



Legal provisions regulating intellectual property rights (patent as a model)

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ABSTRACT

The patent is of great importance because of the benefits it provides that encourage creators in various fields by recognizing their works or giving them fair monetary and moral rewards. The countries of the world have realized the seriousness of patent infringement crimes and the necessity of punishing their perpetrators. They worked on the development of many legal legislations at the international and internal levels with the aim of protecting intellectual property rights, foremost of which is the patent, and working to bridge legal gaps and prevent abuse, with the approval of a group of Protection measures at its various stages.

Keywords:

Legal, property rights

Introduction

The patent is of great importance because of the benefits it provides that encourage creators in various fields by recognizing their works or giving them fair monetary and moral rewards. The countries of the world have realized the seriousness of patent infringement crimes and the necessity of punishing their perpetrators. They worked on the development of many legal legislations at the international and internal levels with the aim of protecting intellectual property rights, foremost of which is the patent, and working to bridge legal gaps and prevent abuse, with the approval of a group of Protection measures at its various stages.

The patent is considered as a title deed to the owner of the invention, which enables him to exploit and benefit from it, and it is a way to prevent others from infringing on this invention, as that third party exploits it without obtaining the permission of the owner of the invention, as the imitator is often looking for quick profit in return for selling Counterfeit

goods or merchandise without trying to obtain a license to reproduce or produce, which usually requires payment of sums of money and according to certain conditions and controls, He is encouraged by the presence of a large segment of consumers seeking to obtain counterfeit goods and commodities because of their low prices. These reasons have prompted countries and organizations concerned with organizing business in addition to legal institutions in various countries of the world to legislate many treaties and agreements that regulate intellectual property rights, including Patents with the imposition of penalties on violators of these rights in order to protect them and regulate the use of them.

The patent is defined as (the certificate indicating the registration of the invention) (1). Thus, the offense of patent infringement consists of two main pillars: the material and the moral pillars. The offense of infringement of the patent does not occur if the patent certificate is not actually issued to the owner of the invention, and it differs. Legislation

determining the forms of committing the offense of patent infringement, As the Iraqi legislator launched the act of infringement on every act that constitutes an infringement of the patent. As for the Egyptian legislator, it has been defined by imitation, selling, offering for sale, trading, importing, possessing, and unlawfully placing data on the products or otherwise that leads to the belief that he has obtained the patent.

This leads us to question the effectiveness of the various legal legislations in standing up to the possible abuses, especially with the expansion of commercial life and the emergence of thousands of goods, products and merchandise whose owners demand to provide the necessary protection for what was produced by their intellectual and mental activity. This is offset by the emergence of many methods of imitation by different parties seeks to make a quick profit, even if it is at the expense of the original owner of the idea, In Iraq, there is no comprehensive legal regulation regulating the idea of patenting invention. Rather, the Iraqi legislator had canceled the penalty imposed in the Patents and Industrial Models Law No. 65 of 1970 and replaced it with a simple penalty that does not match the importance of the patent and its role in the development of society, in addition to The lack of a judiciary specialized in intellectual property crimes, including patents. Therefore, the research has been divided into two main chapters: In the first chapter we will discuss the definition of the crime of patent infringement according to two main sections, namely, the concept of the crime of patent infringement, and the second section will explain the legal characteristics of the crime of patent infringement. The second chapter will be divided into two sections, the first dealing with the pillars The crime of patent infringement and the second section will deal with the penalties for the crime, with a conclusion dealing with a set of results and recommendations.

Chapter one

Definition of the offense of patent infringement

The right of the inventor to monopolize the exploitation of his invention is not proven to him by simply inventing a specific thing, but is proven to him as soon as he obtains the patent.

