

## Intellectual Property, Related Rights, and Their Applications under Islamic Sharia

**Issue:** <https://www.al-idah.pk/index.php/al-idah/issue/view/44>

**URL:** <https://www.al-idah.pk/index.php/al-idah/article/view/1012>

**Article DOI:** <https://doi.org/10.37556/al-idah.044.01.1012>

**Author (s) :**

**Monther Abdel Karim Al-Kodah**

Associate Professor Faculty member at Amman Arab University, Email:

[m.alkodah@aau.edu.jo](mailto:m.alkodah@aau.edu.jo)

**How to Cite :** Monther Abdel Karim Al-Kodah 2026. Intellectual Property, Related Rights, and Their Applications under Islamic Sharia. Al-Idah . 44, -1 (Jun. 2026), 45 - 63.

**Publisher :** Shaykh Zayed Islamic Centre, University of Peshawar, Al-Idah . 44, -1 (Jun. 2026), 45 - 63.

### Article History:

**Received on:** 19 – April - 2026

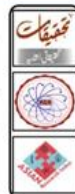
**Accepted on:** 05 – June - 2026

**Published on:** 30– June - 2026



This work is licensed under a Creative Common Attribution 4.0 International License  
Author(s) declared no conflict of interest

### Abstract & Indexing



**Abstract**

*Issues pertinent to the intellectual property (IP) rights developed widely during the recent years in most of the world countries. Strict laws became in force to protect the intellectual property for the individuals and companies, and provide the legal and criminal protection to the patents and trademarks that spread out in the communities. These laws further protect the innovations and thoughts, especially the copyrights and publishing. The issue more developed to the extent that there are now international agreements and conventions among the states that bind them to respect and observe the rights of other states in the intellectual property domain. As a result, this current study was made with the title: "Intellectual Property, Its Related Rights and Applications in Islamic Sharia", which will contribute to highlighting the rights pertinent to the intellectual property, and how far its related rights are safeguarded. The researcher found that the copyrights, trademarks and patents protection have received great attention within the countries, through enactment of laws and regulations. They also gained significant attention in the international treaties and agreements worldwide; taking into consideration that protection of these rights is a feature of the individual's personality; for instance, Trade-Related Aspects of Intellectual Property Rights (TRIPS) and World Intellectual Property Organization (WIPO). At the level of the Arab countries, there are multiple projects for the copyrights protection, i.e. the Islamic Convention Draft. On the other hand, both the ordinary and famous (well-known) brand received the best attention in this legal protection as a way to distinguish products from each other. Assault on it by imitating or using it by others is harmful to the producer, the consumer and the state as a whole. It harms the producer through the loss in marketing his products and the existence of competitors of the other traders; in addition to that it afflicts the consumer. The famous brands (trademarks) in the world countries enjoy both civil and criminal protection when others attempt to use or exploit them. Through this study, the researcher, for the purposes of comparison, collected the issues related to the intellectual property applications in the Islamic Sharia. Islam experienced examples of the intellectual innovation and inventions, and innovations of the scholars and jurists in the Sharia domains, as well as other*

*sciences, and attention to the authors, writers and poets. In conclusion, the researcher presented the results and a pool of recommendations.*

**Keywords:** *Intellectual property, trademark, copyright, Islamic Sharia*

## 1. Introduction

In spite of the fact that the "right of ascribing the work to its doers", which expresses the contemporary copyrights laws concept, is an agreed upon humanitarian principle, the ancients practiced it with the guide of their common sense. The Holy Quran called for it in explicitly expressed verses, such as: "And, do not defraud people of their belongings, and do not spread corruption in the land. "Sura Al-Shoara'a (Verse 183). The articles of the protection of the copyrights developed throughout the world over more than (120) years, in addition to new articles added to the pertinent conventions and treaties, and interconnecting them to other international conventions. This led to the emergence of implicit goals that made them more complicated and branching, which requires us to deal with them in our age with more accuracy and alert. On the other hand, the Islamic Sharia is distinguished from other laws in its guarantee of the copyright and literary and authoring rights of others, and prohibiting the infringement of their rights.

The study problem is built on a number of questions, such as:

- What is the importance of the measures related to the IP rights protection in terms of their owners?
- What are the entailed effects on applying these measures on the authors, inventors and owners of the trademarks?
- How far these measures achieve an active protection of the rights of the individuals and legal entities?
- What is the extent of the need to regulate agreements and enact new laws and systems to protect the IP rights in the shade of the complications the world witnesses nowadays?
- What are the foundations by which the Islamic Shari is distinguished from other laws in guaranteeing and protecting the rights of others?

## 2. Method

It is quite difficult to determine a single method in this analytic study. Therefore, this study was based on multiple scientific methods. Accordingly, the researcher applied multiple well-known scientific methods, such as:

- 1- Inductive method: through inducting, and follow-up of the information and data from their original sources, and reference books.
- 2- The analytic method: by data collection, analysis and sorting, following the issues and rules related to the study subject.
- 3- The comparative method: by comparing the events, opinions, rules and the results with each other, and comparing between the parties of the research relation subject matter of this study.
- 4- The deductive method: extracting opinions, eliciting judgments, and discussing them using a scientific methodology.
- 5- The descriptive method: by describing the experienced condition of the property in general, and the bases and provisions related to it.

### **3. Analysis or Discussion**

There was an increased need to expand the IP protection within or outside the borders of the states, which became a necessity to provide means of the international legal protection to preserve the intellectual rights.

