

THE INTELLECTUAL
PROPERTY
REVIEW

SEVENTH EDITION

Editor
Dominick A Conde

THE LAWREVIEWS

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PROPERTY
REVIEW

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PREFACE

Over the past several decades, there has been a major push to provide uniform and harmonised intellectual property coverage worldwide. To date, however, there remain significant differences and gaps in intellectual property coverage globally. As commerce increasingly becomes focused on international trade rather than individual countries, companies and clients must respond by thinking globally while also understanding the differences that remain between jurisdictions.

While jurisdictional differences can be anticipated and addressed, these differences are further magnified by the geopolitical turmoil that persists worldwide. A prime example is the United Kingdom's Brexit vote, which initially appeared to doom the prospects of establishing a Unified Patent Court in Europe. Those initial fears, however, may have been premature as the United Kingdom is now in a position to fully ratify the treaty establishing the unified court. Another example is President Trump in the United States. While his unorthodox governing style has left many policies of the United States government in turmoil, he has been successful in appointing a new director of the Patent Office and apparently is taking a tougher stand on the misuse of US intellectual property rights, including by placing tariffs on goods subjected to the forced transfer of US intellectual property to Chinese firms. On the other hand, President Trump has failed to fill many key diplomatic posts, weakening efforts at further worldwide cooperation on intellectual property matters. Finally, as China continues to grow its economy, its intellectual property laws have become better defined and more reliable.

To aid practitioners who are navigating this ever changing landscape of global intellectual property, we now present the seventh edition of *The Intellectual Property Review*. In this seventh edition, we present 25 chapters that provide an overview of the forms of intellectual property coverage available in each particular jurisdiction, along with an update of its most recent developments. Each chapter is written and assembled by leading practitioners in that jurisdiction. While all involved have striven to make this review both accurate and comprehensive, we must note that it is necessarily a summary and overview, and we strongly recommend that the reader seek the advice of experienced advisers for any specific intellectual property matter. Contact information for the authors of each chapter is provided at the end of this review.

Dominick A Conde

Fitzpatrick, Cella, Harper & Scinto

New York

April 2018

ISRAEL

*Yedidya Melchior*¹

I FORMS OF INTELLECTUAL PROPERTY PROTECTION

In recent years Israel has been described by many as the ‘start-up nation’. With its rapidly growing high-tech sector and innovation-driven industries, Israel is faced with the challenge of balancing an increasing level of protection of intellectual property and the free flow and use of information as a driving force for further developments.

The protection and enforcement of IP in Israel is influenced by and aligned with the many international treaties and agreements in the field of IP that the country is party to, including (*inter alia*):

- a* the Berne Convention for the Protection of Literary and Artistic Works;
- b* the Paris Convention for the Protection of Industrial Property;
- c* the Patent Cooperation Treaty;
- d* the Madrid Protocol;
- e* the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;
- f* the Agreement on Trade-Related Aspects of IP Rights (TRIPS);
- g* the International Convention for the Protection of New Varieties of Plants (UPOV);
- h* the WIPO Convention; and
- i* the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Many modern Israeli IP laws implement Israel’s obligations as a contracting party pursuant to the forgoing treaties and as part of Israel’s admission into the Organisation for Economic Co-operation and Development (OECD), while others codify unique solutions adopted in Israel. As discussed below, Israel provides statutory protection to all major types of intellectual property. These rights granted by statutes have in large part been broadly interpreted by Israeli courts, and some additional non-statutory rights have been judicially adopted.

i Patents

The Israeli Patents Law, 5727-1967,² has been significantly amended and modernised since its original enactment 50 years ago, to meet Israel’s international obligations. Israel applies

1 Yedidya Melchior is a founding partner of Lapidot, Melchior, Abramovich & Co.

2 Israeli laws are designated by the year in which the original legislation was enacted (both the year according to the Jewish calendar and according to the Gregorian calendar). Later amendments do not change the numbering.

the ‘first to file’ doctrine,³ and a patent is granted for 20 years from the date of filing the application,⁴ with permissible extensions in specific cases.⁵ As further discussed below, a patent may be granted in respect of a ‘patentable invention’.⁶

Pursuant to the Patents Law, a patent owner has the exclusive rights to exploit the invention. Exploitation includes: (1) in respect of an invention that is a product – production, use, offer for sale, sale, or import for such purposes; (2) in respect of an invention that is a process – use of the process, and any of the acts in point (1) above in respect of a product directly derived from the process.