First section

The concept of the offense of patent infringement

The Iraqi legislator did not know the crime of patent infringement, but he defined the patent as (the certificate indicating the registration of the invention), as the Iraqi legislation has considered the patent as a document of protection for the invention by registering it according to legal methods. As for the invention, the Iraqi legislator defined it as ((Any creative idea that the inventor comes up with in any of the technical fields and related to a product or a manufacturing method that practically leads to solving a specific problem in any of the fields (2), As for the Egyptian legislator, he did not address the definition of a patent, nor did he know the crime of patent infringement, but the Egyptian administrative judiciary defined the invention, as the Egyptian Supreme Administrative Court referred to its definition as (the idea that transcends the familiar industrial art, and it must be the fruit of An innovative idea that transcends the existing industrial art, and that someone skilled in the art or in his field of work, and that presenting something that did not exist before) (3) The French legislator did not define the crime of patent infringement, but he clarified the meaning of the invention that (the invention of an idea that involves an innovative step is considered to be for a person of the profession (4))

As for international agreements, the Paris Convention for the Protection of Industrial Property of 1883 did not define the crime of patent infringement, but it clarified the types of patents, as it stipulated that (patents include various types of industrial patents approved by the legislation of the countries of the Union such as import patents, improvement patents, patents and certificates addition, etc.) (5) The TRIPS Agreement of 1994 did not define the crime of patent infringement, but it stipulated the conditions

for obtaining it. It stipulates (1...-the possibility of obtaining patents for inventions, whether they are products or industrial processes, in all fields of technology, provided that they are new and involve a "creative step" and are usable in industry) ... (6) From the above it is clear that the comparative penal legislation did not define the crime of patent infringement, but some of them have defined the concept of patent. As for the field of jurisprudence, the patent has been defined by many definitions, including (as a certificate granted by the state to the inventor, granting him the right to monopolize the exploitation of his invention, and to benefit from it for a certain period, and under specific conditions, in return for the effort and sacrifice he made to reach his invention, and in return for what he gave to the society of the secrets of his invention. (7) Another defined it as (the compensation that the inventor obtains for his efforts and for disclosing his invention to the public, and under the patent, the law recognizes the inventor with specific and temporary rights over his invention, which are for a specific period of time, and it enables the patentee to exploit his invention himself, commercially and economically) (8), It was also defined as a document issued by the administrative authority, which includes a reference to the application submitted by a certain person on a specific date that he has accomplished an invention, and includes a full description of it, and entitles its owner to enjoy the privilege granted by the law (9), The patent was also defined as a certificate granted by the administration to a person, according to which the patentee can adhere to the protection provided by the legislator to the invention (10). From the foregoing, the invention can be defined as (every new creative idea in various fields, whether it is technical, industrial or commercial, related to a product or a manufacturing method that leads to the development of a practical solution to solving a specific problem in any of these fields). As for the patent, it can be defined as (the protection deed issued by the competent authority at the request of the patentee indicating that he has fulfilled the formal procedures required by law

to protect the right to exploit the invention and enable him to exploit his invention himself, commercially and economically). A definition of the crime of patent infringement can be defined as (the infringement by any act that the legislator criminalizes on a new innovative idea in any of the technical or industrial fields for which a patent has been issued and related to a product or manufacturing method that practically leads to solving a specific problem in any of the fields).

Second section

Legal characteristics of the offense of patent infringement

The crime of patent infringement is characterized by several characteristics that can distinguish it from its counterpart crimes, which we summarize below:

First: Among the crimes with potential harm: the legislator's main goal of punishment for the dangerous outcome is to avoid harm (11) so they are called crimes with potential harm or danger crimes, which can be defined (as crimes in which dangerous behavior is criminalized regardless of the possibility of the existence of dangerous consequences). Danger crimes are divided into abstract danger crimes and concrete danger crimes, and they differ in terms of harm and in terms of generality. In terms of harm, potential harm is an important element in crimes of tangible danger, but abstract danger is not considered as such. In terms of generality, the crimes of tangible danger are more general than crimes of abstract danger, while another opinion went to say that the crimes of danger are of the type of crimes of tangible and realistic danger as they expose the legal interests to actual danger (12). And through the text of Article (476) of the amended Iraqi Penal Code No. 111 of 1969, which states that (without prejudice to any severer penalty stipulated by the law, anyone who infringes the intangible property rights of others protected by law or an international agreement to which Iraq has acceded shall be punished with a fine. And it shall be decided to confiscate the things that resulted in an infringement of the aforementioned right.) (13) It is clear that the Iraqi legislator did not require the achievement of the criminal

outcome in the crime of patent infringement as a moral property right, and thus it can be considered a crime of abstract danger.

