

Jurisdiction in Intellectual Property Disputes

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ABSTRACT:

There are two types of disputes raised by intellectual property rights. The first is violations such as theft and others. The second is disputes arising from contractual relations and breaches of obligations by one of the parties to the relationship. Determining the jurisdiction of national courts in the settlement of intellectual property disputes is not a problem in the event of a national dispute but in the event that it includes a foreign element, the conflict of jurisdiction is problematic and is resolved through objective or personal controls. In the event that the parties agree to resolve the dispute by arbitration, the jurisdiction might be decided by determining the law applicable to the dispute or might be invoked through contract clauses, citizenship, or other controls.

Keywords: jurisdiction, intellectual property rights, conflict of laws, private international law

1 INTRODUCTION

The world's intellectual property has gained an important place in order to keep pace with the trend towards a market economy and the transformations that have taken place in all fields. The term "intellectual property" is a term intended for an intangible right. It focuses primarily on mental production of whatever kind, such as the author's scientific and literary rights on his intellectual production. So, the term includes two types of ownership: The first is industrial, which includes patent, drawings, industrial models, formative designs of integrated circuits and brands... The second is literary and artistic intellectual property rights. Therefore, the world has moved to develop regulations and rules that show how to acquire intellectual property rights, and the kinds of actions to which they respond. And this is what led scholars, intellectuals, producers and creators to consider the need to protect their creativity and innovations against any form of abuse. Hence, the process of legalizing and protecting those rights, whether by the provisions of penal or special laws or international conventions, has been evolved to regulate, protect and indicate ways to invest and exploit them.

Relationships producing by intellectual property rights, whether commercial or contractual, and disputes arising therefrom do not raise any jurisdictional issues in the case of purely national relations. However, if there is a foreign member, the relationships will be associated with more than one legal system. So, we will find ourselves in a conflict of international jurisdiction which comparative legislation has varied in its determination. Therefore, we considered that the discussion of the topic of jurisdiction in intellectual property disputes was important because of the nature of the proliferation and expansion of those rights and the inadequacy of some national legislation in keeping with and maintaining them.

This study seeks to highlight what international jurisdiction in intellectual property disputes is contractual or non-contractual, in order to identify problems related to the subject, including specific controls, and the extent to which the governing rules relate to public order.

The scope of the research is limited to the relevant provisions of the Convention and of the law, indicating the position of the Iraqi and Egyptian legislature and referring to certain French and other laws.

In this study, we will attempt to follow a scientific methodology based on the analysis and discussion of legal texts, jurisprudence and jurisprudence on the subject of the study in order to obtain a legal opinion and an integrated view of the subject.

In the light of the foregoing, it is important to deal with the criteria of international jurisdiction in intellectual property disputes. Then, it is, also, important to clarify the nature of international jurisdiction in intellectual property disputes and finally, it is important to provide a conclusion with the main results and recommendations.

2 THE CRITERIA OF INTERNATIONAL JURISDICTION IN INTELLECTUAL PROPERTY DISPUTES

In public law, specifically with regard to the structure of jurisdiction, the personal jurisdiction relating to the power of the court to issue a binding decision to the parties requires the respondent to have adequate contact with the place of the court. However, substantive jurisdiction means that the Court's power to decide a matter depending on the nature of the dispute requires jurisdiction over all the legal issues in dispute.¹ Both personal and substantive jurisdiction are required for the Court to exercise jurisdiction over the dispute under common law. In the European Union under the Brussels system, we find that the Court may rely on general jurisdiction (the defendant's domicile), on special jurisdiction (matters of contract and liability for tort), and also on exclusive jurisdiction (in relation to the validity of registered intellectual property rights and others). In order to take note of these topics, we have to discuss the follows:

2.1 Standards of international jurisdiction

International jurisdiction relates to the power conferred to the state courts in relation to disputes between individuals arising out of business relations, activities, and others in personal and objective matters and the determining of the applicable law and the enforcement of the judgment of foreign courts. There are standards that govern this whether they are personal or regional specified in different legislation. So, what is the concept of international jurisdiction and what are its characteristics?

