

# The Validity of Customs Records in Proving Patent Infringement and the Effects of Criminal Liability

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## Abstract

Through this study, we have examined the provisions related to criminal prosecution in cases of patent counterfeiting and their specific characteristics as mechanisms to protect the rights of inventors. The study is divided into three main elements. Firstly, we focus on the criminal liability of patent counterfeiting claims, specifically addressing the scope of this liability, the parties involved, and the circumstances under which the counterfeiters may be exempted from criminal responsibility. Secondly, we explore patent infringement offenses, including the procedures for pursuing such cases before the competent court and the examination of evidence related to these offenses. Lastly, we provide a detailed overview of the penalties prescribed for patent counterfeiting misdemeanors and the expiration of related claims. The objectives of this study are to explain the system of criminal responsibility for patent counterfeiting claims and to outline the procedures for criminal judicial follow-up of patent infringement crimes.

**Keywords:** counterfeiting lawsuits, criminal follow-up, parties to a criminal lawsuit, misdemeanor offense.

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## Introduction

Patentability is considered within the framework of industrial property rights and holds great significance in gauging the development of nations, societies, and the prosperity of their economies. Consequently, comparative legislations and international agreements have carefully designated patent law to ensure the rights and interests of inventors and innovators. This is done in order to safeguard their inventions against infringement by others who may manufacture the innovative product that falls under the scope of the patent, whether it involves new results, a novel manufacturing process, or a new application of a known method. Protection is provided according to specific provisions governing criminal prosecution related to patent infringement cases. Furthermore, these modern inventions impact human beings as individuals or entities, thus raising the issue of safeguarding human rights and guaranteeing their fundamental freedoms in

the face of any encroachment resulting from aspects of human activity<sup>1</sup>. Customs regulations play a particular role in establishing evidence of infringement, deriving their authority from specific provisions stipulated in customs law and its implementing regulations.

This study aims to shed light on the subject and highlight its significance. Various legislations have recognized the importance of criminal protection, which proves to be more effective in combating offenses related to infringements on proprietary rights held by patent owners. This is achieved through legally protected means, including the possibility of initiating criminal proceedings under the jurisdiction of the public prosecution. The claim of infringement, in this regard, represents the fundamental claim for patent protection, targeting the act committed by others that infringes upon the exclusive rights granted by law to the patent holder<sup>2</sup>. Therefore, the methodological approach adopted in this study is a descriptive-analytical methodology, starting from the following problem statement: What is the validity of customs regulations in proving the crime of infringement in relation to patents? And what is its connection to the resulting criminal liability?

accordingly, we have adopted a plan consisting of two chapters as follows:

**Chapter One:** The Validity of Customs Regulations in Cases of Infringement on Patents.

**Chapter Two:** Provisions of Criminal Liability for Claims of Infringement on Patents.

**Chapter One: The Validity of Customs Reports in Cases of Infringement on Patents.**

Customs reports play a significant role in the realm of proving infringement, deriving their authority from specific provisions stipulated in customs law and its implementing regulations<sup>3</sup>. We will begin by defining customs reports (first section) and then delve into the requirements for the validity of a customs seizure report for infringement (second section).

**First: Definition of Customs Reports:** Defining these reports requires us to first discuss their general definition and then delve into their specific definition, namely reports related to patent infringement disputes.

**A. General Definition of Customs Reports:** They refer to written documents issued by customs administration that are not subject to stamping and registration procedures by sworn officers. One author defined them as: "Prepared means of evidence containing examinations that facilitate the process of proof." Other writers add that they are: "Documents prepared by customs officers, as well as qualified officials, to prove the facts of customs offenses, their circumstances, evidence, and perpetrators."<sup>4</sup>

And these reports take the form of a seizure report in the case of seizure and the form of an inspection report in the case of customs verification. However, how valid is this definition for a patent infringement claim? In this regard, the Algerian legislator has granted customs administration the authority to protect intellectual property rights in general and patent rights in

particular, according to Article 02 of Customs Law No. 17/04, dated 21/04/2017, amending Article 3/3 of the Customs Law. This grants customs the authority to issue seizure reports for counterfeit goods. What is the concept of this report<sup>5</sup> ?