A part of the jurisprudence sees that the legislator criminalizes the act in crimes of an abstract danger, regardless of the degree of danger of this act to the protected interest, and then the perpetrator of the criminal act must be punished even though the protected interest was not exposed to danger, so the assumption that the danger arises just because the behavior is committed. The legislator criminalizes it in the legal model that people frequent, it may include results that may be incorrect and open to interpretation (14)

Secondly, it is considered one of the continuous crimes: the crimes in general are divided according to the time it takes to realize the component behavior into temporary crimes that take a limited short time to realize the component behavior, and continuous crimes the time in which the component behavior is realized extends for a relatively long period, as it is considered a patent infringement crime. It is a continuous crime that may extend the time during which the constituent behavior of the crime is realized for a relatively long period, That is, the behavior that constitutes the crime begins and does not end within a specific period of time, as the infringement can be in multiple forms, it may occur by imitation, the act of display, circulation or possession, which are acts that assume an element of continuity.

Thirdly, it is considered one of the crimes of misdemeanor: The Iraqi Penal Code No. 111 of 1969 divided the crimes in terms of their gravity into felony, misdemeanor and contravention according to the type of punishment imposed by the legislator, as the Iraqi legislator imposed a fine penalty for the crime of patent infringement, as it stipulated that (Without prejudice to any more severe penalty stipulated by law, he shall be punished with a fine (15) Accordingly, the Iraqi legislation has imposed the penalty of a fine as the original penalty for the crime of patent infringement, while the French legislator specified the penalty for the misdemeanor crime which is (imprisonment and a fine together if committed without an aggravating

circumstance (16), and punishable by imprisonment for three years and a fine of three hundred thousand euros, if committed Under an aggravating circumstance, he was also punished with seven years imprisonment and a fine of 750,000 euros when the facts related to goods dangerous to human or animal health and safety.(17) As for the TRIPS Agreement, it stipulates that (Member countries are obligated to impose criminal procedures and penalties, at least in cases of willful imitation...and the penalties that can be imposed include imprisonment and/or financial fines), as the agreement included the patent in this text as one of the intellectual property rights. covered by protection. (18) .

Fourthly, it is considered one of the crimes of property: as the object of the attack in it is a specific right, which is the right of property, unlike crimes against persons, in which the object of the attack is the person of the victim, such as an assault on his life, his physical integrity, his dignity, or his freedom. (19) Which is what the Iraqi legislator referred to when it stipulated that - the owner of the right to invention (20), And the Egyptian legislator stipulates that: ... the subject of an invention ... a patent is granted for it ... when the patent for the invention or the patent for the utility model was issued by it or the methods of its production and is valid in the Arab Republic of Egypt (21). As the infringement obtains a right owned by others.

Fifthly, it is a positive crimes: Positive crimes are defined as those crimes in which the behavior that constitutes the material element is positive, i.e. the commission of a positive activity, and they are realized when the offender comes as one of the legally criminalized acts. The law orders it to be carried out and punishes those who refuse to do so. And it is realized whenever a person refrains from doing an act that the law orders to do, and abstaining from that in itself is a punishable crime (22). The infringement that constitutes its physical element occurs by committing the act of imitation by making the patented invention, selling or offering for sale, trading, importing or possessing with the intent to trade counterfeit products, or

unlawfully placing on products, commercial advertisements, packing tools, or other data that leads to the belief that it has occurred. On a patent or a utility model patent (23) These actions require a positive activity, that the doer uses a part of his body in it, and it cannot occur with a passive activity.