The concept of jurisdiction generally refers to the sovereign State's authority to enact, administer and enforce its laws, including the power of the courts in respect of certain persons, activities, or events, and its jurisdiction *ratione materiae* and *ratione personae* in disputes, the choice of law, the choice of court and the enforcement of foreign judgments.² It also refers to the determining of the jurisdiction of a particular State's court regarding a relationship described as an international private relationship. The rules governing international jurisdiction are national in the sense that they belong to the legislation of the judge's State. Each State has the power to determine the jurisdiction and scope of its courts in the light of special international relations. However, it cannot determine that for the courts of another State, in considering the dispute and determining the applicable law, the national judge relies on his national legislation to determine the law applicable to the subject matter of the dispute in accordance with the national rules of attribution.³ These rules are inherently different from those of jurisdiction in the fact that the latter is unilateral in that they demonstrate the jurisdiction of national rather than foreign courts. They are close to common law by virtue of their sovereignty and do not accept that the jurisdiction of their courts is determined by the foreign legislator.⁴

However, the jurisprudence did not agree on a specific definition of international jurisdiction. The definitions ranged from Legal rules whereby the jurisdiction of national courts is determined by disputes involving a foreign element against other courts in other states,⁵ to defining it as part of private international law, defines several rules governing the direct public jurisdiction of national courts as well as rules governing the law applicable to

¹ Bennett and Granata 2019, p. 32.

² Fitzgerald et al. 2007, pp. 33–34.

³ For more, see Ali 2017.

⁴ For more: Jemai 1966.

⁵ Jassim 2020, p. 44.

proceedings and the implications of provisions, particularly in the legal relationship in question with a foreign element.⁶ However, in the researcher's view, it means the power conferred by the legislator on a judicial body to adjudicate disputes which are private by the law.

Finally, it is important to clarify that the rules of international jurisdiction include the following features:

- 1- They are legal rules, where the law guarantees their organization and is respected and enforced by the national judge.
- 2- They are direct rules: they determine the cases and places of the national judiciary's jurisdiction with regard to the consideration of cases involving a foreign element.
- 3- They are unilateral: Each State is unique in identifying cases of jurisdiction of its national courts in disputes involving a foreign element without addressing cases of jurisdiction of foreign courts in other States.
- 4- They are national norms: the national legislature establishes them and the national judiciary is responsible for determining whether or not they are competent.⁷

2.2 Nature of standards of international jurisdiction

In order to meet the court's original international jurisdiction, there must be an occasion for it to move. The Egyptian and French legislators went on to advance the international jurisdiction of national courts in proceedings relating to an international legal relationship through the national status of the parties to the dispute, whether their nationality, domicile, location of their property, place of conclusion of the contract or place of execution (that means any personal or regional connection with the case and the court), while the English legislature relied on the principle of "Force of force", in the sense of the convening of jurisdiction of a court that ensures its implementation on its territory and is enforceable on the territory of another State.⁸

Hence, it can be said that the convening of the original jurisdiction of a state's courts is based on the following:

- 1- Personal standards: They are inherently based on nationality as an international jurisdiction standard and are based on a legal idea, disputed by two parts: The first is the plaintiff's nationality standard, according to which the international jurisdiction of the courts of a particular State is determined in accordance with the nationality of the plaintiff of which the plaintiff belongs. Jurisprudence and legislation have varied in this regard. French jurisprudence has argued that French courts are the most capable of achieving justice for French citizens. The French legislature determined the international jurisdiction of French courts in accordance with the plaintiff's nationality. Although another aspect of French jurisprudence considers this to be a departure from the principles of international jurisdiction, since the international jurisdiction of national courts may not be based on it individually⁹ as a political rather than a legal standard.¹⁰ The second is the defendant's nationality: the jurisdiction of the court is convened on the basis of the nationality of the defendant as a standard of international jurisdiction which means that the foreign plaintiff may only prosecute the defendant in his national court, even if he has a domicile abroad. Despite different jurisprudence, the judiciary tried to mitigate those effects by rooting in the normal nature of the standard and not pertaining to public order where the litigants may waive it explicitly or implicitly whenever they deem it appropriate. The Egyptian legislator stresses the defendant's nationality as a

⁶ Al-Haddad 2009, p. 17.