### **B. Definition of Customs Seizure Report for Counterfeit Goods:**

Customs law categorizes counterfeit goods as prohibited goods in accordance with the provisions of Article 22 of the Customs Law, as amended by Article 09 of the Customs Law in 2017<sup>6</sup>.

On this premise, this report falls within the scope of customs reports concerning prohibited goods, which are legally prohibited from being imported or exported<sup>7</sup>.

However, because this basis alone is insufficient to define the customs seizure report for counterfeit goods, the definition of this type of report can be derived from Article 22, as amended by Article 43 of the 2008 Finance Law. It states: "It is a written document issued by customs officers relating to goods suspected of being counterfeit. It is subject to detention by hand raising or seizure if they are declared for consumption, declared for export, or discovered during inspection in accordance with Articles 28, 29, and 51 of the Customs Law, or if they are subject to an economic customs regime in accordance with the provisions of Article 115 of the Customs Law, or if the goods are placed in a free zone."<sup>8</sup>

### **Secondly: Conditions for the Validity of the Customs Seizure Report for Counterfeit Goods**

The customs seizure report for counterfeit goods is subject to conditions stipulated in Articles 22 and 22 bis of the Customs Law, as amended by the Finance Law, as well as the provisions of the decision issued by the Customs Administration on 15/07/2002. The conditions can be inferred as follows:

#### **A. Conditions for Customs Administration's Intervention:**

The Algerian legislator has authorized the Customs Administration to intervene automatically in seizing counterfeit goods, according to Article 22 bis, as amended by Article 43 of the 2008 Finance Law, which states: "Goods suspected of being counterfeit are subject to detention by hand raising or seizure if ... discovered during inspection in accordance with Articles 28, 29, and 51 of the Customs Law."<sup>9</sup>

By referring to these articles, we find that the Customs Administration's automatic intervention occurs throughout the customs territory, including land and maritime borders. All imported or exported goods are subject to customs inspection<sup>10</sup>.

If it is proven that the goods are prohibited, their seizure is subject to formalities specified in Articles 242 to 251 of the Customs Law. Failure to comply with these formalities invalidates the seizure report, and these formalities include:

- 1- When preparing the customs seizure report for counterfeit goods, it is necessary to mention the position or title of the officer or officers who drafted it. From this, we find that this role is not limited to customs officers alone. It can also include officers from the Judicial Police, officers from the Tax Department, officers responsible for economic investigations, competition, prices, and quality, and officers from the National Service of Coastal Guards. In addition, members of the National Gendarmerie can also participate in preparing the seizure report, in accordance with the provisions of Article 241 of the Customs Law<sup>11</sup>.
- 2- It is incumbent upon customs officers or those authorized to prepare the seizure report for counterfeit goods to specify the location of the seizure. Failure to do so renders the report invalid<sup>12</sup>. If they are unable to determine the location, the provisions of Article 243, as amended by Law 17/04, apply to them. In this case, the counterfeit or infringing goods are placed under the custody of the counterfeiter or others, either at the same place of seizure or at any other suitable location for the seized goods suspected of being counterfeit<sup>13</sup>.
- 3- Determining the Venue and Timing of Report Preparation: When the customs administration discovers counterfeit goods, it is incumbent upon them to promptly issue the seizure report in accordance with the provisions of Article 242 of Customs Law 17/04, at the location where the counterfeit goods are inspected. Based on this text, the venue and timing of report preparation can be determined<sup>14</sup>.
  - ❖ In terms of timing: Article 243 stipulates that the seizure report shall be immediately prepared.
  - ❖ In terms of venue: The seizure report for counterfeit goods is prepared at the location of the office or customs center within its jurisdiction where the counterfeit goods were discovered. However, the report can be properly prepared in other locations, as provided in Article 106, which amends and supplements Article 242/2 of Customs Law 17/04<sup>15</sup>.
- 4- The content of the report: Article 245 of Customs Law specifies the essential information that must be included in the seizure report. This information consists of the date, time, and place of the seizure, the reason for the seizure, a description of the seized goods, the nature of the accompanying documents, the order addressed to the suspected counterfeiter, the identity and characteristics of the confiscating officers, the location of report preparation, and the time of its stamping<sup>16</sup>.
- 5- The authentication of the report: This procedure is carried out before the competent judicial authority within the specified period for appearance. It is worth noting that this procedure is no longer applicable after the amendment of Article 247 by Law No. 98/10, which amends and supplements the Customs Law. As a result, the seizure report possesses evidentiary force without the need for judicial authentication, which can only be challenged on the grounds of forgery, while its validity remains under the supervision of the court<sup>17</sup>.