However, any act not performed on a commercial scale and that is not commercial in nature is not deemed exploitation of the invention. In addition, the patent owner may not preclude others from engaging in any experimental act in connection with the invention, the objective of which is to improve the invention or to develop another invention, or which is an effort to obtain a regulatory permit to market the product after the patent has lapsed.

The unique exploitation right is not limited to the literal wording of the patent, but also to use ‘in any manner which involves the essence of the invention’.⁷ The essence or gist of the invention is determined using both the doctrine of variants and the doctrine of equivalents.⁸

ii Designs

Designs filed up to August 2018 are governed by the Patents and Designs Ordinance 1926. As of such date the new Designs Law 5777-2017 will enter into force and will protect both new filings for registered designs and unregistered designs.

Under the Designs Law, a design is defined as the appearance of one or more visual attributes of a product or part of a product, including a contour, colour, shape, decoration, texture or material from which it is made. The term product is broadly defined to include a set of objects, packaging, graphical symbols, and on-screen displays, but specifically excludes typefaces and computer programs (which are protectable as copyrights).⁹

The new law requires that the design be globally novel and have unique character. A design will be deemed to be of unique character if the general impression it creates on an informed user is different from the general impression created by another design.¹⁰

The protection of a registered design under the Designs Law is granted for 25 years commencing from the date of application. Unregistered designs are entitled to a limited protection for a period of three years from initial publication.¹¹

The default rule is that the designer is the first owner of the design rights; however, if the design was commissioned, then, unless otherwise agreed, the commissioning party shall be deemed the first owner of the design.¹²

3 Patents Law, Article 9.

4 Patents Law, Article 52.

5 Patents Law, Articles 64A to 64P.

6 Patents Law, Article 3.

7 Patents Law, Article 49(a).

8 C.A. 345/87 *Hughes Aircraft Company v. The State of Israel et al.*, PD 44(4) 45.

9 Designs Law, Article 1.

10 Designs Law, Articles 3 and 7.

11 Designs Law, Articles 39 and 65.

12 Designs Law, Articles 11-14.

iii Trademarks and passing off rights

The Trademarks Ordinance (New Version) 5732-1972 governs both trademarks and service marks, jointly referred to as marks.¹³ Marks are initially registered for a 10-year period and are renewable thereafter for as long as they are in use in Israel and maintain a distinctive character. A mark may be comprised of letter, numbers and other literal elements, stylised literal elements, figurative elements and any combination of the foregoing. In rare cases, marks consisting solely of three-dimensional embodiments, colours or sounds may be approved provided that they have a distinctive character. Three-dimensional marks are allowed only if the shape serves as a mark, has acquired distinctiveness through use, and is not significantly aesthetic or functional.

The registration of a mark confers upon its owner the exclusive use of the mark upon, and in every matter relating to, the goods or services in respect of which it is registered.¹⁴ Registered marks that are well-known in the relevant sector in Israel (known as ‘famous marks’) enjoy the broadest protection and provide exclusivity even in respect of goods that are not of the same description if use of that mark would be likely to indicate a connection with the registered proprietor of the mark.

Unregistered marks enjoy a limited protection. If they are well-known, the owner of such marks enjoys exclusive use of the mark in respect of goods for which the mark is well known in Israel or goods of the same description.¹⁵ Other unregistered marks can only be protected under the passing-off doctrine (also available for registered mark owners), codified in the Commercial Torts Law 5759-1999, which requires the plaintiff also to prove that the mark has acquired goodwill.