⁷ For more, see Mohamed 2009.

⁸ Ali 2017, p. 306.

⁹ Batiffol and Laggard 1983, p. 446.

¹⁰ Referred to in: Al-Din 2000, p. 32.

standard of international jurisdiction whenever the defendant possesses Egyptian nationality,¹¹ in accordance with the text of the article (28) of the Egyptian Code of Procedure.¹² However, in a recent judgement, the Egyptian judiciary authorized the possibility of optional subordination to national jurisdiction, which stipulated: "Optional subordination to national jurisdiction is what it is: the agreement of the litigants expressly or implicitly to accept the jurisdiction of the Egyptian judiciary for consideration of the dispute if it is not originally subject to its jurisdiction" (cassation, 15807/80, 24/3/2014).

2- Regional standards: they refer to the spatial links between the person and the State in which he is endemic, and the extent to which he is associated with either the activity or the interest therein. Hence, their courts are competent for international disputes to which he is a party.¹³ The question of the person's whereabouts "in the home country" is determined in accordance with the law of the State in which the case was brought (The law of the Court). Thus, the text of article 4 of the Brussels International Regulation confers "general jurisdiction on the courts of the Member State in which the respondent resides, which will have jurisdiction to grant remedies in all relevant territories".¹⁴

There are grounds for translating the regional standards into:

- Domicile of defendant: According to this domicile, the plaintiff seeks the defendant's home court, whether foreign or national. At the level of national laws, the Egyptian legislator was introduced this standard in the article 29 of the Egyptian Code of Procedure, and there is a well-established rule in the French Code of procedures that the plaintiff seeks the defendant's home country to assess his case (article 59/1). At the regional level, it was approved by the Riyadh Convention on Judicial Cooperation of 1983 (article 28 /a). What arises here, however, is the plurality of the defendants' domicile. Here, the jurisdiction of a court of domicile or domicile of a defendant must be established, as it has been applied in the national jurisdiction, provided that the defendant residing in the territory of a particular State is an original litigant in the proceedings, and that there is a serious link between the requests made.

- Place of the establishment of Rights: an objective standard that does not pay attention to the parties to the conflict, but rather invokes the facts, and is linked to the principle of the sovereignty of the State by extending its general jurisdiction to its national courts. This standard was enshrined by the French legislator in the article (59/6) of the Abolished Code of Pleadings, and indeed the French jurisprudence and judiciary incorporated it in the content of the article (46/2) of the French Code of Pleadings of 1975 and was even affirmed by the Riyadh Convention on Judicial Cooperation in its article 27.¹⁵ In Iraq, the legislator has adopted the Personal Law and the Law of the Country of Origin in the article 49 of the Copyright Protection Act No. 3 of 1971 and the amendments thereto of 2004 ("The provisions of this Law shall apply to the works of Iraqi authors which are published or displayed for the first time in the Republic of Iraq as well as those of Iraqi and foreign authors which are published, represented or exhibited for the first time in a foreign country...")

2.3 Jurisdiction and public order

Public order in any society, State, or international community expresses jus cogens norms that possess the validity of the injunction and cannot be agreed to in contravention thereof, otherwise, the agreement shall be void. It shall

¹¹ Salama, p. 73.

¹² It edicts that: "The courts of the Republic shall be competent to hear proceedings against the Egyptian, even if he has no domicile or residence in the Republic".

¹³ Al-Ajmi 2016, p. 119.

¹⁴ Bennett and Granata 2019, p. 33.

¹⁵ Referred to: in Khalid 2004, p. 11.

safeguard the values of society and shall reflect its civilization and entrenched perspectives. Therefore, we shall monitor the relationship between the rules of international jurisdiction and public order.