Chapter Two

Elements of the crime of patent infringement and the punishments for the crime

The crime of patent infringement, like other crimes, has elements and conditions for its implementation without the fulfillment of these elements, the act submitted by the person cannot be considered a crime, and therefore the possibility of imposing punishment is negated with it. Therefore, we will divide this chapter into two main parts. The first will deal with the elements of the crime, while the second section will be concerned with a statement of the punishments prescribed for it.

First section

Elements of the offense of patent infringement

First, the physical element: The Iraqi legislator defined the physical element in Article 28 of the Penal Code, as it stipulates that it is (criminal behavior by committing an act criminalized by the law or refraining from an act ordered by law) and defined it as (a physical event whose commission achieves aggression against the interest subject to legal protection) The physical element of the crime is the outward appearance of the crime or its physical entity, as defined by the criminalization texts every crime must have material in which the criminal will of the perpetrator is embodied. the physical pillar is the criminal behavior, the criminal outcome and the causal relationship, and it will be dealt with as follows:

1 - Criminal behavior: behavior consists of doing an act that is criminalized by the law, and the Iraqi legislator defined the act as (every act criminalized by the law, whether positive or negative, such as abandonment and refraining unless there is a text to the contrary) (24) accordingly, the behavior is either positive By committing an act criminalized by law or

negatively by refraining from an act ordered by law. Therefore, the crime of infringing the patent is considered a positive crime, that is, it is committed with an activity carried out by the offender.

The Iraqi legislator did not stipulate this act, as the text mentioned the assault in general: (...Anyone who infringed on a moral property right...(25). As for the Egyptian legislator, it has specified the forms of criminal behavior as it stipulates that: (... shall be punished...1 - whoever imitates the subject of an invention or a utility model for the purpose of commercial circulation, for which a patent has been granted in accordance with the provisions of this law. 2- Whoever sells or offers for sale or circulation, or importing or possessing with the intention of trading counterfeit products with his knowledge of that whenever the patent or the utility model patent was issued by it or the methods of its production and is in force in the Arab Republic of Egypt. 3. Whoever unlawfully places on products, commercial subsidies, packaging tools, or other data, data that leads to the belief that he has obtained a patent or a (utility) model patent...(26) and the French legislator expands the provision on acts that constitute infringement of a patent. As it stipulates the act of counterfeiting or infringing the rights of the patent owner or claiming ownership of the patent or manufacturing, supplying, marketing, importing, exporting, using and possessing for these purposes or any product that includes the counterfeit design (27) As for the TRIPS Agreement of 1994, Article 61 of it states that (Member countries are obligated to impose the application of criminal procedures and penalties, at least in cases of willful counterfeiting...) Through the above text, it is clear that the TRIPS Agreement has provided for an act of counterfeiting or any other case of infringement of a patent. The invention as one of the intellectual property rights, and the comparative legislation has expanded the criminalization, so it did not limit the infringement to imitation, it can happen by selling the counterfeit product, or acquiring it with the intention of selling, or offering it for sale, or trading, or the act of importing counterfeit products from abroad, meaning

that Any of these acts that constitute the physical element of this crime shall be subject to the legally prescribed penalty.

2 - The criminal consequence: It is the effect of criminal behavior, and represents the assault on interests and rights that the law protects, (28) and the Iraqi legislator stipulated that (1 - no person is asked for a crime that was not the result of his criminal behavior) and Article 1-121 indicated of the French Penal Code that (No person is asked about a crime that was not the result of his criminal behavior) and the criminal result has two forms:

The first is physical and is represented by a change in the external world, which is a tangible change that can be perceived.

The second is legal, represented by the change that the legislator criminalizes committing the act on the basis of and which results in the change in the outside world.

The two forms are not correlative and unrelated, as the result can occur with its legal meaning without the physical, and the criminal consequence in the crime of patent infringement is represented by the infringement of the protected interest, which is the right of the owner to monopolize the benefits of the product for which the patent was issued.

