



AUDIRI VOX

a client-centric ip practice

MIDDLE EAST – ASIA – AFRICA

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Minahill Syed

AN OVERVIEW OF THE UAE PERSONAL DATA PROTECTION LAW

The United Arab Emirates Federal Decree-Law No. 45/2021, otherwise and colloquially denoted as the 'Personal Data Protection Law' (PDPL) came into effect on January 2nd 2022.

The PDPL is an outcome of a long-deliberated plan to enhance standards related to data protection of the subjects and their privacy per international standards. The PDPL is the first formal data protection law enacted within the UAE mainland concerning the collection and processing of personal data of all subjects residing in the UAE.

The provisions of Article (2) '*Scope of Application of the Decree-Law*,' concur that the storage, handling, exchange, retrieval, dissemination, etc. of personal information applies to data subjects who have a domicile or place of business within the State, and that the processing of such data can be undertaken by controllers or processors who are both in and outside of the State. Nonetheless, the stipulations within the decree-law do not apply to government data, the authorities who control and process personal data, data belonging to the UAE security and judicial authorities, to health or financial data (when there exists separate 'special' legislation governing its protection and processing), nor companies or organizations within the 'free zones' of the State.

Although the PDPL is the first comprehensive **federal** data protection law, prior to its promulgation, the UAE had 'offshore' data protection laws for the two main financial free trade zones (FTZs), namely the Dubai International Financial Center (DIFC) and the Abu Dhabi Global Market (ADGM). These FTZs refer to areas whereby companies operating within are exempt from taxation and in which, expatriates, investors, and relevant shareholders can obtain complete ownership of their operations. As such, sector-specific laws and regulations

apply to FTZs.

The PDPL aims to ensure respect for the confidentiality of data subjects by application of the Law to adequately manage and protect personal information according to stipulated requirements. According to Article (11) 'Roles of Data Protection Officer,' as the sole regulatory authority, the Data Office will remain liable for overseeing the implementation of the framework, implementing resolutions, and ensuring the compliance of the Controller and Processors through:

- Addressing complaints and requests relating to personal data grievances and questions in accordance with the provisions stipulated by the Decree-Law.
- Providing technical advice, recommendations, and risk assessment procedures based on evaluating the Personal Data protection systems and Intrusion Protection systems implemented by controllers and processors.
- (In regard to Data Protection Officers) Acting as the mediatory between the controller or processor (and Office when deemed necessary) when evaluating the application of provisions related to the Decree-Law.

The PDPL aims to protect personal data, sensitive personal data, and biometric data. For the sake of semantics, the difference between the two categories is that the former precludes the latter **and** biometric data. Hence, personal data refers to any data related to a data subject by reference to their name, voice, picture, ID number, geographical or electronic identifiers, or other biometric categories such as physical, physiological, cultural, or social characteristics.

Sensitive personal data refers to any information that reveals an individual's race, ethnicity, political/philosophical views, religious beliefs, criminal record, or data related to their physical, psychological, genetic, or sexual state. Organizations established within the Emirates can process the personal information of data subjects physically located within the country; a company established outside of the UAE but processing the data of subjects **inside the country** will also be held liable to follow the UAE Federal Data Protection Law.

Articles (5) '*Personal Data Protection Controls*' and (6) '*Conditions for Consent to Data Processing*' stipulate that the processing of a subject's personal data without prior consent suffices as an obstruction of transparent and lawful privacy/protection clauses. As stated within Article (5)2, the collection of personal data must be for a clear purpose and cannot be processed at a 'later stage' that is contrary to the purpose of the pursuant action. As per Article (6)2, it is also within the rights of the data subject to withdraw their consent at any time throughout the course of processing – this withdrawal will not affect the legitimacy of any processing undertaken prior to when consent was revoked.

In order to ensure that security requirements are met, the PDPL ensures compliance from both controller and processor through strict enforcement of standards and organizational measures. Articles (7), '*The General Obligations of the Controller*' and (8) '*The General Obligations of the Processor*,' discuss the actions carried out to ensure that data is not subject to breach, corruption, or manipulation.

These include:

- Restricting the processing of personal data to the specific purpose for which it was undertaken; this shall affect factors such as the scale and kind of data being collected, the type of processing taking place, the duration for which the storage of the collected data will last, and accessibility to it.
- A record of the personal data processed, which will also contain details on the Controller, Data Protection Officer, the data of those who are authorized to access the Data Subject's Information, the timeframe of access, tracking of modifications/erasure, and any relevant information on the cross-border transfer of data.
- Providing the Office with any information requested in support of their functions as stated within the Degree-Law and per their Executive Regulations.
- Erasing data following the expiration of the processing timeframe and securing the electronic devices used for the collection of data and handling thereof.

- Should a subject's data be processed by joint Processors, a contract between both parties will clearly designate and define their respective duties and obligations; both processors will be held liable for the pursuance of their roles.