**B. Preparation of a Report on the Suspected Counterfeit Goods Raised Hand:** Counterfeit goods may be subject to the raised hand procedure, based on the provisions of Article 12 of the decision dated 15/07/2002, which states: "If the customs office is not informed of the notification process by the competent authority to communicate the content of the request or

notified of the precautionary measures taken by the competent authority for this purpose within ten business days from the suspension of the grant of the raised hand privilege, provided that all customs procedures are completed, the seizure procedure is then lifted. This period may be extended to a maximum of ten additional business days in special cases.<sup>18</sup>

Indeed, procedure to pardon can also be applied to suspected counterfeit goods by depositing a guarantee. Based on this text, the raised hand procedure applies in two cases:

- ❖ When the rights holder fails to notify the judicial authority within a period of ten days from the date of issuance of the customs seizure decision for the suspected counterfeit goods.
- ❖ When the suspected counterfeiter provides sufficient guarantee to protect the interests of the rights holder.

### **C. Conditions for Customs Intervention Based on a Request from the Rights Holder:**

These conditions are regulated by the decision dated 15/07/2002, as previously mentioned. In order for the report on the seizure of counterfeits to be legally valid, the following must be fulfilled:

- ❖ Submission of the seizure request: The rights holder must submit a written application to the General Directorate of Customs, seeking the involvement of customs administration when the goods are intended for consumption or when they are discovered during a control conducted on goods subject to customs supervision or under an economic customs system in a free zone<sup>19</sup>.

This application must include a sufficiently detailed and accurate description of the goods to enable their identification<sup>20</sup>.

- ❖ Examination of the seizure request: The General Directorate of Customs promptly examines the request and provides written notification to the applicant regarding its decision on the request.
- ❖ Legal validity of the seizure decision based on the rights holder's request: This type of seizure is characterized by its temporary nature and holds evidentiary validity<sup>21</sup>.

Undoubtedly, these formalities have been established by the laws to ensure the protection of a general procedural framework for the patent system.

## **Chapter Two: Criminal Liability Provisions for Patent Infringement Lawsuits**

The protection of patents internally necessitates a form of criminal protection to combat infringement offenses. Based on this, we will address three demands in this chapter:

### **First Section: Criminal Liability for Patent Infringement Lawsuits.**

Through this demand, we will attempt to elaborate on the following elements:

#### **The First Element: Content of Criminal Liability for Patent Infringement Lawsuits.**

No individual can be questioned or punished for committing an infringement offense unless their actions were unauthorized and punishable by law. Therefore, committing an infringement offense requires that the invention has been filed with the competent authority and has obtained a document granting legitimate rights for its exploitation. Legal protection applies from the day of filing the application<sup>22</sup>.

However, a person who was unaware of the existence of the patent cannot be considered an infringer. In other words, the existence of the patent and the exclusivity of exploiting the invention must be made known through publication procedures to inform others about its existence. Consequently, legal provisions stipulate that acts carried out before the registration of the patent are considered as infringement of associated rights and cannot lead to a judgment, even in civil cases. However, the legislator made an exception for acts committed after notifying the person deemed to be an infringer<sup>23</sup>. This notification must be made based on an official copy of the detailed description of the invention submitted during the patent application. Consequently, acts that constitute patent infringement are those committed after the registration and issuance of the patent or after the completion of publication procedures, as well as after regular notification to third parties.