#### **3.1. Evolution of the Intellectual Property Rights**

"The beginnings of the international regulation of the IP rights protection date back to Paris Convention in 1883 for the industrial property protection, and Bern Convention in 1886, which dealt in the author's rights. But the framework of these two conventions and the sponsoring organization, which also sponsors the other conventions (World Intellectual Property Organization "WIPO"), did not allow the protection of these rights to the extent that the advanced countries wanted; they seek to have control over their innovative and intellectual capabilities. And, at the pressure of the United States of America and the European Union, and in spite of the opposition of most of the developing countries, the provisions of the two conventions with some amendments were transferred to Uruguay Round. This resulted in the Multilateral Agreement on the Business-Related IP Rights."<sup>1</sup>

##### ***3.1.1 The historical development of intellectual property rights in international conventions***

There was an urgent need for the protection of the IP in 1873, when the inventors refrained from displaying their inventions in the international show that was held in Vienna, for the fear of stealing their ideas and exploiting them by others. Consequently, many meetings were held in Paris that resulted in signing the first international convention for the IP protection in 1883, which was known by: "Paris Convention for the Protection of Industrial Property". Three years later, the Bern Convention was signed concerning the literary and artistic works, which grants the creative people the right to protect their innovative works, and receive remunerations or being benefited by others. Similar to the Paris Agreement, the Bern Convention established an international office to carry out administrative tasks.<sup>2</sup> Both bureaus united in 1893, which produced an international organization under the name: United International Intellectual Bureaus for Protection of the Intellectual Property Protection (BIRPI).<sup>3</sup> From the late nineteenth century until the end of the twentieth century, the subject of intellectual property protection witnessed rapid developments, the conclusion of which was the establishment of the World Intellectual Property Organization (WIPO), in 1970, for the purpose of promoting the protection and use of intellectual property throughout the world. A decade later, the WIPO replaced the BIRPI, and in 1978, WIPO secretariat moved to the headquarters of the UN in Geneva. Pursuant to the conducting of a cooperation agreement with the World Trade Organization (WTO) in 1996, WIPO simplified the role entitled to it and proved the importance of the IP rights in the management of the businesses in the globalization epoch.<sup>4</sup> And, as a result of establishing the WTO on 15 April 1994, and after the conclusion of Uruguay Round for the General Agreement on Tariffs and Trade (GATT),<sup>5</sup> trade multilateral negotiations, there was, among the agreements included in these negotiations, an agreement on the international trade-related aspects of intellectual property rights,<sup>6</sup> namely what was called TRIPS agreement, which became in force in 1995, thereby gave way for a new era of intellectual property rights protection and enforcement.<sup>7</sup>

### 3.2. Definition of the Intellectual Property

Definition of the right (HAQQ) in the language (Arabic) <sup>8</sup>

Haqq (Arabic) "right: the two Arabic letters of the same origin, which indicate the accuracy and correctness of the thing. The right (truth) is the antonym of the falsehood, and then every branch is related to it either by quality of extraction or skill in falsehood fabrication, respectively. In Arabic "Haqqa Al'-Shai'a" became a must. <sup>9</sup> Language scholars mentioned many meanings of HAQQ, particularly opposite to falsehood, and the fixed existing thing. They say Haqqaqto-lamra, if I made it a must, or fixed, or became certain.<sup>10</sup>

#### 3.2.1 Main Heading of the Second Analysis or Discussion etc.

Definition of Haqq (the right) in the Sharia terminology.

Al-Dasouqi said in defining the right: the right is something that included money, property and other things.<sup>11</sup>

Abdul Aziz Al-Bukhari defined it saying: "The existing from all sides, without any doubt in its existence. Of this comes:" Magic is right and envy is right, known by their effects". Then he said: The right of the servant (human) is what a special interest is concerned in it."

Among the other meanings of the right are:

- Proof and obligation. In this concern it means proving the ruling and making it a must, as in the verse of Almighty Allah: "The word has been justified against most of them—for they do not believe." (Sura Yasin, Verse 7)
- The firm thing (order): i.e. the verses of Almighty Allah: "And the inhabitants of the Garden will call out to the inmates of the Fire: "We have found what our Lord promised us to be true; did you find what your Lord promised you to be true?" They will say, "Yes." Then an announcer will announce in their midst: "The curse of Allah is upon the wrongdoers" (Sura Al-Aaraf, Verse 44.
- Paying the right in return for the obligation or the ruling, as in the verse of Almighty Allah, "And in their wealth, there was a rightful share for the beggar and the deprived" (Sura Al-Thariat, verse 19).<sup>12</sup>

And one of the famous jurisprudential definitions is that "it is a specialization in which the Sharia recognizes an authority or a mandate."<sup>13</sup>

*Definition of the Right (Haqq) in the law:*

"Right is a material or literary benefit preserved by the law through granting its owner the power to carry out the necessary works to enjoy this benefit?"<sup>14</sup> "And the right is an interest of high value protected by the law."<sup>15</sup> "And the right is a voluntary power or ability that the person transfers to enable him carry out certain works to achieve an interest for him, recognized by the law."<sup>16</sup>

*Nature of the IP Right*

Legal, literary, and intellectual rights such as copyrights, manuscript verification, inventions, and so on, are among the intellectual rights that give their owners the right to retain the profit resulting from their work."<sup>17</sup>

*Definition of the IP and Nature*

"It is the products of the human brain of innovative ideas and knowledge, and any other expressions, which are of commercial value, and could be protected by the law from imitation, infringement and defamation."<sup>18</sup>

"The nature of the IP is twofold as it combines between the person right, on one hand, and the moral right, on the other, that is known as the legal right, which is termed by "Intellectual Property".<sup>19</sup>

### ***Importance of the IP***

First: Importance of the IP politically.

"There is a political importance of the IP right, as the political history enfolds crises related to the infringement of the intellectual property."

Second: Importance of the IP socially.

"The IP was the subject of a major dispute, especially in artistic circles, because of accusations that the authored work, melody or poetry belonged to someone else."

Third: Importance of the IP economically.

"The advancement of the state in the IP protection domain encourages the international investment, because there is an actual safeguard of their innovations and production from theft, infringement or forgery."

Fourth: Importance of the IP internationally.

IP rights are an important factor in the comprehensive development of the life aspects. It further contributes effectively to the leadership of the progress and development processes for any nation."<sup>20</sup>

### *Divisions of the Property*

- **Industrial Property**

"The rights that come with new innovations, such as inventions, industrial drawings and patterns; or on remarkable emblems used either to distinguish the products (brands-Trademarks), or the businesses (Trade Name)."<sup>21</sup> The industrial property is divided into types:

First Type: Invention

Invention may be defined as the collection of the ideas and objects together in an innovative manner to create something that did not exist before."<sup>22</sup>

Second Type: Industrial Patterns and Drawings<sup>23</sup>

Industrial drawing: is the image of the figures, bodies, patterns or decorations, only, for any material through an industrial process or means, whether manual or automated, or whether can be assessed by the naked eye, if the item is completed."<sup>24</sup>

The Industrial Pattern: is the shape of the commodity or the product itself."<sup>25</sup>

Second Branch: Trademark (Brand)