Public order is a restriction on the authority of will,¹⁶ which is one of the changing ideas where it varies from one system to another and from society to another and from time to time. It refers in the rules of procedure to jus cogens rules that cannot be contravened by special agreement. Some jurisprudence has argued that: "The means of protecting public political, social, economic, moral or religious supreme interests relates to the system of higher society and exceeds the interests of the individual."¹⁷ In the same vein, the Egyptian Court of Cassation defined it as: "Includes rules aimed at the political, social and economic public interest of the country, which relate to the physical and moral normality of an organized society and take precedence over the interests of individuals".¹⁸ In the field of private international law, the application of foreign law is prohibited if its application infringes on the foundations and principles of national society. Iraqi legislation does not define public order, but the content of the text of the article (130) of the Civil Code edicts "The object of the obligation must be lawful and not contrary to public order" It is a jus cogens rule, the breach of which may not be agreed upon or the agreement shall be signed null and void, According to the researcher, public order means a set of legal rules aimed at preserving the state's political, economic and moral entity. They put the superiority of the public interest over the individual interest into practice without losing sight of or completely ignoring the individual interest but those definitions do not set a disciplined end to the notion of public order, because they are a normative relative notion that varies across time, systems and States, which are jus cogens but not all public order.

The impact of public order is evident in public and private law. In Iraq, we find constitutional norms relating to public rights and freedoms contained in Title II, including personal rights, the inviolability of the home, nationality, the right to litigation, defense, innocence, property, ... etc. In administrative and financial law, the work of the public official and the competence of State institutions, taxes, and fees is a public order. In the Penal Code, the Penal Code defines criminal offenses, prescribed penalties, jurisdictional rules, and all legal rules contained in Penal Code No. 111 of 1969, as amended, any agreement contrary thereto is null and void. As well as the rules governing currency, eligibility. And in respect of the arbitration agreement the article 1448 of the French Code of Pleadings has gone to the effect that "the court may not judge the existence of an arbitration agreement by its own self but one of the two parties of dispute must uphold it, otherwise the litigant shall be deducted implicitly. The power of the parties to the arbitration agreement is not absolute but linked to matters in which the legislator permits and is not inconsistent with its general regime".¹⁹

Since the idea of public order was flexible, the judge had the discretion to determine the extent to which the applicable law was incompatible with public order. It was not an absurd process but based on the principles prevailing in the State and under the supervision of the Supreme Court.²⁰ Therefore, we found the text of article 6 of the French Civil Code to be: "Laws relating to public order and morals cannot be entered into through special agreements, and matters which may not be settled by arbitration and which relate to public order such as (Patent validity, trademarks, acquisition or loss of nationality, expropriation for public benefit, acts of sovereignty or

¹⁶ Salama p. 225.

¹⁷ Sinhoury 1952, p. 299.

¹⁸ Egyptian Civil Cassation, on January 17, 1979, Set of Cassation Provisions, 139.

¹⁹ Judgment of the Federal Supreme Court of 14 December 1997 on Appeal No. 279, p. 818; In this judgment, the Court held that: "If it is lawfully established that the agreement of the parties to the dispute to settle it outside the State through arbitrators abroad is without prejudice to public order.

²⁰ Mayer 1994, p. 619.

funds...).²¹ The judicial rulings clarified these issues in many decisions, as the decision of the Dubai Court of Cassation No. 155/97 of 8 June 1997,²² and the decision of the Kuwaiti Court of Cassation No. 38/74 of 21/5/1974.²³ However, in the researcher's view, when the legislator prohibited contractors from derogating a *jus cogens* rule, the natural consequence is that this rule is of public order.