Under the doctrine of ‘exhaustion of rights’, parallel import into Israel of original goods is permitted regardless of the place of first sale. The parallel importer may make use of the manufacturer’s mark subject to not creating the impression that the activity is endorsed by the manufacturer.¹⁶

iv Copyrights

The Copyright Law 5768-2007 consolidated and replaced the core of copyright law into a single document. Copyright subsists in original literary, artistic, dramatic (including audiovisual and choreographic) works, musical works and sound recordings. These terms are defined broadly in the Copyright Law and also interpreted broadly by courts. Computer programs are protected as literary works. However, applied arts that fall within the definition of ‘designs’ are explicitly precluded from copyright protection,¹⁷ but a work of art embedded in a product, such as a picture printed on a chair, may be protectable under the Copyright Law.¹⁸

For a work to be protected, it must be original and fixed in any form. The threshold for originality is minimal and requires that its making involved some kind of original creativity. Accordingly, a compilation or database will only be protected if there was originality in the selection and arrangement of the works or of the data embodied therein.¹⁹ Copyright

13 Trademarks Ordinance, Article 2.

14 Trademarks Ordinance, Article 46(a).

15 Trademarks Ordinance, Article 46A(a).

16 C.A. 7629/12 *Suissa v. Tommy Hilfinger Licensing LLC* (published in Nevo, 16 November 2014).

17 Copyright Law, Article 7.

18 C.A. 1248/15 *Fisher Price Inc. v. Doron* (published in Nevo, 31 August 2017).

19 Copyright Law, Article 4(b).

protection lasts from the date of creation until 70 years after the death of the creator, with some exceptions such as sound recordings (protected up to 70 years from the recording) and state works (receiving a protection period of 50 years from the creation).²⁰

Copyright does not extend to any of the following: ideas, procedures and methods of operation, mathematical concepts, facts or data and news; but it does extend to their expression.²¹

The default rule is that the author of a work is the first owner of copyright in the work. This rule also applies to commissioned works (also referred to as ‘work for hire’) unless otherwise agreed (expressly or impliedly) between the commissioning party and the author. However, an employer is the first owner of copyright in a work made by an employee in the course of his or her service and during the period of his or her service.²²

A copyright owner enjoys exclusive rights to reproduction, publication, public performance and making available to the public (including online or as a rental), broadcasting, and creating of derivative works.

In addition, authors of certain works enjoy non-transferable moral rights during the entire period of copyright in the work. Such rights include the rights of the author to have his or her name identified with his work, and to prevent distortion, mutilation or other derogatory acts in relation to the work that would be prejudicial to the honour or reputation of the author.²³

Israel does not maintain a copyright registry, and there are no formal registration or other requirements for obtaining copyright protection. However, a contract for copyright assignment or the grant of an exclusive licence therein requires a written document.²⁴

v Performers’ and broadcasters’ rights

Performers’ and Broadcasters’ Rights are governed by the Performers and Broadcasters Rights Law 5744-1984 and its subsequent amendments. Protection for performers’ rights lasts until 70 years from the end of the year in which the performance took place. Protection for broadcasters’ rights lasts until 25 years from the end of the year in which the original broadcast took place.

vi Trade secrets

In addition to contractual obligations, trade secrets are also protectable under the Commercial Torts Law 5759-1999. The law defines a ‘trade secret’ as commercial information that is not public or that cannot readily and legally be discovered by the public, the secrecy of which grants its owner an advantage over competitors, provided that its owner takes reasonable steps to protect its secrecy.²⁵

20 Copyright Law, Articles 38–43.

21 Copyright Law, Article 5.

22 Copyright Law, Articles 33–36.

23 Copyright Law, Articles 45–46.

24 Copyright Law, Article 37(c).

25 Commercial Torts Law, Article 5.

Use of a trade secret by a former employee is not deemed a misappropriation of the trade secret if the knowledge constituting the trade secret became part of the employee's general professional skills.²⁶

The Commercial Torts Law explicitly permits reverse engineering.²⁷

vii Plant varieties

The Plant Breeders' Rights Law 5733-1973 implements Israel's obligations as a member of the International Union for Protection of new Varieties of Plants. The registration is managed by the Israel Plant Breeders' Rights Council, which is a unit under the auspices of the Ministry of Agriculture and Rural Development.

A plant variety is eligible for protection if it is new and its basic characteristics are sufficiently uniform and stable and they are maintained even after repeated cycles of reproduction.