As counterfeiting the patent or offering it for sale contrary to the permission of its owner or obtaining it for the purpose of sale, or otherwise, represents an infringement of the owner's financial and moral right to invention. The criminal result is considered to be realized by the mere commission of the criminal behavior that is realized by imitation or any act that constitutes an infringement of the patent. As for the element of harm and its availability in the crime, the crime of infringement is considered a dangerous crime, and therefore it is not necessary to verify the harm for the crime to occur. The mere possibility of the harm occurring is sufficient for punishment, as the legislation did not require that the patent owner be harmed by the act committed for the crime. (29)

3- Causal relationship: For the crime to occur, it is required that the criminal consequence be the result of the offender's behavior. There

must be a causal relationship between the behavior and the criminal result, as the causal relationship is the link between the criminal behavior and the criminal result, as the criminal result in the crime of infringement on A patent is an infringement of a protected interest in it. Therefore, in order to achieve causation, it is required that the infringement obtained by the patent is a result of the criminal behavior committed by the offender, whether by imitation or any other act.

The second pillar is the moral pillar: the moral pillar is represented in the psychological origin of the physical objects of the crime, and its image is represented by the criminal intent in intentional crimes, and takes the image of error in non-intentional crimes. The Iraqi legislator defined criminal intent as (the perpetrator directs his will to commit the act constituting the crime, aiming at the result of the crime that occurred or any other criminal result) (30). The preceding text stipulated that the criminal intent be based on two basic elements, namely knowledge and will, since it was satisfied with mentioning the word will because will presupposes knowledge as it is a necessary prelude to the existence of a conscious will that surrounds what it wants. The criminal intent based on knowledge of the elements of the crime with a will directed towards the realization of these elements (31). The Egyptian legislator did not know the criminal intent in the Penal Code, and did not specify its provisions or organization, and the French legislator did not know in the Penal Code issued in 1994, but only stipulated the necessity of criminal intent in felonies and misdemeanors, and the criminal intent is divided into general intent, which is the intent that all intentional crimes require. Including the crime of patent infringement, and a special intent, which is the intent that the legislator requires in some crimes.

The third pillar: Issuance of the patent from the competent authority The crime of patent infringement does not arise if a patent is not actually issued to the owner of the invention, even if he submits an application to the competent authority (32). Granting a patent is proof that the patent owner has fulfilled the

formal procedures required by law to protect the right (to exploit the invention) (33), whether the patent owner is the same inventor or the person whose rights have been transferred to him. The patent is the originator of the right, (34) Without it, the invention does not have an absolute right to its owner alone, but the society as a whole has the right to exploit it financially, and from a legal point of view, it is proof that the patent owner has fulfilled the formal procedures required by law to protect the right to exploit the invention, whether the patent owner is the same inventor or the person transferred to him his rights, just as the crime does not arise if the period of protection expires or has lapsed, and also the imitation of the patent must occur without right, and without the consent of the owner of the patent (35). In Iraq, the patent is issued by the registrar of patents, as the Iraqi legislator stipulates (and the registrar announces the patent after fulfilling the conditions stipulated in the Iraqi legislation), (36) and grants the patent to the right holder by a decision of the registrar (37) and must be registered in the Patents Register, as it stipulates that (a register shall be prepared in the Agency called the Patent Register in which patents and all data related to them are recorded in accordance with the provisions of this law) (38) The Iraqi legislator required the registration of patents for the purpose of their being covered by the penal protection provided by Iraqi legislation, as it stipulated that "The application is submitted to the registrar by the inventor or the person to whom the invention rights have devolved through an authorized registration agent in the cases permitted by law in accordance with the conditions determined by a special system. The application may not include the registration of more than one invention (39) ... The registrar announces the patent after fulfilling the conditions stipulated in Iraqi legislation (40).