"The trademark that is already used or intended to be used attached on the goods, or in what is related to indicate that these goods belong to the same brand owner, by virtue of its manufacture, production, certificate or trading in or offering for sale."<sup>26</sup>

- **Trade Name**

"The name the person chooses to distinguish his commercial store from other stores, which consists of innovative naming, or the person's name or title, or of all of them, with any addition that concerns the type of business or activity he practices".<sup>27</sup>

- **Marks of Origin**<sup>28</sup>

Geographical indications: "Are the indications that identify the origin of a commodity in the territories of the member country or area or location in these territories."<sup>29</sup>

Topic Three: Intellectual Property in Islam

Before Islam, the Arabs had influential intellectual features, an interest in poetry and oration, and an appreciation for poetic and oratory talents.<sup>30</sup>

First Demand: Concepts that control the IP Protection in the Islamic Sharia

"Islam is very keen to preserve the public principles that protect rights, which lead us to acknowledge that Islamic jurisprudence has known many concepts related to intellectual property, and human intellectual production, in general."<sup>31</sup>

The Islamic state knew types of applying the purchase of the materialistic rights of the author. It demanded the authors to write in a certain subject, and their role here is authoring only. The state also protected the intellectual innovation through agreement with the author to purchase his innovations to allocate them for public benefit, without prejudice to the private copyrights."<sup>32</sup>

Second Demand: Rules and Concepts that Control the IP in the Islamic Law

First: Setting the rules and controls that control the IP to maintain the intellectual production and mental innovation in general.

Second: "Jurisprudents of the Islamic Law emphasized the importance of innovation for the author." <sup>33</sup>

Third: There is a correlation between the concern of Islam for man and his intellectual rights.

Fourth: Islam scholars are almost unanimously agreeing on the authority of the reason in its field. Imam Al-Shafi'e, may Allah bless his soul with mercy, said: "Allah, the Exalted, bestowed on the servants (humans) their minds in different degrees, and guided them to the path of truth, textually and semantically."<sup>34</sup>

Fifth: Islamic law looked at the author or the innovator with an eye of appreciation and reverence, and gave him the title (the scholar- a high prestigious rank). This glorification and high appreciation is mentioned in many Quranic verses and the honorable Hadiths of the Prophet. For instance, the Almighty said: "Allah elevates those among you who believe and those given knowledge, many steps. And Allah is Aware of what you do." Al-Mujadaleh, Verse 11.

#### **4. Trademark (Brand)**

"The trademark is all what distinguishes a particular produce, whether it is a commodity or service, from other names that took distinguished shape, the signatures, words, letters, figures, drawings, symbols and the prominent inscriptions, or a group of colors that take a certain shape, and others." <sup>35</sup>

##### **4.1 Famous trademark.**

First Requirement: Concept of the famous trademark.

"It is an international trademark that is subject to, in terms of definition and the conditions, the general provisions of the trademarks. It is well known in the markets as it is placed on high quality and distinguished products."<sup>36</sup>

##### **4.1.1 Introducing the famous brand: Definition of the famous brand in the language.**

A'lama (mark) is the singular of Alam (flag-banner) or Alamat (marks) (Arabic Dictionary). Mark is the attribute or sign."<sup>37</sup> Therefore, the marks or banners are things fixed in the wide open spaces (for instance deserts) to guide the persons who miss their right ways."<sup>38</sup> And, the mark is the trail, or the lighthouse, or the tall mountain, the sign and the banner."<sup>39</sup> Almighty Allah said: "And among His signs are the ships sailing the sea like flags (or mountains). If He wills, He can calm the wind, leaving them motionless on its surface. Surely in this are signs for

every patient, thankful person. Or He could wreck them because of what they have committed. Yet He forgives much." (Sura Al-Shoora, Verses 32-34). As for the famous (Mashour-in Arabic) is the singular of "Mashaheer-in Arabic); and the famous is the well known among the public."<sup>40</sup>

#### **4.2.2 Definition of the famous trademark idiomatically.**

"The high reputed brand is the well-known by a wide segment of the public, and enjoys a prominent status and good reputation."<sup>41</sup> And, it is the trademark that enjoys wide knowledge among the consumers and a reputation and advertisement at the world level, and has a high financial value in the market."<sup>42</sup>

Paris Convention for the Protection of the Industrial Property (WIPO) for 1883, and its amendments in 1967, did not provide a definition of the famous brand. Rather, it only provided in Article 6 (duplicate) denial or annulment of the registration of a trademark or industrial trademark that constitutes copying, imitations or translations that would create confusion in a mark that the competent authority in the country, in which the registration or the use was made, considers famous."<sup>43</sup>

"This could be known through surveys of consumer patterns, consumer opinion poll; and questions to consumers about their knowledge of a particular brand; and the degree to which they know it."

*Period of making benefits of the brand.*<sup>44</sup>

The brand popularity is measured through the sales of the products or services; the extent of the brand contribution in the market of these products; and the length of the period during which the product that bears the brand is present in the commercial markets.<sup>45</sup>

*Period of the publicity and advertising of the brand.*

"This is achieved by the extent of the success of the publicity and advertisement campaigns and their geographical scope, as well as displaying the commodities and services distinguished by the brand in the promotional shows and markets both at the national and international levels."<sup>46</sup>

Fourth: Number of the countries where the Brand is registered.

"It is not required that the trademark is to be registered in all the countries in the name of the brand proprietor. It may be owned by many different companies that work in different countries, but they all belong to one group, or have close ties or partnership and cooperation relations."<sup>47</sup>

Personal criteria.

These criteria are based on a personal basis, that is, on the public's knowledge of the well-known mark. In other words, for a brand to be popular, it must be known to the consumer audience sector.<sup>48</sup>

Legal protection of the well-known trademark.

First Branch: Civil protection of the well-known trademark.

"The well-known brand is characterized by that its protection legally constitutes an exception of two basic principles, namely: territorial principle and specialization principle. By the first it is meant that the protection of the brand is limited only in the province or territory of the country in which the brand is registered or used. The second principle means that the protection of the trademark is only when using it on products or services similar to commodities or services on which the well-known brand is attached."<sup>49</sup>

"The famous trademark enjoys the civil protection when used by others on commodities or services similar to those that bear the famous trademark, even if it is not registered or used inside the country where the protection is required. In this concern the owner of the well-known brand has the right to lodge a suit before the courts of jurisdiction when the components of the suit are completed."<sup>50</sup>

"The use of the well-known brand by others on commodities or services not similar to those on which the original brand is attached, or of low quality, would harm its reputation and thus weaken its ability to distinguish. All this led to the emergence of the need to protect the well-known trademark when it is used on products or services that are not similar to the originals."<sup>51</sup>

Criminal protection of the well-known trademark.