3 NATURE OF INTERNATIONAL JURISDICTION IN INTELLECTUAL PROPERTY DISPUTES

There is a set of bases governing jurisdiction in intellectual property disputes in national legislation, especially as it relates to the fact that intellectual property rights are of a regional nature. The rules of jurisdiction in no way apply in intellectual property disputes except in the presence of a foreign element in the relationship. In addition, the procedures applied by registration and others have an impact on the criteria that determine international jurisdiction. In this light, we have to discuss the nature and basis of jurisdiction in intellectual property disputes.

3.1 *What are intellectual property disputes?*

Due to the great economic openness and complexity of commercial, literary, artistic, cultural, and other relations between the world's countries, disputes arise as a result of the violation of the rights of individuals. In the field of intellectual property, we have found many violations and thefts of intellectual production and innovation. So, we will try to highlight the entity and nature of such disputes.

Intellectual property is a general idea that refers to legal rights arising from intellectual activity in literary, artistic, industrial, and scientific fields. It seems to us that States have reasons to create laws to protect them, including the fact that those rights are a legal expression of the moral and material rights of creators and the public's rights to access those creations. It also promotes creativity and its spirit, thereby contributing to economic and social development.²⁴

In view of the violation of those protected rights, intellectual property rights disputes have arisen, which refer to the disagreement between two parties over those rights within a legal relationship and relate to the powers conferred upon the owner of the right and his intellectual production by use, exploitation, or disposition.²⁵

Two types of disputes in intellectual property can be distinguished: the first is Disputes arising from wrongdoing by persons (natural - legal) such as infringement, theft, or imitation of a trademark, patent, industrial model, or copies of literary and artistic material for financial or literary gain. Here, the judiciary and legislation play their role in punishing them and determining compensation for reparation at the national level. Liability extends to the international level and this is reflected in the field of famous brands and other rights.²⁶ So, the Iraqi Trademark Law No. (23) Of 1957 as amended by Act No. 80 of 2004 (article 4/para. 2) stipulates that: "The owner of the famous trademark shall enjoy the protection granted under this Law even if the trademark is not registered in Iraq." The Iraqi legislator also decided to protect the civil famous mark through the illegal competition suit, which

²¹ Article 2060 of the French Civil Code lists a number of issues in which arbitration is prohibited, for example, a person's civil status and capacity, divorce, disputes concerning public units and public institutions, and what relates to matters of public order.

²² Cassation No. 96 / 500, Dubi.

²³ *WIPO Intellectual Property Handbook* 2008, p. 3.

²⁴ *Ibid.*

²⁵ Mohammed 2020, p. 42.

²⁶ Mohammed 2017, p. 8.

is considered by the application of the general rules of tort liability, as stipulated in article (204) of the Iraqi Civil Code No. 40 of 1951, which stipulates: "Any act of any injury to others... Compensation is required ", as is article 163 of the Egyptian Civil Code No. 131 of 1948, which states: "Any act that causes harm to others is required to be compensated." The second type of dispute in intellectual property is a dispute arising as a result of commercial contracts, licensing contracts, technology transfer contracts, research and distribution contracts, trade secrets conservation agreements ... in which one of the parties to such contracts breaches its obligations arising from the contract whether through infringement of the rights involved or unauthorized use, etc.²⁷ The researcher agrees that such disputes are of a transnational international nature. It is also technical and needs experts, and rapid decision-making, and relies heavily on confidentiality because of trade secrets.

It seems to us that there are two segments that distinguish the nature of intellectual property disputes: First is national disputes: in the sense that their laws are based on the principle of regionalism, it is the basis and substantive aspect of international intellectual property conventions. The intellectual property right is limited to the territory of the granting State and is the constitutive right of activities within the territory that relate only to that activity. There are also interrelationships between intellectual property rights and ordinary private rights in terms of the right holder's ability to dispose of those rights. The author is also granted the right to take the necessary legal measures if violated by others and to receive compensation. Therefore, the rights derived from intellectual property created by national legislation are of a regional nature and cannot be imposed on other states. It is also a human right, with various constitutions and international declarations enshrining their protection and preservation, notably intellectual property rights.²⁸