The effects of a patent are not absolute unless it is both existing and valid at the same time. The existence of the document is not a sufficient condition; it must also be valid, meaning it cannot be invalidated<sup>24</sup>. Based on this premise, it can be said that actions occurring after the expiration of the legal protection period of the patent do not constitute infringement. Patent exclusivity is not permanent but temporary, and it becomes permissible for everyone after the specified period of protection ends. Actions that occur after the patent holder's rights have expired due to non-payment of annual fees are not considered infringement. However, actions that occurred prior to the expiration of the patent can form the basis for a criminal infringement lawsuit. The criminal lawsuit for patent infringement can be initiated through three mechanisms:

**First:** Initiation of the lawsuit by the public prosecutor.

**Second:** Initiation of the lawsuit through a complaint by the civil party.

**Third:** Initiation of the infringement lawsuit through a complaint accompanied by a civil claim filed with the investigating judge<sup>25</sup>.

**First: Initiation of the Public Prosecution for an Infringement Lawsuit.**

The Public Prosecution is considered an agent or, one could even say, a representative of society in initiating public lawsuits that represent what is known as public rights. The Public Prosecution, in principle, is responsible for the automatic prosecution of all criminal acts according to legal provisions. However, does the Public Prosecution have the right or authority to initiate an infringement lawsuit without requiring a complaint from the aggrieved party, the patent owner?

In this regard, the Public Prosecution can initiate such a lawsuit upon the discovery by judicial authorities of acts that are considered infringement under the law. In such cases, the Public Prosecution has the right to pursue the offender for the crime of infringement, even in the absence of a complaint from the aggrieved party. The aggrieved party may be heard as a civil party in the lawsuit<sup>26</sup>.

However, if the aggrieved party expresses their consent to this infringement, the Public Prosecution must issue a decision to dismiss the case, unless the Public Prosecution deems that even with this consent, the interests of the consumer are at risk. In such cases, the basis for prosecution is not founded on the crime of infringement but rather on the criminal provisions of consumer protection laws<sup>27</sup>.

### **Second: Initiating the Lawsuit through a Complaint from the Civil Party.**

It is possible for the holder of the patent right to file a complaint with the Public Prosecution, alleging the existence of infringement or violation of one of their patent-protected rights. In such a case, the Public Prosecution is required to initiate a preliminary investigation by assigning the judicial authorities to conduct inquiries into the subject matter of the complaint. Upon completion of these inquiries, the Public Prosecution assumes the task of legally adapting the facts. If it is established that the elements of the infringement offense are present, the offender is referred to the misdemeanor court<sup>28</sup>.

**Third:** Initiating an Infringement Lawsuit through a Complaint accompanied by a Civil Claim filed with the Examining Magistrate.

The Algerian legislator has allowed anyone with an interest to initiate an infringement lawsuit accompanied by a civil claim, provided that it is submitted in accordance with Article 72 of the Algerian Criminal Procedure Law. This complaint is directly filed before the competent regional Examining Magistrate, and it is subject to examination by the judge. If the elements of the infringement offense are found to be present, the Examining Magistrate orders the civil claimant to pay a bail, which is a monetary amount determined by the discretionary power of the Examining Magistrate. The payment of this bail is equal for all civil claimants, regardless of their nationalities, as long as they belong to a country that is a party to the Paris Convention for the Protection of Intellectual Property<sup>29</sup>.

This complaint is subject to the oversight of the Public Prosecutor, who expresses their opinion on it based on a judicial request from the Examining Magistrate. Once these conditions and formalities are fulfilled, the Examining Magistrate begins their investigation into the complaint by hearing the parties, recording their statements and the testimonies of their witnesses, and examining the evidence presented and evaluating it. If the elements of the offense, represented by the infringement offense, are proven, the Examining Magistrate concludes their work by issuing an order to refer the offender to the misdemeanor court<sup>30</sup>.