The protection is granted for 20 years from the date of registration. Varieties of vines, fruit trees, forest trees and any other perennial plants are given 25 years of protection from the date of registration.²⁸

viii Appellations of origin and geographical indications

Both appellations of origin (AO) and geographical indications (GI) are governed by the Appellations of Origin and Geographical Indications (Protection) Law 5725-1965, which was enacted in order to implement Israel's obligations pursuant to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Protection of an AO is subject to registration, is granted for a period of 10 years from the date of the application and is renewable thereafter. Foreign AOs are valid in Israel for as long as their registration is valid in their country of origin. GIs are protected in Israel, but no registration is required.

ix Integrated circuits

The Integrated Circuits (Protection) Law 5760-1999 provides protection to the layout-design (topography) of an independently-developed original integrated circuit (including an original combination of common elements). The owner enjoys the exclusive right to copy the layout-design or part thereof, and to import, sell or otherwise distribute the layout-design or an integrated circuit in which the layout-design is incorporated.

There are no registration requirements, and the protection lasts for a period that is the shorter of 10 years from the first sale, or 15 years from the creation of the layout-design.

26 Commercial Torts Law, Article 7.

27 Commercial Torts Law, Article 6(c).

28 Plant Breeders' Rights Law, Article 38(a).

x Unjust enrichment

The Israeli Supreme Court has held²⁹ that in certain cases in which a claim does not fit into any existing intellectual property category, but the defendant's activities using the plaintiff's work or name were clearly wrong or unfair, the gap may be filled by the doctrine of 'unjust enrichment' codified in the Unjust Enrichment Law 5739-1979.

The unjust enrichment doctrine has been most widely used to grant protection to unregistered designs, mainly in cases where obtaining the registration would take longer than the projected term of the product sales (such as fashion designs). The doctrine has also been used to block unauthorised broadcasting of sports events and to grant common law protection for unregistered marks. The introduction of the unjust enrichment doctrine into the world of IP law has caused uncertainty to the practitioners in the field, as the application is somewhat inconsistent and the definitions of the fairness aspects are vague. With the introduction of unregistered design rights as part of the new Designs Law it is expected that use of the unjust enrichment doctrine will decrease.

Publicity rights, also referred to as celebrity rights, were judicially created based on the unjust enrichment doctrine. The Supreme Court held that the right of publicity is an independent right, protecting the economic value of using the image, name or voice of another person without his or her authorisation.³⁰

II RECENT DEVELOPMENTS

The most significant recent change is the legislation of the new Designs Law, which will come into force in August 2018. The new law radically changes design rights, including broadening the protectable subject matter, requiring both novelty and uniqueness, allowing for variants of designs, extending the duration of protection, allowing a grace period from disclosure to filing, providing statutory damages for infringement, and granting unregistered design rights.

Israel, as a leading centre for research and development, attempting to further incentivise scientific innovation and export of knowledge, has, in 2017, reformed the Encouragement of Capital Investment Law 5719-1959, to provide tax benefits for companies that register their IP rights in Israel.

Concurrently with the enactment of the Designs Law, the Copyrights Law was amended to include, for the first time, legislative protection to typefaces. Typefaces are now protected for a period of 70 years from the initial publication.

Recently the Tel Aviv District Court, in two separate cases, held that television programme formats³¹ and radio show formats³² are sufficient expressions of ideas and thus protectable under the Copyright Law.

In July 2017, the ILPO announced that it had joined TMClass, the EU search and translate tool for trademark applicants.

29 R.C.A. 5768/94 *A.Sh.I.R Importation Manufacture and Distribution et al. v. Forum Accessories and Consumer Product et al.*, PD 52(4) 289.

30 C.A. 8483/02, *Aloni Ltd v. Ariel McDonald*, PD 58(4), 314.

31 C.C. (Tel Aviv District) 2659-04-15 *Brodsky v. Armosa* (published in Nevo, 23 April 2017).

32 C.C. (Tel Aviv District) 60778-12-17 (Motion 1) *Kol Barama v. Radio Kol Chai* (published in Nevo, 7 January 2018).

III OBTAINING PROTECTION

i Patents

A patent may be granted for a 'patentable invention', a term defined as a product or a process in any field of technology, which is novel and useful, has industrial application and involves an inventive step.³³

While this is a broad definition, certain subject matters are excluded, namely methods of therapeutic treatment on the human body; and new varieties of plants or animals, other than microbiological organisms not derived from nature.³⁴ However, this subject-matter exemption has been narrowly interpreted, in order to allow protection of the use of a substance that was not previously used as a therapeutic substance.³⁵ Biological material is generally patentable, and, if not readily available to the public, the application may reference a deposit made in a designated institution under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.³⁶

As implied by the term 'field of technology', non-technological developments (such as those in various fields of social sciences), as well as abstract ideas are excluded from subject matter eligibility. The foregoing distinction is also the basis for the very restrictive approach to business method patents. According to the ILPO,³⁷ business methods *per se* are not considered to be in a field of technology. Therefore only 'hybrid' inventions in which a business method is coupled with technological elements may fall within the scope of a patentable invention.