"The illegal imitation of the goods reduces the quality of the original product, and makes the consumer get a low quality product, which renders him a prey to misleading and deception, and offends the state; because it weakens the national and foreign investment in countries. <sup>52</sup>

Normal brand

First requirement: Essence of the trademark

First Branch: Definition of the trademark

First: Trademark in the law.

"Marks are symbols capable of linear representation, especially words, including names of persons, letters, numbers, graphics, or pictures and shapes distinguishing goods, or their packaging, and colors alone."<sup>53</sup>

Second: Trademark in the jurisprudential terminology.

"Brand or trademark is that what the manufacturer or the merchant takes as a logo for his products that distinguish them from other similar products."<sup>54</sup>

Distinguishing the trademark from the rest of the similar components.

First: Trademark and trade name.

The trade name aims at distinguishing the commercial shop from other shops of the same business nature. Meanwhile, the trademark aims at distinguishing the products or services provided by the commercial shop.

Second: Trademark and appellation of the origin (Geographical indication): Appellation includes manufacture place of the product. But, the trademark may include a geographical indication that is one of its components.

Third: Trademark and innovation: There is no essential link between the mark and the industrial, literary or artistic innovation, but there is an overlap between them; a product bearing an invention may bear an industrial mark.

#### **4.2.3 Conditions of the trademark and its expiry.**

That is the trademark shall have its identity that distinguishes it and makes it different from other trademarks that are used to distinguish similar commodities or services.

Second: The external characteristic.

Is the non-similarity with other trademarks that were previously registered, or previously required for similar products and services.

Third: Legality.

The trademark should not include a component or shapes that are contrary to the public morals or the public order.

Second Branch: Acquiring the right to a mark by registering it (objectivity)

First: Registering it with the competent authority.

The right to a trademark is acquired by registering it with the competent authority, without prejudice to the right of priority acquired within the framework of the application of international agreements in force; and defining the period for registering a trademark at ten years in accordance with the specific provisions.

Second: Cases of violation of the right to use the trademark.

In the event of a violation of the right, the trademark remains the property of the first person who fulfilled the conditions specified for the validity of filing.

## 5. Patent

### 5.1 Definition of the patent.

Invention is every new beneficial idea that has the industrial applicability. The laws of our times recognize the exclusive right of the inventor, who introduces to the society a new invention, to invest it. This exclusive right is deemed a property right that starts with the moment the patent is received.

#### 5.1.1 Concept of the patent.<sup>55</sup>

First Branch: Definition of the patent in language and legal terminology.

Patent (Bara'a in Arabic), the noun Bor'a (Arabic), which means healing from illness. 56

Patent in the legal terminology: Patent in law is derived from (brief) which means an official short book. It is an expression that indicates a work or brief document issued by an authority to the owner of a "Mark" to prove a right or capacity.<sup>57</sup>

Definition of the invention linguistically and idiomatically.

Invention (Ikhtira'a): in Arabic language: Ibn Faris said in (Maqayees) Measures of Language: "The three Arabic letters: Kha, Raa, and Ain, are of one origin, which all indicate looseness.<sup>58</sup>

Invention, idiomatically, "Is an idea composed in a certain way based on foundations that, as a whole, seeks to achieve an industrial yield."<sup>59</sup>

The general conditions that must be met to grant a patent.

There are several conditions to grant a patent, as follows:

- existence of the invention.

For a patent to be granted, a new invention must exist, or an already existing invention to which the inventor adds new thing/s in addition to what is known before. There are cases that the invention should include, namely:

- A- Invention of a new product: the invention may lead to the emergence of a new, distinguished thing/s.
- B- Invention of a new way: the invention may be related to a new way that enables getting a known product. In this case the way alone is the patent subject matter, not the product per se.
- C- Invention of a new application of known way: through the use of the new application in the way for a new purpose.

- the novelty.

"This means that the invention should not be known before. Rather, its owner must have preceded others in introducing this invention. In other words, people did not know this invention before applying to grant the pertinent patent, by any way of knowledge or publishing." 60

- the invention must be investable and industrially applicable.

The invention for which the patent is granted must be investable or industrially applicable.

- Fourth condition: the invention must not violate the Islamic law, the public morals and public order.

5.1.2 *The international agreements and conventions related to the patents.*

61

1- (WIPO), Paris Convention for the Protection of the Industrial Property

By joining this convention, the member states constitute a union for the protection of the industrial property, which includes the patents, benefit patterns, drawings, industrial patterns, trademarks and trade names.<sup>62</sup>

2- (TRIPS), WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

TRIPS agreement is a more comprehensive framework of the IP subjects; it organized the protection of the computer softwares and databases within the scope of the copyrights. Thus, these works were added to the works of the literary property. Furthermore, this agreement established another center for the management of the IP internationally, i.e. the World Trade Organization (WTO), the agreement that allocated a special board within its authorities in TRIPS agreement.

3- Madrid Agreement Relating to the International Registration of Trademarks.

This agreement initiates a union specialized for the international registration of the trademarks, and aims to secure the protection of the citizens of the member state with regard to their goods and service trademarks registered in the country of origin, by registering such trademarks in the international office through the trademark office in the country of origin.<sup>63</sup>

4- The Hague Agreement Concerning the International Filing of the Industrial Designs.

This agreement establishes a union related to the international filing of the industrial patterns. Accordingly, he who files an application can carry out one international filing, either with WIPO or with a national office of a member state in the agreement.

5- Lisbon Agreement for the Protection of Geographical Indications and their International Registration.

This agreement establishes a union within the framework of Paris Agreement for the Protection of the Geographical Indications, and looks after them. By this is meant the geographical name of the country, the territory, or the place where such products originated and gained their own fame.

6- PCT, Patent Cooperation Treaty.

This treaty establishes a union called the International Union for Cooperation in the Patents Scope. It aims at cooperating in the area of research, examining the applications for patent protection, and providing specialized technical services.

7- Budapest Treaty on the International Recognition of the Deposition of Microorganisms for Patent Purposes.