### **The second element: Parties involved in criminal lawsuits for infringement offenses:**

The criminal lawsuit for infringement offenses consists of a civil party, the accused of infringement, and the Public Prosecution. Concerning the civil party, it is represented by the patent holder or anyone who has the right to it, regardless of their capacity<sup>31</sup>.

As for the accused of infringement, they can have several characteristics. They may be the original perpetrator who directly commits the act of infringement. It is worth noting that if the accused only attempts to commit the offense of infringement, they are still liable to punishment because the legislator does not punish for attempted infringement. This is applicable to the provisions of Article 31 of the Algerian Penal Code, which states: "Attempted offenses are not punishable except based on an explicit provision in the law"<sup>32</sup>

In general, attempted offenses differ from attempted felonies, and in misdemeanors, attempts are not considered at all.

### **The third element: Exemption of the infringer from criminal liability:**

The Algerian legislator, following the example of comparative legislation, has exempted the infringer from criminal liability in the following cases:

First: Victim satisfaction: Victim satisfaction is evident in the form of explicit consent from the patent holder regarding the actions of the infringer. This consent sets a limit to prosecution since protection is primarily intended to safeguard the rights of the patent holder. If the actions that infringe upon the patent are authorized, the offense of infringement ceases to exist due to the absence of the essential element of trespass. However, when does this satisfaction become effective in criminal proceedings?

The satisfaction can be obtained in the lawsuit before the commission of the offense or after its commission but before filing the criminal complaint or during its proceedings. However, if a conviction judgment is issued in the absence of consent, obtaining consent afterward does not affect the course of the criminal proceedings or the judge's conviction verdict<sup>33</sup>.

Second: Exhaustion of patent holder's rights: The exhaustion of the patent holder's rights results in the lapse of the offense of infringement. Exhaustion refers to the circumstances in which the rights derived from the patent are exhausted due to placing the product on the market with the consent of the patent owner and in a lawful manner. This exhaustion can be national, within the boundaries of the state, regional, such as in European Union countries, or international, encompassing the entire international market. Therefore, the introduction and circulation of the product in the market are considered as the exhaustion of the patent holder's rights.

### **The second issue: Considering the crimes of infringement on patents.**



After discussing the principles of criminal liability in infringement lawsuits regarding patents, which are not complete unless we establish the basic rules that constitute their legal system, it is necessary to determine how these lawsuits are conducted before the competent courts and address the issue of evidence in establishing the crimes related to this matter.

**First:** The competent court: The judicial system in Algeria follows the principle of unified courts, which means that any court can hear a criminal case without specifying a specific specialized jurisdiction<sup>35</sup>. As for the territorial jurisdiction, the general rule is that the competent court is the place where the crime was committed. However, a crime can be committed and appear in multiple locations, such as the imitation of an invention and its sale in multiple places. In such cases, the competent court can be determined through Article 329 of the Algerian Code of Criminal Procedure No. 66/155, which states: "The local court with jurisdiction to hear a misdemeanor is the court located at the place of the crime, the place of residence of one of the accused or their partners, or the place of their arrest, even if the arrest was made for another reason. Therefore, the competent Court of First Instance with local jurisdiction to hear the public lawsuit related to the crime arising from the infringement or counterfeiting of a patent is either the Court of First Instance in the place where the criminal act occurred or a part thereof, or the Court of First Instance in the actual or chosen residence of the defendant, or the Court of First Instance in the place where the defendant conducts their business<sup>36</sup>.

Additionally, the court has jurisdiction to consider misdemeanors and non-severable or related violations. The court within whose jurisdiction the violations occurred, excluding others, has jurisdiction to consider those violations. Therefore, based on the previous text, it is evident that the competent court is the court located in the place where one of the elements of industrial property is implemented<sup>37</sup>. Furthermore, the patent holder has the right to request a precautionary seizure before filing a lawsuit that requires special procedures to be followed<sup>38</sup>.

