'Aisha': Raising public awareness of IP rights through social media engagement.

The UAE's launch of an ambitious intellectual property system marks a transformative step towards fostering innovation and creativity on a global scale. With a robust set of initiatives spanning comprehensive IP protection, streamlined registration processes, and a commitment to resolving disputes, the UAE demonstrates its dedication to creating an environment that empowers inventors, creators, and entrepreneurs. The incorporation of AI technology, user-friendly platforms, and groundbreaking initiatives positions the nation as a key player in intellectual property rights protection. The envisioned growth in patent registrations, increased awareness through initiatives like IP Sport, and the strategic focus on talent development showcase the UAE's commitment to becoming a knowledge-based economy by 2031. This comprehensive IP system not only stimulates economic growth but also sets the stage for the UAE to export advanced national products, encourage intellectual property investments, and emerge as a global leader in innovation and technology.





## IP UPDATES

### UAE: Patent Examination Procedure



The UAE Patent Office has recently announced the implementation of a new procedure for patent examination.

From now onwards, the Examiner may issue a “Fee Amendment Order” for newly filed applications and for pending applications whose examination is pending in the Patent Office. The order will provide additional official fees for patent applications based on a number of claims. If the patent applications contain more than 10 claims and up to 30 claims, the additional official fees will be AED 1000. If the patent applications contain more than 30 claims and up to 50 claims, the additional official fees will be AED 2000. If the Applicant wants to amend the claims by correcting minor errors (if any), the amendment fee will be AED 2000 based on the Examiner's decision.

### Myanmar: Introduction of Industrial Designs



On February 01, 2024, the Myanmar Department of Intellectual Property has announced filing of industrial design applications would be accepted under the Industrial Design Law. This is a great initiative in Myanmar. This will offer an opportunity to creators to protect their designs.

### Libya: Updates on Resolution No. 26/2024 dated January 17, 2024 for Trademark Office



The Minister of Economy and Trade of Libya has issued resolution no. 26/2024 on January 17, 2024. The resolution provides a new adoption for trademark registration and gives clarity on trademark registration procedures, expiration, mortgage, renewal, cancellation, etc. The official fees for trademark registration have been increased. Further, the opposition period for trademark applications has been shortened to a non-extendible 30 days. The Trademark Office has also launched the Trademark Office - Electronic Publication Platform. Now, all the accepted trademark applications will be published on the Official Website.

### Sudan: Trademark Office resumed Operations from February 11, 2024



From February 11, 2024, the Trademark Office has resumed the operations after 10 months of closure period. Now, the Trademark Office is accepting new filings of trademark applications, renewals, etc. However, the trademark office is not attending any subsequent procedures such as examination and supporting documents, as their database has not updated. They will start such procedures after updating the database.

### Qatar: Payment of Patent Annuities and Withdrawal and Amendment of Patent Application



The Minister of Economy and Trade has issued circulars concerning the payment of patent annuities and withdrawal and amendment of patent application. Circular No. 2/2024 concerning the payment of annuities stated that the Patent Office will not examine or issue any decision regarding a submitted patent application within a consecutive period of three years, the applicant, or their representative agent, may stop settling the annuities starting from the forth one until the Patent Office issues its acceptance or grant decision; at which point all outstanding (accumulated) annuities must be paid; while the remaining subsequent annuities can be paid in their respective year until the end of the protection period. Circular No. 3/2024 concerning the withdrawal and amendment of patent application stated that patentees may withdraw their applications anytime as long as no final decision of grant or rejection have been issued; at which point they can no longer recover their submitted documents, nor can they retrieve the official paid fees. Equally, patentees may also amend their patent applications or submit supporting documents anytime as long as no final decision of grant or rejection has been issued. However, the amendments must not alter the essence or nature of the invention.