Second is international disputes: Due to the large movement in the areas of intellectual property and their rights from patent applications and registration of industrial models, marks, and so on, they have become transnational rights and there is often a foreign element in their contractual relations. Consequently, the disputes arising therefrom are invoked in the provisions of private international law. This kind of international dispute is related to the economic standard which refers to the contract's linkage to international trade interests and the movement of capital across States, or the legal standard which means that the contract becomes international when it is in contact with more than one legal system,²⁹ or to these two standards.³⁰ In the researcher's view, there are other criteria from which international intellectual property disputes are inferred, including what has been added by uniform international sales law (according to The Hague Convention of 1964), such as the criterion, at the conclusion of the sales contract, which is based on the different business centers or places of normal residence of the contracting parties, and also on the occurrence of the sale of goods that are the place of transfer from one State to another and the issuance of an affirmative and acceptance in two different States.³¹

3.2 Application of jurisdictional criteria to intellectual property issues

There are international conventions governing the jurisdictional relationship to intellectual property issues that have resulted from the existence of the World Intellectual Property Organization (WIPO) and the incorporation of several important principles, including rules of reciprocity, and the Paris Convention for the Protection of Industrial Property of (1883) and the Bern Convention for the Protection of Literary and Artistic Works (1886)³² and many other mechanisms. In fact, the Bern Convention and subsequent conventions specifically prohibit

²⁷ Grantham 1996, p. 21.

²⁸ Prolonged Commercial Law, p. 20.

²⁹ Hamid 2017, p. 19.

³⁰ Al-Sharqawi 1992, p. 25.

³¹ For more: Mohammed 2018, p. 5.

³² Echoed 2016, p. 717.

Contracting States from imposing formalities such as registration as a condition for the acquisition of copyright and adjacent rights. However, the copyright and adjacent rights, like industrial property rights, are also regarded as territorial in scope, and that means that the right is effective only in the territory of the State under whose laws it was established.

There are rules of jurisdiction in national legislation that do not raise any problems compared to those associated with more than one legal system. Determining the extent of the court's jurisdiction to adjudicate a dispute depends in some way on the nature of intellectual property rights and the nature of the dispute itself. The criteria applicable in contractual and non-contractual disputes must therefore be clarified.

With regard to the application of international jurisdiction standards in contractual intellectual property disputes, we can talk about two criteria: The first is a criterion of the optional submission agreement where the Hague Convention differentiated between copyright, adjacent rights, and other intellectual property rights (authors' rights are not included) and the provisions of the Convention do not apply to invalidity claims relating to registration. Accordingly, the parties agree to choose the disputed court in accordance with the Brussels Rules unless the agreement is void under the law of the designated Forum State. The power of will does not extend to rights requiring registration or validity of patents, marks, drawings, etc.³³ For example, with regard to the author's right, article 25 of the Iraqi Civil Code provides: "Contractual obligations shall be subordinated to the law of the State in which the joint domicile of the contractors is located if they are united as a domicile and if they differ, the law of the State in which the contract was made shall be applied unless the contractors agree or show that another law is intended to be applied."

The second is a criterion of the place of execution where there is overlap between contractual disputes and issues of registration or validity of intellectual property rights in which courts have exclusive jurisdiction, which is a complex area, where decisions are made on a case-by-case basis. However, there are other special criterions such as the place of the place of registration or deposit of intellectual property rights, which is reflected in article 24/4 of the 2012 "Brussels Regulation" and adopted by the European Union, which stipulates that: "With regard to matters of patent registration or validity of the drawing, mark, forms and others granted by deposit or registration, whether filed under a lawsuit or by contra lawsuit, regardless of the domicile of the parties, are conferred upon the courts of the Member State in which the registration or deposit was requested or submitted in accordance with European Union conventions, which is devoted to the principle of territoriality and can be abandoned when individuals are allowed to resort to the courts of other States that protect them, provided that the choice is not at the time of the dispute but at the time of deposit and registration".