This treaty aims at transporting the microorganisms or keeping them in the custody of an international deposition party, or both purposes together.

8- (TLT), Treaty of the Law of Trademarks.

The treaty aims at organizing the issues related to the registration of the trademarks, and is applied to all the commodities and services trademarks. It excludes out of its application scope marks that cannot be embodied, such as the sound marks, collective marks, quality and warranty marks.

9- (PLT), Patent Law treaty

This treaty aims at finding a type of harmony concerning the related official requirements of the applications to obtain the patent and maintain it.

*5.2.3 Patent in the Islamic jurisprudence.*<sup>64</sup>

First Requirement: Patent right in the Islamic jurisprudence. 65

First Branch: Nature of the patent right in the Islamic jurisprudence.

There is wide room in Islam for this right, as it is among the private rights of their owners. In the contemporary custom, the patent right has a significant financial value for people to fund. This right is one of the legally (Shari) protected rights; their owners have the right to dispose in it, and it is not permissible to infringe. This right could be justified based on the rule of the intended interests; and the interest in protecting this right is encouraging the invention and innovation; so that the person who makes his best effort in the invention will be the exclusive owner of it. It will be protected from those who try to take the fruits of his innovation and thoughts, and compete him in utilizing it.<sup>66</sup>

Inventor's right in the Islamic jurisprudence scale.

The inventor's right is a legal (Shari) right, which is necessarily known through the religion. The right of the inventor by attributing the invention to him, preventing infringing it, and making efforts to protect it, is an indisputable matter in the Islamic Sharia. Sincerity and honesty require ascribing each right to its owner, and ascription entails many things, including reckoning, reward, and seeking accuracy.<sup>67</sup>

Patent right in the Islamic jurisprudence

Invention is like authoring, both are mental innovation; therefore their rules are the same. The patent was defined as: "An official general document granted by a specialized administrative authority to the applicant under certain formal and objective conditions. The patent includes a description of the invention, and granting it to the deserving party and his successors, for a certain period, and an exclusive right, deterring the imitation and deception sue. This right is the license to utilize the invention covered by the patent, unless otherwise a judicial order is issued to the contrary. 68

This patent has many rights such as:

First: the right for the inventor to utilize his invention and for his heirs to exploit it after his death for a specific period determined by the patent laws; so that this right ends after that period, and becomes part of the public wealth.

Second: right of the inventor to be attributed to him from the patent issued in the name of the employer.<sup>69</sup>

## **6. Author's Right**

"Protection of the copyright (author's right) for his literary productions and scientific innovations is a recent protection appeared in the middle of the eighteenth century."<sup>70</sup> "The author's right gained great attention since the French Revolution, even though, some believe that this right appeared in the monarchy epoch before the French Revolution; as, by then, whoever wanted to print a book must obtain a prior permission through the royal licensing,"<sup>71</sup> "The first law to protect the copyright was issued in France in January 1871, following the French Revolution. In England, the first law was issued in 1710 to protect the printed authored work, and then the basic law of the copyright was issued on 16 December 1911, which stipulated the protection of the authored literary work, and protection of the designs, artistic patterns, sculptures, oil drawings and engineering works."<sup>72</sup>

## **6.1 Author's right (Copyright) and related rights.**

Copyrights mean the rights in which the owner has the right to maintain them, which may be the edited or oral works that are attributed to the author and his name is mentioned on them.

### *6.1.1 Copyrights*

Copyrights: are what is proven to the scientist or the author of legal specialization in his authored matter, which can be attributed to him, and can ward off the assault on it, and dispose in it and exclusively get the financial benefit resulting from the legally permitted exploitation.<sup>73</sup>

The author: "He who publishes the work attributed to him, whether by mentioning his name on it or in any other way, including using a pen name, unless there is evidence to the contrary."<sup>74</sup>

Publishing contract: is the agreement between the author and publisher who undertakes, by virtue of the contract, to present his mental production to the publisher, and the latter becomes committed to print this production at his own cost and distributes it under his responsibility."<sup>75</sup>

Publishing: is the transmission of the work or delivering it, directly or indirectly, to the public.<sup>76</sup>

## **6.2 Copyright in the Islamic jurisprudence.**

Investment in the scientific research including authorship is one of the best areas of the scientific research.

### **6.2.1 Authorship before and after Islam.**

First Branch: features of the Arab appreciation of authorship and innovation before Islam.

"No one denies that the pre-Islamic Arabs, in their long intellectual history, had features of appreciation and respect for the unique right of the innovator in the fields of poetry, proverbs and rhetoric. This is a proof that Arabs knew the right of who authors or innovates, especially in the field of poetry. Moreover, the care in writing and its tools in the pre-Islamic poetry was very high."<sup>77</sup> Pre-Islam Arabs knew many types of writings, including the covenants, conventions, dictation, letters, and the like.<sup>78</sup>

### **6.2.2 Authorship among Muslims.**

"The companions of the Prophet (PBAUH) and their followers in the first early period of Islam did not resort to authorship, due to their close time to that of the Prophet (PBAUH), and due to the presence of the trustful companions. This exempted them from transcribing and authoring, in addition to the fact that they depended on memorization, and the hafiz (memorizer of the Complete Holy Quran by heart) was an Imam among them. Then, blogging and interest in authored writings started gradually. The circle of knowledge and science expanded, and every sect had its own penchant to certain issues and subjects, and became famous of them. The similar issues were collected into a source, and authorship took one shape represented in authoring a partial, single issue that did not exceed the limits of the issue, which focus is one of the Sublime Prophetic Hadith."<sup>79</sup>

Arabs anciently knew what is termed "plagiarism". Al-Mutanabbi (very famous poet) coined in his poetry the materialistic copyrights when he said addressing Saif Al-Dawlah (one of the famous regional rulers):

Reward me for my poetry (the original);

Other poets praised you by reciting my poetry.

Major critics like: Al-Jurjani, Al-Askari, Ibn Rasheeq, and Ibn Al-Atheer devoted chapters in their writings for poetry plagiarism."<sup>80</sup> Some of the Arab critics were very strict in the plagiarism issue, such as Al-Obaid (died 433 AH), in his book "Al-Inaba". In this book he severely criticized some of the great poets like Al-Mutanabbi, just because they were influenced by or liked a common meaning known before. Al-Obaidi said, commenting on the famous poem of Al-Mutanabbi, that it contained poetic verses "Stolen" from a poem by Al-Kumait Ibn Zaid Al-Koofi: "By God, this is a theft that necessitates cutting off the tongue, in addition to cutting the hand."<sup>81</sup>

: Book copying.