Second section punishments for the offense of patent infringement

Penal legislation, special legislation and international agreements imposed primary and secondary penalties on the perpetrator of the

infringement of the patent. Therefore, we will address this section in two subsections below:

Subsection One The original penalty: The Iraqi legislator imposed a fine for the crime of patent infringement, as it stipulated that: (A person who infringes a right of intangible property rights...) shall be punished with a fine. (41) The amount of the fine is not less than (200,001) two hundred thousand dinars and one and not more than 1,000,000) one million dinars (42) As for the Iraqi Patent and Industrial Models Law No. 65 of 1970, before its amendment, it was punishable by imprisonment for a period not exceeding two years or a fine not exceeding one thousand dinars, or by both penalties for the offense of patent infringement (43) However, the Iraqi legislator abolished the penalty of imprisonment or a fine and was satisfied with the penalty of a fine only, and it would have been better for the Iraqi legislator to return the imprisonment penalty that was stipulated in the Iraqi Patent and Industrial Models Law No. 65 of 1970 before it was amended because it provides better penal protection for the patent and achieves a clear deterrence The right of anyone who wants to commit an infringement of the patent.

Subsection Two Sub-sanctions: Sub-sanctions may be consequential, complementary, or precautionary measures. The accessory penalty is the one that is inflicted on the convict by virtue of the law without the need to stipulate it in the judgment, and in order for it to be attached to the offender by dependence, there must be a judgment with an original penalty, As for the complementary penalty, it is the penalty that cannot be imposed on the offender, unless the judge expressly stipulates it, and the difference between them is that the accessory penalty follows a specific original penalty, and is signed merely for the sake of ruling with this penalty, and without the need for the judge to pronounce it. As for the complementary penalty, it is linked to a crime or A specific type of crime, and it can only be imposed by a judge's ruling (44). Accordingly, the subsidiary penalties stipulated in the penal legislation are:
1 - Confiscation: Confiscation means the expropriation of a thing or thing related to a crime that has occurred or is feared to occur,

forcibly on behalf of its owner and for free (45) The public authority sells it and deducts the value of fines and compensation from the price obtained from it. The Iraqi legislator imposed the confiscation penalty for this crime, as it stipulated that: (... The court may, upon passing a judgment of conviction in a felony or misdemeanor, order the confiscation of the seized items that were obtained from the crime, that were used in its commission, or that were intended for their use in it... The court must, in all cases, order the confiscation of the seized items that were paid to commit the crime (46), and it also stipulated that: The court may order the confiscation of the products that were the subject of the infringement, as well as all the tools and materials actually used in the infringement of the patent...(47) The Iraqi legislation has considered the confiscation penalty as a complementary penalty, as it is left to the judge, who can order the confiscation of the products that were the subject of the infringement, as well as all the tools and materials actually used in the infringement of the patent. The court may decide to confiscate the goods, products, packing materials, advertisements, plates, seals, and other tools and materials mainly used in making the products, or from which the infringement was committed, or originated from, or in the printing of the trademark on the goods or which committed an act of infringement, or arose from it. Therefore, the confiscation must be based on the order of the competent court, and this may be during the consideration of the case, whether civil or criminal, and the court can order the confiscation of all goods, things and tools used in committing the infringement of the patent, as this helps to save the reputation of the patent from deterioration, In fact, the court may order confiscation even if the legal prosecution of the accused did not lead to a lack of conviction for the acts attributed to him of infringement of the patent. And that confiscation is a permissive matter for the court, as it has Judicial discretion in this regard. If the court orders confiscation, the confiscation may include goods, tools and

things used in the commission of the crime, as it may be limited to some of that.

2 - Destruction: The Iraqi legislator stipulated that the court may order the destruction of the products that were the subject of the assault, as well as all tools and materials used in the assault, or their deposit for non-commercial purposes (48). Since the penalty for destruction is a complementary penalty where the legislator empowered the judge to rule on it, the court may order the destruction of the goods. And other tools with which the act of infringement was committed, just as the ruling to destroy all or some of these things is left to the discretionary authority of the court.

If it is proven to the court that the condition of these materials is of a high quality, then the ruling should be other than destruction, such as an order to sell them or make use of them (49).

3- Publication: The Iraqi legislator permitted the court to order the publication of the judgment as a supplementary penalty, because it is a penalty that the legislator placed in the hands of the judge, as it stipulated that (the court may publish the judgment in the bulletin and in one or more newspapers at the expense of the convict) (50) It is worth noting that the Egyptian law differed from the Iraqi law in that it made confiscation and publication an obligatory matter that the judge must rule on, while the Iraqi law made it a permissive matter subject to the discretionary authority of the judge. As for the French legislator, the publication penalty has been made permissible and imposed by the judge based on a request submitted by the victim. The publication of the penalty includes the identity of the perpetrator and a description of the crime and is published in one of the national newspapers (51).