On temporal and provisional measures, they are among the issues that give rise to controversy in intellectual property disputes and depend on the factual circumstances of the case and the possibility of recognition and enforcement of the measure in other states.³⁴ However, the principles of the European "Planck" on conflicts of laws and jurisdiction in the field of intellectual property determined, in Article 5, the possible issues relating to intellectual property proceedings, including relevant evidence preservation orders, confiscation orders, and reservation. And in accordance with the judgments of the European Court of Justice, the purpose of provisional measures is to terminate alleged violations of intellectual rights. The Court may award compensation to the claimant, as determined by the Constitutional Court of Jordan, stating that the legal provision allowing compensation to be awarded to those affected by the proceedings for infringement of intellectual property rights in the event of an urgent decision to seize the goods claimed for infringement of intellectual property rights when the other party is not entitled to claim.³⁵

³³ Bennett and Granata 2019, pp. 37–38.

³⁴ Jurčys 2012, p. 191.

³⁵ Decision No. 1/2018 of the Jordanian Constitutional Court, publications of the Centre of Costass.

As for the application of international jurisdiction standards in non-contractual intellectual property disputes, the domicile is of particular importance in the field of jurisdiction, especially in cases of imitation where the damage caused is transboundary. Hence, this domicile is applied regardless of where the conflict occurred. So, the defendant's domicile is determined by the law of the State in which the proceedings are filed, as confirmed by Article 4 of the Brussels Regulation.

However, according to the litigation privilege criterion builds on the nationality of the contractors, the plaintiff may prosecute the foreign defendant in the national courts to which he belongs. And here nationality applies as a general criterion in determining international jurisdiction in intellectual property disputes. On another side, The location of the damage contained in Article 7/2 of the Brussels Convention, could be the criterion of jurisdiction when the dispute of imitation brought by an individual against another person is considered to be in default rather than in breach of a contractual obligation, and this allows the plaintiff to file proceedings in the court of the State where the damage is caused.³⁶

3.3 Exclusive jurisdiction and extent of arbitration

While the judiciary remains the primary means of resolving disputes, the development and continuation of international trade and the complexity of institutional-corporate relations have created alternative means of resolving disputes, particularly in the field of intellectual property, including arbitration, and mediation, which are flexible, confidential, and low cost. These alternative means of resolving disputes have been able to resolve many disputes and resolve them away from ordinary justice.³⁷ Arbitration as one of these means and the legitimacy of resorting to it in the field of intellectual property contract disputes can be discussed here as follows:

First: With regard to patent rights: the patent is defined in Iraqi law as a "Certificate indicative of the registration of the invention",³⁸ and the invention in Iraqi legislation is: "Any creative idea that the inventor comes up with in any of the technical areas, relating to a product, or method of making, that practically solves a particular problem in any of the areas".³⁹ In some States, the judiciary was not at the outset permitting arbitration in disputes relating to intellectual property rights, such as a patent. In the United States of America, It was only with the enactment of the Optional Arbitration Act that any patent contract or any right under such patent may contain a requirement for arbitration in any patent dispute..., and its arbitration proceedings shall be subject to federal arbitration law.⁴⁰ Patent rights are understood as a limited and State-ruled monopoly. Some states enact laws regulating how patents are monopolized. In the event of related disputes, the State determines whether the patent is valid and enforceable.⁴¹ Since patent rights must be granted exclusively by a competent public authority, some courts considered that special mechanisms ", such as arbitration, cannot declare the patent invalid, and this supports the

³⁶ Marie-Elodie 2010, p. 450.

³⁷ For more on Alternative Ways of Settling Intellectual Property Disputes see: Nadia 2022, p. 41.

³⁸ Article 8 /1 of the Patent and Industrial Models Act and the Integrated Services Act No. 65 of 1970, as amended.

³⁹ Article 4 /1 of the Patent and Industrial Models Act and the Integrated Services Act No. 65 of 1970, as amended.

⁴⁰ Voluntary arbitration. 35 U.S. Code § 294.