After the precautionary seizure, one of the procedures related to expedited justice is that the claimant can request the confiscation and seizure of all infringing products, as well as the tools and equipment used in their production. If the right holder submits this request before filing an actual lawsuit, it should be presented to the president of the Court of First Instance. This ruling is recognized by comparative legislation in both French, Egyptian, and Algerian laws<sup>39</sup>.

Based on what has been mentioned, the competent court is the court located in the place where the infringement, exploitation, use, or any other violation of these rights occurs, and not necessarily the court where the preparatory acts took place. However, if the infringement occurs and the perpetrator or others start transferring these goods to another location with the intention of selling them, and before the sale takes place, the offenders are apprehended, then the competent court would be the court in the place of their arrest. It is possible that the offenders are not apprehended at the location of infringement or sale, but rather face charges in a separate case. During the trial, it becomes evident that there has been infringement, sale of counterfeit

goods, exploitation, use, or infringement of patent rights. In such cases, the competent court would be the court handling the original lawsuit<sup>40</sup>.

As for the court of the defendant's residence, it is the court located in the jurisdiction of the defendant's place of residence if the goods are found in their dwelling due to storage, use, or any other reason. Additionally, any court within its jurisdiction can take its proceedings in its designated location. It can also delegate authority to other courts where the criminal acts fall within their jurisdiction. The primary jurisdiction lies with the initial courts because the crime of patent infringement is considered a misdemeanor rather than a violation, and the penalty for the former is more severe than the latter<sup>41</sup>.

The Egyptian legislator considers that criminal offenses related to intellectual property rights are examined by the Misdemeanor Court. This court is also competent to consider civil matters, such as compensation claims, if the patent owner does not file a civil lawsuit before the Misdemeanor Court. If the civil claims are subsequently pursued before the Civil Court after being initially filed before the Misdemeanor Court, the Civil Court is obliged to suspend the civil lawsuit pending a final judgment in the criminal case. If the criminal case has not been initiated, the Civil Court continues to consider the compensation claim until a final judgment is issued, as long as the criminal case has not been initiated. However, if the criminal case is initiated before a final judgment is issued, the Civil Court must suspend the civil lawsuit at any stage upon the issuance of an interim judgment in the criminal case<sup>42</sup>.

**Secondly**, proving the offense of patent infringement: Patent infringement is often proven through the seizure of the infringing products, documentation, and expert testimony, in addition to the personal conviction of the judge.

1. The term "seizure of the infringement" refers to placing the counterfeit items under the control of the judiciary by virtue of an order signed by the competent judge upon the request of the civil party. This is a precautionary measure aimed at examining the counterfeit items and providing a detailed description of them, along with the seizure of samples to be used as evidence to prove the offense of infringement<sup>43</sup>. It is worth noting that this procedure is followed in comparative legislations, including the French and Egyptian laws, except in the Algerian law adopted in Order 03/07 concerning patents. However, it can be accepted as a means of proof by referring to the provisions of Article 645 of the Algerian Code of Criminal Procedure<sup>44</sup>. The procedures for the seizure of the infringement are subject to the general rules stipulated in the Civil Procedure Code.

2. Documentary evidence: The patent owner can use written documents as evidence to prove the offense of infringement. These documents primarily include commercial correspondence issued by the infringer, which proves their imitation of the patent. It can also include drawings and descriptions created by the infringer. Documentary evidence can also refer to documents, notebooks, and records held by the perpetrator that confirm the act of infringement<sup>45</sup>.

3. Expertise: Technical expertise can be used as a method to prove infringement, which the claimant may resort to. The judge may also order the use of expertise to verify the occurrence of infringement. In this context, establishing an infringement may require the engagement of specialized experts. Experts are appointed by a ruling issued by the judge of the case, which specifies their assigned tasks to gather evidence and provide an opinion on the nature of the infringement and whether it constitutes a violation of protected rights. This expert opinion is based on research and experiments and holds a technical nature. The assessment of expertise falls within the discretionary power of the judge of the case<sup>46</sup>.