## INDIA: Copyright Case



**Gujarat Cooperative Milk Marketing Federation LTD & ANR. (Plaintiff) vs Sujay Kumar & ORS. (Defendant)**

Case No.: CS(COMM) 45/2021, I.A. 1353/2021, I.A. 9877/2021, I.A. 9878/2021 I.A. 19665/2022.  
Decided On: February 02, 2024

**Amul** The present suit was filed by plaintiff against multiple defendants including “WIDEOPEN” for posting disparaging content related to the defendant and trademark “AMUL” on social media, including YouTube. Defendant No. 5, “WIDEOPEN”, was not identifiable due to Google's refusal to provide the identity as per GDPR rules. The Counsel for Google Ireland emphasized the legal constraints under the GDPR and suggested obtaining data through legal processes in Ireland. No Mutual Legal Assistance Treaty (MLAT) exists between India and Ireland. The Hon'ble Delhi High Court observed the complexity of issues due to conflicting legal jurisdictions and finds that it is essential to ensure that copyright owners are not deprived of remedies due to data protection laws.

defendants were using the mark “LOTUS SPLASH,” likely to cause confusion with their trademark “LOTUS”. The Hon'ble Delhi High Court, after examining evidence, finds the contention of plaintiff to not be prima facie case of confusion and infringement as the only common feature between both the mark is word “lotus” and the product is completely different in appearance it will not cause confusion in mind of consumer so there is no infringement. Thus, the Hon'ble court is of the opinion that there is no prima facie case of grant of injunction.

**Tata Sons Private Limited & ANR. (Plaintiffs) vs Mohan Kumar Kotana (Defendant)**

Case No.: CS(COMM) 91/2024, I.A. 2223/2024, I.A. 2224/2024, I.A. 2225/2024, I.A. 2226/2024, I.A. 2227/2024, I.A. 2228/2024 & I.A. 2229/2024.  
Decided On: January 31, 2024



The present suit has been filed by the plaintiff seeking inter alia permanent injunction against defendant for infringing packaging of the plaintiff trade dress. Plaintiff contended that the defendant has plans to expand his business beyond local territory which can cause confusion as to the source of the product. The Hon'ble High Court of Delhi observed that the defendant trade dress and packaging on its product is bound to create confusion as to the source of the product and it is likely to cause confusion. The Hon'ble court in absence of defendant makes it *prima facie case of ex parte ad interim injunction*. The Hon'ble Court granted *ex parte ad interim injunction* and gave an order in favor of Plaintiffs and Defendant was restrain from dealing in any product which is similar to plaintiff trade dress.

**M/S ZARI SILK (INDIA) PVT. LTD. (Plaintiff) vs MS. SURBHI MUNJAL (Defendant)**

Case No.: CS(COMM) 38/2024  
Decided On: February 01, 2024



The present suit was filed by the plaintiff seeking permanent injunction against defendant for using plaintiff's trademark “ZARI”. Plaintiffs contended that the defendant's mark is phonetically and exactly identical to the plaintiff's mark.

## INDIA : Trademark Case

**Lotus Herbals Private Limited (Plaintiff) vs Dpka Universal Consumer Ventures Private Limited & ORS. (Defendants)**

Case No.: CS(COMM) 454/2023, I.A. 12308/2023, I.A. 17542/2023 and I.A. 19426/2023  
Decided On: January 25, 2024



**LOTUS**  
HERBALS

The present suit was filed by the plaintiff seeking a permanent injunction against defendants for infringing plaintiff's trademark. Plaintiff contended that



The Hon'ble Delhi High Court, after examining evidence, and on non-appearance of defendant even after receiving multiple summons observed that the case is prima facie case of ex parte ad interim injunction. The Hon'ble court also found contention of plaintiff to be case of likely to cause confusion as mark is not only phonetically similar, but defendant also sought registration under same class as of plaintiff. Thus, the Hon'ble court ordered an *ex-parte ad interim injunction* against defendant and immediate restraint on them from using said mark.

**Bennett Coleman And Company Limited (Plaintiff)  
vs Timespro Consulting LLP & ORS. (Defendants)**

Case No.: CS(COMM) 723/2022, I.A. 12370/2023 & I.A. 12371/2023.

Decided On: February 05, 2024



The present suit was filed by the plaintiff seeking a permanent injunction against defendants for causing confusion with the plaintiff's trademark. Plaintiff contended that defendants are using mark "TIMESPRO CONSULTING," causing confusion with their trademark "TIMES, TIMESPRO, TIMES PROPERTY and TIMES" and using their name to defraud consumers. The Hon'ble Delhi High Court, after examining evidence, finds the contention of plaintiff to be prima facie case of confusion and infringement. Thus, the Hon'ble court ordered permanent injunction against defendant and immediate restraint on their practice by preventing them from using the said trademark.







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