⁴¹ Graham v. John Deere Co. of Kan. City, 383 U.S. 1, 5-6 (1966).

view that disputes concerning the validity of the patents should generally be decided by a public government authority rather than by a private entity, and that because patent rights are monopolies approved by the state.⁴²

Modern commercial arbitration can be an effective and objective means of settling commercial disputes, and it has reached an important position in patent disputes recently, as reflected in the United States Supreme Court's case *Mitsubishi Motor Corp. v. Soler Chrysler Plymouth*, enforcing a Swiss arbitral award, noting that the settlement of arbitration disputes was consistent with public order, particularly over international commercial transactions.⁴³ Arbitration had become a better means of settling international trade disputes rather than litigation.⁴⁴

Second: On copyright and adjacent rights: The French legislator in intellectual property protection law decided to place all intellectual property disputes under the exclusive jurisdiction of the competent courts.⁴⁵ Despite legal reservations about arbitrability in literary copyright disputes, the French Court of Appeal emphasized that disputes relating to the author's moral rights could be settled directly through arbitration, albeit for a single time. In Egyptian legislation, article 182 of Intellectual Property Act No. 82 of 2002 edict "In the event that the parties to the dispute agree on arbitration that the provisions of the Arbitration Act in Civil and Commercial Matters promulgated by Law No. 27 of 1994 should be applied unless they otherwise agree."

As intellectual property disputes increase globally and are usually transboundary disputes relating to patents, trademarks, etc., many opinions have risen to expand reliance on arbitration to settle such disputes, especially as the judiciary has become an arduous path.⁴⁶ It takes years and is expensive, especially in the United States.⁴⁷ This prompted States experiencing a continuing violation of intellectual property rights to develop effective mechanisms, including commercial arbitration under the General Agreement on tariffs and Trade (GATT), and WIPO's Framework for the Protection of Internal Markets.⁴⁸ WIPO's rules of arbitration provide the best mechanism for handling long-standing disputes and complex and professional international disputes over patents.

Notwithstanding these trends, some jurisprudence considers that although arbitration in the area of the protection of intellectual property rights may be resorted to, recourse to the courts is more beneficial to the damaged or the abused. Although the common picture of an infringement of intellectual property rights is imitation, recourse to fair justice is protected by the intervention of the Public Prosecutor's Office. And the criminal penalties imposed by the judge provide deterrence to the abuser. Also, the publication of the conviction entails informing and warning the consumer to avoid counterfeit goods and products. Disputes arising from an infringement of industrial and other intellectual property rights may also serve as a place for arbitration in accordance with the General Rules of Arbitration Law because they have the right to quickly adjudicate.⁴⁹

⁴² The INTERNATIONAL ARBITRATION OF PATENT DISPUTES, Ibid, p. 384.

⁴³ Ibid, p. 387.

⁴⁴ Graving 1989.

⁴⁵ Article 3319 of the French Intellectual Property Protection Law of 1992.

⁴⁶ Eiland 2009.

⁴⁷ *Hughes Aircraft Co. v. United States*, 140 F.3d. 1470 (Fed. Cir. 1998) (noting that the case was filed in 1973).

⁴⁸ Das 1994; Winter 1987.

⁴⁹ Amr 2020.

4 CONCLUSION

The development of communication and information media has played an important role in disseminating science and knowledge and encouraging innovation but has contributed in one way or another to increasing violations of intellectual property rights. International trade entanglement and its complexity have made those rights transboundary and with it have arisen intellectual property disputes, particularly in the area of intellectual property contracts. The problem of the conflict of international jurisdiction arose. Although the judiciary was the traditional means of resolving such disputes, it did not remain the only one today as other alternative means emerged that have become more flexible and less expensive, namely mediation and arbitration. However, after examination, we consider that the development of laws and legislation protecting contractual and non-contractual intellectual property rights is very slow to keep pace with violations. In Iraq, It appears to us that copyright laws No. 30 of 1971, resolution 84 of the Coalition Provisional Authority, and the sanctions envisaged have not activated enough to establish such protection.

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