Computer software is typically deemed protectable under the Copyright Law, and not as a patent. According to the ILPO guidelines, the use of a computer in and of itself does not render an invention patentable. The invention is to be examined as a whole, without separating software components from hardware components, and must result in changes of physical elements, which are beyond the mere automation of a process by adding a computer.³⁸ Since the regulations are somewhat unclear, it remains to be seen how case law will develop.

An invention is deemed novel if it was not published (in Israel or abroad) prior to the application date,³⁹ including by exploitation or exhibition by the patentee, in a manner that enables a skilled person to make it according to the particulars made known in such publication. Since disclosure of the invention as part of the patent process justifies the grant of monopoly powers to the patentee, such powers should not be granted to an invention that is already publicly available.⁴⁰

The disclosure of the gist of the invention is deemed to be sufficient prior publication, even if not identical to the invention for which protection is sought.⁴¹ Foreign-language publications prior to the application date (including foreign patent applications), even in languages that are not understood by the patent examiner, are sufficient for determining lack of novelty.⁴²

33 Patents Law, Article 3.

34 Patents Law, Article 7.

35 C.A. 244/72 *Plantex Ltd. v. The Wellcome Foundation*, PD 27(3) 50.

36 Patents Law, Article 12(b).

37 Commissioner Decision 131,733, *ex parte* in the matter of *Eli Tamir*.

38 Commissioner Decision 190,125, *ex parte* in the matter of *Digital Layers Inc.*

39 Patents Law, Article 4, excluding publications permitted under Article 6.

40 C.A. 345/87 *Hughes Aircraft Company v. The State of Israel et al.*, PD 44(4) 45, p. 103.

41 C.A. 4867/92 *Sanitovsky v. Taaman Ltd.*, PD 50(2) 509, p. 517.

42 Commissioner Decision 123,976 *Gesser v. Compucraft Ltd.*

The requirement for an ‘inventive step’, usually referred to as the non-obviousness requirement, is defined as a step that does not, to an average skilled person, appear obvious in the light of information published before the application date.

The Supreme Court has held that the requirement for usefulness, also referred to as the utility requirement, only requires that the applicant shows a potential to the utility of the invention, without actually having to prove it,⁴³ thus allowing patent applications in early stages of the R&D process. It should be noted that gene sequences are patentable, although they may not meet the regular usefulness standard at the time of the application.⁴⁴

Except in special circumstances, such as impending infringement, in which expedited examination may be requested, there is no need to request examination, and the application is automatically assigned to the relevant examination department of the ILPO. While the initial notice, detailing the name of invention, application date and priority claimed, is published shortly after the filing, the actual examination only starts a few years after filing, with the timing varying according to the subject matter of the invention. The ILPO’s multi-year goal is to reduce first examination pendency to 24 months by 2018 (compared to a 35.7 months’ average pendency in 2010 and a 28.5-month average in 2016).

The ILPO provides expedited examination for ‘green technology’ (i.e., technologies that assist in improving the environment), and an applicant seeking this expedited route must request it upon filing and explain the environmental benefit of the invention.

The ILPO has introduced a fast-track examination procedure that is promoted as an alternative to US Provisional applications, and intended for applicants that declare that the Israeli application will be the basis for priority claims in corresponding foreign applications. The ILPO undertakes to issue a preliminary principal report within three months of filing in this route. This fast-track is beneficial for early stage ventures that will be able show potential investors a positive initial examination report within a short period, thus boosting their financing abilities. An additional expedited route is the ‘Patent Prosecution Highway’, which permits one patent office to base examination of a patent application on a favourable examination conducted by another patent office (including in respect of a PCT application). Israel was one of the 16 countries that established the Global Patent Prosecution Highway arrangement, which became effective on January 2014. Taking advantage of the highway route is not limited to Israeli citizens or residents, and may be utilised by applicants from other countries.