Book copying and writing became a process associated with the book and authorship spread out. Rather, it turned into an Islamic industry after the advent of Islam.<sup>82</sup> Copyists, paper makers, and scribes became an important class that affects the dissemination of science, and affects the right of the scholar, the author or the innovator. It was said that: "The scourge of knowledge is the betrayal of the scribes."<sup>83</sup>

copyright protection in accordance with the Islamic Convention Project for the protection of copyrights.<sup>84</sup>

Many projects emerged to protect the copyright and overcome the related problems in this field. This project was introduced to the Islamic Organization for Education, Culture and Science in its plan for 1994 in the name: "Islamic Convention Project". Article (2) of the project showed the importance of the copyrights protection, through stipulating the following: (In recognition of the contracting Islamic State of the importance of a system for the protection of authors' rights (copyrights) that suits all member states, it was necessary for this protection to find a specific agreement to ensure the completion of the applied regional and international documents, without affecting what would encourage creativity and the publication of works that could contribute to building an edifice for the spiritual and material civilization of the Islamic world). The Islamic Fiqh (Jurisdiction) Academy has decided that: (The rights of authorship, invention or innovation are protected by Sharia, and their owners have the right to dispose of them, so it is not permissible to violate them).<sup>85</sup>

## **7. Conclusion**

Praise be to God alone, and prayers and peace be upon the one after whom there is no prophet, thereafter;

All praise to Almighty Allah, and gratitude to Him for the countless bounties and blessings upon me and the entire world. Last, but not least, after a long journey navigating among the rules of the intellectual property, I managed to conclude this research titled: "Intellectual Property, Its Related Rights and Applications in Islamic Sharia", which is specifically dedicated to the IP rules, trademarks, brands, patents, and the copyrights in general, without giving preference to one country over another, or a law over another.

The observer of the developments of the legal library finds only few legal researches dedicated to the intellectual property (IP) and its adopted applications, as compared to the Islamic Sharia, due to the novelty of the Arabic legal experience thereof, which created the need to issue this study. Through preparing this study, we were keen, as far as possible, to

be in a new modern dress, and to be based on a statement of reality that does not contradict our Islamic Sharia. There is no way to compare the Sharia with the positive law; even though, there is no harm to do so in certain cases, if this distinguishes the right from the wrong, the good from the false. Accordingly, this study included, as far my knowledge goes, the clarification and statement of the IP in the Islamic Fiqh (jurisprudence), and explaining the summary of the Sharia rulings related to the IP.

In preparing the scientific material, we sought the help of many legal references, which are specialized and distinguished in this type of knowledge, namely a pool of the law jurists, which I referred to in the references and footnotes of the book. They were a firm foundation and support to this book, with carrying out what is needed of disposition, such as amendment, increase, or deletion to suit the methodology of this book, without prejudice of the origin of the scientific material. In addition, this research included a number of legal references and multiple researches published on the legal websites and electronic links, which enriched my research and gave it a momentum in many of its chapters and topics. This research concluded the following results:

- 1- Issues related to the IP rights developed worldwide.
- 2- There are strict laws that protect the IP rights of the individuals and companies, and provide the legal civil and criminal protection for it.
- 3- The progress of the countries in the domain of protecting the IP encourages the international investment.
- 4- Protection of the well-known trademark legally constitutes an exemption of two basic principles: regionalism and specialization.
- 5- Islam knew patterns of the intellectual innovation protection, and the innovations of the scientists and jurists in the fields of the literary property.
- 6- IP rights are established and maintained in the Islamic jurisprudence.
- 7- The Islamic law instituted care and interest in the IP rights in a manner that preceded the international agreements and conventions in this regard.
- 8- Patent right in the Islamic jurisprudence is among the rights that are dedicated to the owners of the patents.
- 9- The Islamic jurisprudence does not oppose enacting laws that regulate the right to exploit the patent.
- 10- The researches specialized in the IP and its multiple applications are few, as compared to Islamic law.

The results the researcher concluded in this study led to many recommendations as follows:

- 1- Work toward establishing the legality of the rules related to the IP and its protection.
- 2- Reconsidering the rules related to the regulation of the IP provisions within the states, through enacting new laws and systems to protect these rights.
- 3- There is an urgent need to coin international and regional agreements and conventions in the shade of the complications and

difficulties the current age is witnessing, particularly the growing role of the social media.

4- There is a need to provide means of the international legal protection (civil and criminal) to preserve the intellectual rights to their owners.

5- Providing legal guarantees to the proceeds resulting from the intellectual rights that give its owner the right to preserve the profit resulting from his work

6- Work toward organizing the copyright (author's right) and the relating rights at the international level.

7- Activating the means of government supervision, in particular on patents and providing protection for them.

8- Conducting further specialized scientific studies and researches, which overcome the difficulties that face the areas of implementing the issues related to the copyrights, patents and trademarks protection.

9- Utilizing the social media means such as Facebook, Tweeter. Instagram....) and employ them in the state to protect the IP rights.



**This work is licensed under a Creative Commons Attribution 4.0 International Licence.**

## Reference

- <sup>1</sup> An Article Titled: "The International Protection of the IP for the Digital Works", Judge: Mohammad Ahmad Hitteh, Lecturer in the Faculty of Law, Ain Shams University, 2016, Published in "My Law Network", Jordan Forums (Documented law article)
- <sup>2</sup> United International Intellectual Bureaus for Protection of the Intellectual Property Protection (BIRPI).
- <sup>3</sup> World international Property Organization (WIPO), which is an international organization that aims at providing assistance to safeguard the innovators and IP owners' rights worldwide, and recognize the inventors and authors and reward them for their innovations.
- <sup>4</sup> IP Rights Laws, Protecting the Innovation or legitimization of the monopoly (Ibid)
- <sup>5</sup> General Agreement on Tariffs and Trade
- <sup>6</sup> Trade-Related Aspects of Intellectual Property Rights, (IP Council).
- <sup>7</sup> TRIPS agreement is the WTO Agreement on Trade-Related Aspects and Intellectual Property Rights. It added new rules in the IP rights area, such as protection of the computer softwares and databases within the domain of the author's rights. It established, for the first time, another center to manage the IP system globally, namely the WTO, which dedicated among its authorities a Board for TRIPS Agreement.
- <sup>8</sup> Article on the IP Rights and methods of protection, prepared by Mr. Ahmad Mohammad Al-Anzawi, published on Ahlol Hadith Forum site <https://www.ahlalhdeeth.com/vb/showthread.php?t=114777>. The researcher provided many increases on the article to fit the study methodology.
- <sup>9</sup> Moa'jam Maqayees Al-Lugha (T: Haroon) Year Published: 1399-1979, P. 244 ج