4. The personal conviction of the judge: The judge in an infringement case possesses a personal margin of conviction that is evident through the exercise of their authority in assessing the persuasive evidence and scrutinizing the content of technical expertise. These elements collectively assist the judge in resolving the dispute<sup>47</sup>.

### **Issue Three: Penalties for Patent Infringement and the Expiry of Infringement Claims.**

In this issue, we will delve into two distinct elements. Firstly, the prescribed penalties for the offense of patent infringement, and secondly, the expiration of infringement claims in patents. The following discussion will provide detailed insights into these matters.

#### **First Element: Penalties for Patent Infringement.**

Undoubtedly, encroaching upon the right to a patent leads to fraud and deception of individuals in society, resulting in a disruption of trust and creditworthiness, considering them as pillars of economic transactions within the state<sup>48</sup>. Consequently, this necessitates the imposition of penalties, encompassing two fundamental types: primary penalties and ancillary penalties.

1. Primary Penalties: Primary penalties take two forms: custodial penalties and monetary penalties in the form of fines.
  - ❖ Negative custodial penalties: These penalties deprive the convicted individual of their freedom by placing them in detention. The offender of patent infringement is sentenced to imprisonment. It is worth noting that the recognition of such penalties varies from one legislation to another<sup>49</sup>. In Algerian legislation, for instance, it is stipulated by Article 61 of Order 03/07 concerning patents, which states: "The act of infringement is punishable by imprisonment for a period ranging from six months to two years."<sup>50</sup> In contrast, French legislation also imposes custodial penalties on offenders of patent infringement. Article 615/14 of the French Intellectual Property Law provides for the conviction of the offender with a penalty of up to three years. In case of recurrence, the penalty is doubled and can reach up to five years if the offenders are part of a criminal organization. By examining the aforementioned texts, we conclude that the French legislator has imposed more severe custodial penalties compared to other legislations<sup>51</sup>.
2. In this regard, most legislations have remained silent regarding the definition of fines, prompting jurisprudence to address this issue. Jurisprudence has defined fines as "monetary penalties

imposed on the offender, representing compensation for the damage inflicted on the public treasury. This damage consists of the loss of budgetary rights, whether in terms of tax revenues or fees due as a result of the infringing activity<sup>52</sup>.

Various legislations, such as Algerian legislation, have adopted fines. According to Article 61 of the Algerian Patent Law, it states: "...punishable by a fine ranging from two million and five hundred thousand Algerian dinars to ten million or by one of these two penalties." Consequently, this provision grants the misdemeanor judge the authority to decide on a combined sentence of custodial penalties and a monetary fine, or to impose a sentence of imprisonment alone, without the fine, or a fine without imprisonment. The Egyptian legislator has also followed a similar approach, as stated in Article 32 of Law 82/2002, which imposes a fine ranging from a minimum of 20,000 Egyptian pounds to a maximum of 100,000 Egyptian pounds for the conviction of patent infringement. In cases of recurrence, if combined with imprisonment, the imprisonment period does not exceed two years. In French legislation, fines are estimated at 30,000 euros and are imposed alongside a prison sentence. The fine is doubled in cases of recurrence, and an additional discretionary fine of 500,000 euros may be imposed on offenders considered as criminal organizations<sup>53</sup>.

### **Secondly, supplementary penalties:**

The judge has the authority to impose supplementary penalties on the convicted offender of patent infringement. It is worth noting that there is a variation in these penalties among different legislations. In Algerian legislation, for example, they are not explicitly mentioned in the Patent Law. On the other hand, the French legislator has regulated supplementary penalties through Article 615/14 of the French Intellectual Property Law, as previously mentioned. Based on these provisions, we can detail these penalties as follows:

- 1- Confiscation: The misdemeanour judge has the authority to rule on the confiscation of counterfeit goods or the means used in their production. Confiscation follows the primary penalty, whether it is imposed or not, as it can only be ordered upon the conviction of the offender for the crime of infringement. Article 32, in its final paragraph, of the Egyptian Intellectual Property Law 82/2002 stipulates: "In all cases, the court shall decree the confiscation of the counterfeit items involved in the crime and the tools used in the infringement..." Thus, the Egyptian legislator clarified the items subject to confiscation through this provision<sup>55</sup>.