An applicant may request acceptance of an application based on a grant by an accredited foreign patent office of a corresponding application.⁴⁵

The applicant may also claim priority pursuant to the Paris Convention,⁴⁶ or according to the PCT. It should be noted that the ILPO has been declared an international searching and international preliminary examining authority for PCT applications filed at the USPTO. The ILPO allows for an extension of the period for entering the Israeli national phase under the ‘due care’ standard. The Commissioner has held that when the main subject matter of the application is covered in a US provisional application (even if in less detail than in the later Israeli application), priority may be claimed according to the Paris Convention.⁴⁷

43 C.A. 665/84 *Sanofi Ltd. v. Unipharm Ltd.*, PD 41(4) 729.

44 Commissioner Circular MN 64 of 6 October 2008.

45 Patents Law, Article 17(c).

46 Patents Law, Article 10.

47 Commissioner Decision 136,532 *G.D. Searle & Co. v. Trima Israeli Medical Products*.

Patent applications need not be in Hebrew, and may also be filed in English or Arabic. The applicant need not be the inventor, though if the applicant is not the inventor he or she is required to state how he or she became the owner of the invention.⁴⁸

The Patents Law requires the applicant to provide comprehensive information about prior art, including a list of all prior art references cited during the prosecution of corresponding applications abroad, or otherwise known to the applicant. This list must be updated by the applicant on an ongoing basis, and the examiner typically requests an update from the applicant prior to the examination.

In the course of examination, the applicant may amend the application, an action usually taken owing to rejections from the examiner. If such changes do not suffice to convince the examiner to grant the patent, or if the applicant otherwise disagrees with the rejection, the applicant may request an *ex parte* hearing in front of the Commissioner.

Once the examiner is convinced of the eligibility of the application for registration, the application will be published in the Patent Gazette, and opposition may be filed within three months of that publication. An ILPO study found that in recent years only about 1 per cent of the total number of allowed patent applications were opposed. However, the study also showed that the duration of the proceedings of the few oppositions litigated through to a final decision was on average almost six years.

If an opposition is filed, the parties litigate in front of the Commissioner or a deputy of the Commissioner, with the right of appeal to the District Court, and may further request an appeal to the Supreme Court. The Commissioner and the courts may impose costs in favour of the prevailing party.

Following registration of a patent, any party may apply for cancellation of the patent, based on similar grounds as those for opposition,⁴⁹ except that the party requesting the cancellation carries the burden of proof. Such an action is categorised as a 'direct attack' on the validity of the patent. It is also possible to indirectly claim the invalidity of the patent, for example as a defence in infringement proceedings.

ii Designs

Designs are subject to registration and review by the ILPO that examines the eligibility of the applications. A design application should include the identity of the applicant and how he became owner of the design, an Israeli address, and the visual representation of the design. Regulations implementing the procedural aspects of the Designs Law are expected to be published within a few months.

Unlike with patent applications, the backlog of design applications is relatively short, and a first examination is generally conducted within a few months.

iii Trademarks

Trade and service mark applications are filed with the trademarks department of the ILPO. The basic requirement for registering a trademark is that the mark is distinctive.⁵⁰ The Trademark Ordinance includes several categories of unregistrable marks, most significantly

48 Patents Law, Article 11(b).

49 Patents Law, Article 73B.

50 Trademark Ordinance, Article 8.

marks that are descriptive or that are identical or confusingly similar to trademarks of third parties or otherwise misleading. Among other exclusions are marks making use of national symbols, deceptive marks and marks making use of a person without such person's consent.

In 2010, Israel joined the Madrid Protocol, and as a result Israeli applicants may submit a single trademark application that will automatically apply to all member states. Foreign marks registered in member states also enjoy relaxed disqualification criteria when applying for similar protection in Israel.⁵¹

According to ILPO published information, except in cases where expedited examination is requested (for example, because of third-party infringement), as of March 2018 the waiting period for first examination is 10 months from filing.