Finally, in the case of a data breach, Article 9, '*Notification of Personal Data Breach*,' posits that the Controller must immediately notify the Office (and data subject) of any threat to the subject's confidentiality, privacy, and the security of their personal data as discovered through investigation. The notification must be supplemented by a description of the nature and records of the breach, information on the Data Protection Officer, expected effects of the Breach, corrective actions taken to minimize effects thereof, and any other requirements as proposed by the Office.

As consumers and data subjects become more aware of how their data is being processed, evaluated, and accessed by third-parties and organizations, there is growing consensus that privacy and security rights must simultaneously expand. The UAE's Personal Data Protection Law is a step towards the reification of their commitment to and alignment with international guidelines for data protection.



INSIGHTS FROM THE AIPLA 2023 ANNUAL MEETING: IP PRACTICE IN JAPAN PRE-MEETING

AIPLA (American Intellectual Property Law Association) houses the IP Practice in Japan Committee (IP-JP), dedicated to fostering connections with professional societies in Japan focused on intellectual property law. The committee actively engages in studying Japanese law and practice, reporting key issues to the Association Board of Directors and membership.

In this year's lead-up to the AIPLA Annual Meeting at Gaylord National Harbor, MD, USA, Audiri Vox played a pivotal role as a key sponsor and participant in the IP Practice in Japan (IP-JP) Pre-Meeting. Unveiling insights from both the American and Japanese intellectual property landscapes, the event showcased a dynamic exchange of ideas, with Audiri Vox contributing actively to the vibrant discussions. Dive into the symphony of knowledge and global collaboration, where over 60 IP Attorneys came together to create a harmonious blend of expertise. Mr. Divyendu Verma, Global Head of Patents Practice at Audiri Vox, participated in this insightful event.

The seminar kicked off with a reception hosted by the Japan Patent Attorney Association (JPAA) at the Japanese Embassy in Washington DC on the evening of October 16, 2023. Subsequently, a day and a half were packed with presentations from speakers representing AIPLA, JPAA, the International Association for the Protection of Intellectual Property in Japan (AIPPI-JP), Japan Trademark Association (JTA), and Japan Patent Office (JPO).

The topics covered a range of issues, including:

- US: Subject Matter Eligibility
- US: PTAB - Developments and Strategies
- US: SCOTUS Review - Recent Cases and What is Coming Up
- US: Recent Developments on Trademark Law and Practice
- Japan: Recent IP High Court Decisions
- Japan: Post-Grant Opposition Updates
- Japan: Update on Examination Standards
- Japan: Recent Developments on Trademark Law and Practice

Audiri Vox, among other sponsors, actively contributed to the discussions during the meeting, which saw participation from various IP Attorneys worldwide, making it a resounding success.

AIPLA Annual Meeting 2023

IP Practice in Japan Committee

Pre-Meeting Seminar

Tuesday Oct. 17, 2023 & Wednesday Oct. 18, 2023

Co-Chairs: Don Studebaker, Studebaker Brackett PC
Kevin Kunzendorf, Sughrue Mion PLLC

Dress Code: Business Casual

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(in alphabetical order)

		
		
		
		
		



AUDIRI VOX MAKES A MARK AT THE AIPLA ANNUAL MEETING 2023

Audiri Vox, a prominent player in the field of intellectual property, took center stage at the prestigious AIPLA Annual Meeting 2023, held at the Gaylord National Harbor from October 19 to October 21, 2023. The event, a gathering of over 1400 members and IP attorneys from around the globe, served as a dynamic platform for knowledge exchange and networking.

Representing Audiri Vox was Mr. Divyendu Verma, the Global Head of Patents Practice based at Audiri Vox's Dubai office. The annual meeting kicked off on October 19 with a compelling plenary session, paving the way for more than 30 technical sessions that unfolded over the next three days.

The event culminated on October 21 with a symbolic transition of leadership as President Brain Batzli passed the torch to Ann Mueting. Audiri Vox's presence was not just notable but impactful, with the team actively participating in various sessions, discussions, and networking opportunities.

In reflecting on the event, Mr. Verma expressed satisfaction with Audiri Vox's meaningful engagement at the AIPLA Annual Meeting, contributing to its success and reaffirming the firm's commitment to staying at the forefront of developments in intellectual property.

As Audiri Vox continues to play a pivotal role in shaping the discourse in the IP landscape, its participation in the AIPLA Annual Meeting adds another feather to its cap of achievements and reinforces its position as a key player in the global intellectual property community.



AUDIRI VOX LEAVES AN INDELIBLE IMPRESSION AT THE AIPPI ANNUAL CONGRESS 2023 IN ISTANBUL

Audiri Vox, a prominent player in the field of intellectual property rights, made a significant impact at the AIPPI Annual Congress held in Istanbul, Turkey, from October 22 to 25, 2023. The event was attended by more than 2100 distinguished professionals and experts from the global intellectual property community, offering a unique platform for knowledge exchange and collaboration.



A highlight of Audiri Vox's participation was the unveiling of their AIPPI book, titled "Artificial Intelligence and Patents: An International Perspective on Patenting AI-Related Inventions," published by Wolters Kluwer. This comprehensive work delves into the realm of AI technology, providing valuable insights and addressing various patent policy challenges posed by this cutting-edge field.