Results

Based on the foregoing, the study reached a set of results, which are listed below:

First: The Iraqi legislator did not define the crime of patent infringement, and it was possible to define it, which is (the infringement of any act that the legislator has criminalized on a new creative idea in any of the technical or industrial fields for which a patent has been

issued and related to a product or manufacturing method that practically leads to solving a specific problem in any of the fields.

Second: The crime of patent infringement does not occur if a patent is not actually issued to the owner of the invention, even if he submitted an application to the competent authority, and the Iraqi legislator required the registration of patents for the purpose of including them with criminal protection.

Third: Legislations differed in determining the forms of criminal behavior for the offense of patent infringement. As the Iraqi legislator launched the act of infringement on every act that constitutes an infringement of the patent, As for the Egyptian legislator, it has been defined by imitation, selling, offering for sale, trading, importing or possessing with the intent of trading counterfeit products, and unlawfully placing on products, commercial subsidies, packing tools, or other data that leads to the belief that he has obtained a patent or a utility model patent.

Fourth: Imitation means the manufacture of the thing subject of the patent, whether it is related to new results, a new application in a known way, or the invention of a compound similar to the patent in circulation, through the offender reproducing the innovator subject of the patent, whether that innovator is similar to the original thing or not. for him.

Fifth: The Iraqi legislator contented himself with the general criminal intent for the crime of patent infringement, and the Egyptian legislation was unique in requiring the presence of special intent in some forms of criminal behavior for the crime of patent infringement and stipulated that the act of imitation be for the purpose of commercial circulation.

Sixth: The penalty that was prescribed in the Iraqi Patent and Industrial Models Law No. 65 of 1970 is imprisonment for a period not exceeding two years or a fine not exceeding one thousand dinars, or both penalties for the crime of patent infringement. After the amendment, the Iraqi legislator canceled The penalty of imprisonment or a fine, and the penalty of a fine for the crime of patent infringement is sufficient, with an amount not

less than (200001) two hundred thousand dinars and one and not more than (1,000,000) one million dinars.

Recommendations

Based on the foregoing, the research reached the following recommendations

First: Amending the Law on Patents, Industrial Models, Undisclosed Information, Integrated Circuits and Plant Varieties No. 65 of 1970, as amended, by returning the penalty of imprisonment for a period not exceeding two years, which was prescribed for the crime of infringement of the patent or industrial model, which was stipulated in the previous law, and replacing it with the penalty of confiscation. and stipulate it as a punishment.

Second: The necessity of amending Article 4 of the Law on Patents, Industrial Models, Undisclosed Information, Integrated Circuits and Iraqi Plant Varieties, as amended to be in the following form. A patent is not granted in the following cases: - 1 - Inventions whose exploitation results in a violation of public morals, public order, or national security, or that conflict with the public interest, or seriously harm the environment, or harm the life or health of humans, animals, or plants, or conflict with human dignity, or lead to an act prohibited by law.

Third, it is necessary to order the destruction of the products that were the subject of the assault, as well as all the tools and materials used in the assault, or their deposit for non-commercial purposes, so that the counterfeit goods do not affect the original goods if they are kept.

Fourth: We suggest that a text be added to the Law on Patents, Industrial models, Undisclosed Information, Integrated Circuits and Plant Varieties for Moral Property Rights, so that the penalty is seven years imprisonment and a fine of no less than 1,000,000 million dinars if the crime is committed by an organized group or on the Internet or when the crime is committed by an organized group or on the Internet. to pose a threat to human or animal health and safety, In the event of recurrence, the penalty stipulated for the crime shall be doubled, in addition to depriving the offender for a period

of no less than five years from the right of eligibility to local chambers of commerce and industry, chambers of commerce and before industrial courts.

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