- 10 Lesan-ol-Arab (Arab Mother Tongue), Ibn Manthour and Al-Misbah Al-Muneer  
(Lexicons), the word HAQQ
- 11 Al-Dasouqi Footnote on Al-Sharh Al-Kabeer (Great interpretation)
- 12 The right and the debt, and the effect of death in them. Sheikh Ali Al-Khafeef, Dar  
Al-Fikr Al-Arabi, 2010, p.35.
- 13 Introduction to the General Commitment Theory in the Islamic Fiqh  
(Jurisprudence), Sheikh Al-Zarqa, Dar Ol-Qalam for Printing and Publishing,  
2013, p.11
- 14 Origins of the Law, Dr. Mohammad Kamil Mursi, p. 408.
- 15 Sources of the right in the Islamic Jurisprudence, V 1, Al-Sanhouri, p.4
- 16 Introduction to Law Science, Dr. Suleiman Morqos, p.419
- 17 Introduction to the study of the Islamic Law, V 2, Dr. Abdel Rahman Sabouni, p.9
- 18 Intellectual property", www.businessdictionary.com, Retrieved 24-1-2018. Edited
- 19 IP, essence, vocabularies, protection methods (Ibid), p.41 and beyond
- 20 IP rights are a developmental significance and income source. Dr. Abdul Rahman  
Bin Khaled Al-Abdel Kareem, Article published on the website of Mal Economic  
Newspaper, April , 2018.
- 21 See, Dr. Samiha Al-Qalyoubi, Industrial Property, Ed 2, Dar Al-Nahda Al-Arabia,  
1998, Cairo, p.5.
- 22 Invention", www.britannica.com, Retrieved 09-01-2020, Edited.
- 23 IP, essence, vocabularies, protection methods (Ibid), p.122 and beyond
- 24 Jordanian Law of the inventions privileges and fees, No. 22 for 1952.
- 25 IP, essence, vocabularies, protection methods (Ibid), p.118 and beyond
- 26 Jordanian Trademarks Law, No. 33 for 1952.
- 27 Article 2 of the Jordanian Trade Names Law, No. 9 for 2006.
- 28 TRIPS Agreement defines the "geographical data" by the data that determines a  
certain commodity by its origin in the territories of the member countries or area or  
location within these territories, where the type, fame, or other characteristics of  
the commodity are basically related to its geographic origin.
- 29 See TRIPS Agreement, Section Three, Article 22/1, Titled "Geographical  
Indications".
- 30 Tolerance Magazine (Islamic, Seasonable, Intellectual Magazine) No. 4, IP Rights  
from an Islamic Perspective, No.4, 1424 AH/2004 AD, Researcher: Barakat  
Mahmoud Murad (with expanded discretion of the researcher)
- 31 IP Rights from an Islamic Perspective (Ibid) (with expanded discretion of the  
researcher)
- 32 IP, essence, vocabularies, protection methods (Ibid), p.15 and beyond
- 33 Dr. Nawwaf Kana'an, Author's Right (Ibid) p. 21 and beyond.
- 34 Al-Resala (Message), Mohammad Ibn Idrees Al-Shafi'e. Revised and explained by  
Ahmad Mohammad Shafi'e, Dar Al-Fikr, Section of Ijtihad and slander of  
imitation.
- 35 Famous trademark, comparative study, Nuha Khaled Issa, with discretion of the  
researcher to fit the research methodology.
- 36 Examples of the famous trademarks are: Coca Cola for gaseous drinks, Mercedes  
on the cars, and Sony on the electrical appliances.
- 37 Dr. Nassar Sayyid Ahmad and Dr. Mustafa Mohammad, Al-Moajam Al-Waseet,  
V1 & 2, Dar Ihia'a Al-Turath Al-Arabi for Printing and Publishing, Ed 1, 2008,  
p.371
- 38 Ibn Manthour, Lesanol Arab (Arab Mother Tongue), V10, Ed 1, Dar Sader, Beirut  
2005, p.264
- 39 Mohammad Bin Abi Baker Al-Razi, Mukhtar Al-Sihah, Dar Alkitab Al-Arabi, (no  
printing year), pp.451-452
- 40 Dr. Nassar Sayyid Ahmad, et al, Al-Moajam Al-Waseet, (Ibid) p.518