The book's structure begins with an insightful introduction to AI technology, setting the stage for an in-depth exploration of patent policy issues. Subsequent chapters offer a meticulous analysis of national and regional laws, offering a nuanced perspective from 16 different jurisdictions.

The Managing Partner of Audiri Vox - Mr. Sarmad Hasan Manto, whose expertise shines brightly in the intellectual property rights landscape, served as the co-author of the

Middle East chapter. Simultaneously, the Global Head of Patents Practice, Divyendu Verma, contributed as the co-author of the Indian chapter. This dual recognition not only underscores the firm's commitment to excellence but also showcases the individual prowess of its partners in the dynamic world of intellectual property rights.



Audiri Vox's presence at the AIPPI Annual Congress marked not only a successful networking opportunity but also a celebration of their substantial contribution to the field. As the firm continues to make strides in the intellectual property realm, the release of this significant publication adds another feather to its cap, solidifying its position as a key player in the industry.



IP UPDATES

Saudi Arabia: Hosts Diplomatic Conference On Design Law Treaty



Recently, the WIPO member states have approved Saudi Arabia as a host of a diplomatic conference, 2024 to conclude the negotiations of Design Law Treaty. The objective of the Design Law Treaty is to streamline a global approach for protecting industrial designs. The Design Law Treaty will also help in making the procedure easier, faster and affordable for designers specifically smaller scale designers and micro, small and medium-sized enterprises (MSMEs), to register the work.

UAE: Ras Al Khaimah Digital Assets Oasis ("rak Dao")



The Ras Al Khaimah Digital Assets Oasis ("RAK DAO") has been launched on October 19, 2023, which was generally established through RAK Law No. 2 of 2023, under the supervision of RAK's Department of the Future. The main objective of RAK DAO is to provide a free zone offering to next-generation innovators. This is a platform where domestic and international innovators come together who are investors, entrepreneurs, and businesses person focusing on virtual assets such as blockchain, gaming, NFTS, Web3 and Metaverse.

Rwanda: Budapest Treaty On The International Recognition Of The Deposit Of Microorganisms For The Purposes Of Patent Procedure



From December 04, 2023, the Budapest Treaty on the International recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure will enter into force with respect to the Republic of Rwanda. As per the notification of the World Intellectual Property Organization (WIPO), Rwanda deposited its instrumentation of accession to the Budapest Treaty on September 04, 2023.

INDIA:



The Chinese University Of Hong Kong Knowledge Transfer Office (appellant), Sequenom, Inc. (appellant) vs The Assistant Controller Of Patents & Designs (respondent)

Case number: CMA (PT) No.14 of 2023 & C MP No.16669 of 2023

Decided on: 12 October 2023

The current appeal has been filed by the appellant w.r.t the rejection of the patent application on the ground of Sections 3(i) of the Patents Act i.e., "methods of diagnosis practised on the human and animal body is not patentable". The appellant has filed the Indian national phase application in respect of a claimed invention entitled "Fetal Genomic Analysis From a Maternal Biological Sample". The respondent rejected the invention on the ground that the invention was not patentable under section 3(i) as every method step involved in the process of diagnosis qualified as a diagnostic method. The Hon'ble Madras High Court observed the following issue and is of opined that claim should be examined to determine whether a diagnosis for treatment is made, and if such diagnosis is not definitive, it would be ineligible for patent, whereas, if diagnosis for treatment cannot be made, it would be eligible for patent. The Hon'ble Court further noticed that the Patent Office has granted patents to in vitro processes and there is inconsistency, and there is a case to consider options such as restricting the scope of the expression 'diagnostic' in Section 3(i) to in vivo processes and counter balancing by providing for compulsory licensing. The Hon'ble court stated that "determination of foetal fraction is related to diagnosis but is not "diagnostic" and the following process cannot per se uncover pathology and, therefore, would not qualify as "diagnostic". The Hon'ble Court concluded the following matter by rejecting the objection as untenable and proceeding the application to grant based on amended claims 1-12.

Novozymes vs. The Assistant Controller Of Patents & Designs

**Case number: (T) CMA (PT) No.33 of 2023
(OA/6/2017/PT/CHN)**

Decided on: 20 SEPTEMBER 2023

The Madras high court has recently passed an order in this case and provides clarity about the applicability of section 3 (d) and section 3 (e) for biochemical inventions. The Hon'ble Court had provided the clearer view of Section 3 by stating that the invention should pass through the exemption filters provided in the section 3 of the patent act, which explains non patentable inventions, hence even if claims meet the requirements of Section 2 (1) (j) of the Patents Act, they should be pass through section 3 to be consider as eligible for patent. The Hon'ble Court had further explained section 3 (d) of the Patent Act, which consists of three limbs, separated by the disjunctive “or”. The three limbs are as under:

- (i) The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance.
- (ii) The mere discovery of any new property or new use for a known substance.
- (iii) Of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.





309 Churchill Tower Business Bay, P.O. Box 415116 Dubai-United Arab Emirates
+971 4 582 6655
global@audirivox.com



www.audirivox.com

Editorial Board

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