IV ENFORCEMENT OF RIGHTS

There are no specialised IP courts in Israel, but the courts are generally IP-friendly, and the Israeli legal system provides litigants with a wide variety of remedies. Some IP laws provide special remedies; the following are the commonly available ones.

i Injunction

Rights owners usually seek an injunction to stop infringing activities. Temporary injunctions may be requested *ex parte*. Temporary injunctions are commonly granted when the right holder can demonstrate ownership, likelihood of finding of an infringement and unquantified harm during the period until trial. If an injunction is granted *ex parte*, a hearing with both parties will be conducted within a few days. The Supreme Court has ruled that an injunction is the primary remedy for IP infringement.⁵²

Even if not granted *ex parte*, a hearing for the purpose of a temporary injunction will usually be held within two weeks. Most of the cases settle (except in some cases in respect of monetary damages) after the decision on the temporary injunction, as the court's decision in the interim process (either in favour of the plaintiff or the defendant) is a strong indicator of the overall projected outcome.

ii Receivership and seizure order

The court may appoint an *ex parte* receiver with the authority to enter the premises of an alleged infringer and confiscate, in the defendant's presence, the infringing items, as well as the means used to produce them. This remedy is granted at a preliminary stage only if the plaintiff can demonstrate with substantial evidence that there is a high likelihood that the seizure is required in order to prevent the destruction of evidence or smuggling away of infringing goods. After full trial, if infringement is established, an order for the recovery and destruction of infringing items is typically granted.

iii Damages

After establishing infringement at full trial (which, in contested cases will generally take more than two years), monetary remedies are available.

51 Trademark Ordinance, Article 16.

52 R.C.A. 6141/02 *ACUM v. Galey Tzahal Broadcasting et al.*, PD 57(2) 625.

The plaintiff may recover actual damages computed either as losses incurred by the plaintiff (which usually requires expert accounting testimony) or the gains derived by the defendant from the infringing activity. For the computation of the defendant's profits, the court may issue, after infringement is established, a subpoena for all relevant accounting records.

Even if a plaintiff cannot show damage with sufficient particularity, he or she may be entitled to statutory damages of up to 100,000 shekels, for infringements under the Copyright Law, the Designs Law and the Commercial Torts Law. It should be noted that multiple infringements of the same right (e.g., making many copies of a single work) do not entitle the plaintiff to receive multiple statutory damages.

iv Administrative and criminal procedures

As part of the measures against counterfeit goods, customs officials are authorised to seize and detain goods that appear to be in violation of design, copyright or trademark rights, while giving notice to the registered agent of the right owner.⁵³

Many intellectual property laws also include provisions criminalising certain forms of infringement. The criminal offences are enforced by an intellectual property unit of the Israeli police. In addition to criminal proceedings, police officers are authorised to confiscate goods suspected of being infringing.

A unique remedy in Israel is the ability of the IP owner to file a private criminal complaint in a magistrates' court against the alleged infringer. In such case, the court may impose similar sanctions to those imposed in a criminal proceeding conducted by the state.

V TRENDS AND OUTLOOK

Israeli IP jurisprudence continues to evolve as Israel becomes a more significant player in the global market and party to a growing number of international and bilateral agreements in the field of IP.

The enactment of the much-anticipated new Designs Law will be followed by Israel's anticipated ratification of the Hague Agreement Concerning the International Deposit of Industrial Designs.

The main challenges ahead are adapting IP legislation and case law to an ever evolving digital era. Issues that must be addressed or clarified include: the liabilities and responsibilities of internet service providers in cases of online infringement, patents over software elements, limitations on anti-circumvention measures and more. An attempt to tackle some of the issues that have emerged due to developments in internet and technology is the proposed 5th amendment to the Copyright Law that has passed first reading in the Israeli parliament. The proposed amendment includes an expansion of the 'indirect infringement' doctrine for facilitating access to IP made publicly available by the initial infringer, allowing courts to order service providers to limit access to websites that contain infringing content, and compel them to reveal the identities of infringing users.

⁵³ Customs Ordinance (New Version), Article 200A.

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Yedidya Melchior has been member of the Israeli bar association since 2001. Yedidya obtained his LLB *magna cum laude* from the Haifa University Law Faculty along with a BA in economics from Haifa University. Yedidya proceeded to receive his LLM *cum laude* from the Law Faculty of the Hebrew University in Jerusalem.

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Yedidya and his team handle complex transactions with significant intellectual property considerations, such as IP licensing, IP sales, joint R&D and manufacturing projects and other joint ventures, establishing distribution channels, creation of online commercial platforms, and venture capital financing. Yedidya also heads the commercial and corporate litigation department, which also handles IP-related disputes resolved in courts or through alternative dispute resolution procedures.

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