- 41 Dr. Abdel Fattah Bayyoumi, Industrial Property in the Comparative Law, Dar Al-Fikr Al-Jami'e, Alexandria, 2008, p. 156.
- 42 Dr. Abdel Wahhab Al-Sayyid Arafa, protection of the IP, V1, The Technical Bureau of the Legal Encyclopedias, Alexandria, (no printing year), p. 139
- 43 The Famous Trademark in the Algerian Law, Prof. Sulami Milood, Batina University (Algiers)
- 44 Sharif Mohammad Ghannam, Protection of the Trademarks through Internet in their relations with the Electronic Address, Part II, Research published in the Law Journal, No.4, 28<sup>th</sup> year, December, Kuwait, 2004, p.409.
- 45 Industrial Property (Ibid), p.567, Example: Coca Cola brand was known in the former Soviet Union through publicity and advertisements, although the products were not present in the Soviet markets.
- 46 Dr. Mohammad Mahboubi, Protection of the Famous Brand (Ibid), p. 2
- 47 See WIPO Rules, Explanatory Notes (2/F1, B (2)
- 48 TRIPS Agreement for the Intellectual Property, Article (16/2)
- 49 Dr. Kan'an Al-Ahmar, Protection of the Popular Trademark. International WIPO Seminar on the IP for the Faculty Members and Law Students in the University of Jordan, Amman, 2004, Research published on the Internet and the website: [www.wipo.int.edocs.arab.com](http://www.wipo.int.edocs.arab.com).
- 50 Dr. Abdullah Hussein Al-Khashroum, Summary (Wajeez) of the Industrial and Commercial Property Rights, Part 1, Dar Wa'el for Publishing, 2005, p. 192.
- 51 Dr. Naeem Mghabghab, the Criminal and Civil Protection for Trademarks, Data and Trade Names, Ed.1, Cultural Bureau for Publishing and Distribution.
- 52 Dr.. Hisham Zwain, Criminal and Civil Protection for Trademarks, Data and Trade Names, Ed.1, Cultural Bureau for Publishing and Distribution, 2004, pp. 90-91.
- 53 Summary (Wajeez) of the Industrial and Commercial Property Rights (Ibid) p.135.
- 54 Dr. Munir Mohammad Al-Juhaini, Trademarks and Trade Names, Part I. Dar Al-Kotob Al-Jamieh, Lebanon. 2004, p. 204
- 55 An article on the invention published on the link: <http://mawdoo3.com> موضوع كوم
- 56 Ibn Faris: (Maqayees fi Al-Logha) Measures in the Language (129), Al-Faraheedi: Al-Ain (8/289). ***P.S.: Al-Ain is one of the earliest, most famous, and comprehensive Arabic Language lexicons.***
- 57 Gérard Corneau: Dictionary of the Legal Terms (342/9)
- 58 Ibn Faris: (Maqayees fi Al-Logha) Measures in the Language (310)
- 59 Al-Wajeez (Brief) in the Industrial and Commercial Property, Al-Nahi, Salah Eddeen Adul Lateef, Dar Al-Furqan, No Ed.) p.67.
- 60 Patent in the Islamic Jurisprudence, Sheema, Khader Al-Nadi, Faculty of Sharia and Law, The Islamic University, Gaza (Unpublished MA Thesis) 2012, p.44
- 61 Quoted from: <https://ar.wikipedia.org/wiki>
- 62 (TRIPS) WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, conducted on 20 March 1883, amended in Brussels on 14 December 1900; in Washington on 02 June 1911; in La Hague on 06 November 1925; and in London on 02 June 1934, which was conducted in Syria vide the decree of the High Commissionaire No. 152/L.R issued on 19 July 1939.
- 63 For more details on this agreement, see the book titled: International Registration of the Trademarks, Dr. Wa'el Mohammad Refa'at, Saudi Arabia, Law and Economics Library, 2015, p.5 and beyond.
- 64 Right of Authorship and Invention in the Islamic Jurisprudence. Published on: <http://fiqh.islammessage.com>
- 65 Quoted from: Islamic Jurisprudence Academy Magazine, issued by the Islamic Jurisprudence Academy, affiliate of the Islamic Conference Organization, the Comprehensive Library.

- <sup>66</sup> Contemporary Financial Transactions in the Islamic Jurisprudence, p.69, General Jurisprudential Entrance, 3/21.
- <sup>67</sup> Al Abbadi, Research in the Islamic Jurisprudence and the Moral Rights, Islamic Jurisprudence Academy Journal, No. 5, (2/479).
- <sup>68</sup> Contemporary Financial Transactions in the Islamic Jurisprudence, Shabeer, p.67; Contemporary Financial Transactions in the Islamic Jurisprudence, Qala'aji, p.131.
- <sup>69</sup> Contemporary Financial Transactions in the Islamic Jurisprudence, p.68.
- <sup>70</sup> Dr. Abdel Moni'em Al-Badrawi, Explanation of the Civil Law in the Original Rights, Dar Al-Kitab Al-Arabi Printing Press, Egypt, 2<sup>nd</sup> Ed., 1956.
- <sup>71</sup> Dr. Abdul Razzaq Al-Sanhouri, Al-Waseet in Explaining the Civil Law, Egypt, 1967, 8/383.
- <sup>72</sup> Dr. Ahmad Suweilem Al-Omari: Rights of the Mental Production, Dar Al-Kitab al-Arabi for Printing and Publishing, Cairo, 1967, p.30
- <sup>73</sup> Invention and Copyright in the Islamic Jurisprudence, Hussein Bin Ma'alawi Al-Shahrani, p.82.
- <sup>74</sup> Jordanian Judiciary Experience in Enforcing the IP Rights (Ibid).
- <sup>75</sup> Copyright and the Censorship Provision on the Authored works, Al-Minshawi, Abdul Hamid, Dar Al-Fikr Al-Jami'e, Alexandria, Egypt, 1994, p. 93.
- <sup>76</sup> Website of the Arab Publisher on the Internet, Evaluative Study, Dr. Fahed Sa'ati, 2010, p. 29.
- <sup>77</sup> Dr. Awn Al-Sharif Qasem, Advanced Studies in the Arabic Language, Khartoum Diaries, Khartoum International Institute for Arabic Language, 1984.
- <sup>78</sup> Qasem Othman Al-Noor, Writing and Library in the Islamic Civilization, Historical Perspective, Unpublished PhD Dissertation, Faculty of Arts, Khartoum University, 1994. p.7 and beyond.
- <sup>79</sup> Dr. Nawwaf Kana'an, Copyright, Contemporary Examples, in the Copyright and Protection Methods. 1<sup>st</sup> Ed. 1407 AH, 1987 AD, p.21 and beyond.
- <sup>80</sup> This quotation is by Abdullah Lahood under the title: "Opinion of the Arab Critics in the Poetry Plagiarism". Cited in the book titled "Copyrights" by Dr. George Habbour.
- <sup>81</sup> See the book titled "Al-Kumait Ibn Zaid Al-Assi Poetry", Authored by: Dawood Salloum, Part: 1, p. 375
- <sup>82</sup> Writing and Library in the Islamic Civilization, Ibid, p.181
- <sup>83</sup> Writing and Library in the Islamic Civilization, Ibid, p.185
- <sup>84</sup> Position of Islam about the IP Rights, Prof. Dr. Barakat Mohammad Murad, 2005, p. 84.
- <sup>85</sup> Islamic Fiqh (Jurisdiction) Academy, among a number of decisions in its 5<sup>th</sup> round that was held in the State of Kuwait during the period from 1 to 6 Jamadi I 1409 AH, corr. to 10 to 15 of December 1988. See these decisions in the Islamic Fiqh Academy Journal of the 5<sup>th</sup> round of the Islamic Fiqh Academy Conference, No.5, Part 3, pp.2581-2582.