Confiscation extends to machines and tools used in the infringement of a patent because this helps prevent the possibility of their future use in committing the crime again. Confiscation serves as a precautionary measure, and its purpose, like other precautionary measures, is to prevent the potential criminal danger associated with these items.

Confiscation also applies to the counterfeit products themselves, and in such cases, it serves a compensatory purpose. The court sells these products, and the proceeds are used to deduct fines

and compensations. The rationale behind this is to ensure that the crime does not result in unjust enrichment for the infringer. Additionally, the authorities may dispose of counterfeit products in other appropriate ways, such as delivering them to refugees, charitable organizations, or public institutions<sup>56</sup>.

Confiscation is a discretionary power of the court, and it can order confiscation even if no harm has resulted from the act of infringement. Furthermore, the court can order confiscation even in cases where the accused is acquitted due to lack of knowledge of the infringement, i.e., the absence of criminal intent. This is because the acquittal of someone engaged in the sale or importation of counterfeit products, based on their lack of knowledge about their true nature, does not negate the fact that dealing in these counterfeit products constitutes an infringement on the rights of the patent holder. The protection of patents under the law requires preventing such infringement through the confiscation of those items. The wisdom behind allowing confiscation is to weigh the damages incurred by the patent holder and the damages that will be inflicted upon the convicted infringer or their creditors as a result of the confiscation.

- 2- **Destruction:** It is permissible for the judge to order the destruction of counterfeit goods in order to get rid of them by any means such as breaking, burning, disposing, or the like. The convicted infringer is responsible for bearing the expenses of the destruction. The Egyptian legislator explicitly mentioned this in Article 35 of Law No. 82/2002 on Intellectual Property, stating: "...he may also order the destruction of the seized items when necessary"<sup>59</sup>. It can be noted that destruction is only applied in cases of extreme necessity, as evidenced by the legislator's inclusion of the phrase "when necessary" in the text. When counterfeit goods pose a threat to the safety and well-being of consumers, such as counterfeit medicines or food products that do not meet the required conditions and specifications, destruction becomes necessary. However, destruction is not acceptable if the goods are not harmful, do not affect the health and safety of consumers, and meet the required conditions and specifications<sup>60</sup>.
- 3- **Publication of the judgment:** The court resolving the dispute may order the offender, at their own expense, to publish the entire judgment in one or more daily newspapers, whether designated or not. This can be accomplished by posting the judgment on the notice board of the court or the municipality where the offender resides or on a public market bulletin board<sup>61</sup>. The Egyptian legislator has stipulated the publication requirement through Article 32 of Law<sup>62</sup>No. 82/2002 on Intellectual Property, which has been previously mentioned. Additionally, there are other supplementary penalties, such as prohibition from continuing the infringement and the closure of the convicted establishment engaged in the infringement, which the competent court may impose if deemed necessary.

## **Second Element: Expiration of the Criminal Lawsuit for Trademark Infringement.**

The criminal lawsuit for trademark infringement expires for several reasons, including:

**First: Expiration:** Like other offenses, trademark infringement is subject to expiration. This is established by the majority of legislations. The French legislator explicitly defined a three-year prescription period for trademark infringement in the Intellectual Property Law under Article 615/08, which states: "The lawsuit for infringement expires after the passage of three years from the date of the infringing acts. " In contrast, the Algerian Patent Law does not specify a time limit for the expiration of the lawsuit for trademark infringement, possibly deferring to general rules. In this regard, Article 8 of the Criminal Procedure Law stipulates that offenses expire by prescription after three years from the date of discovering the infringement, similar to forgery. The Egyptian legislator has also adopted this approach<sup>64</sup>.

**Secondly: Death of the Offender:** The criminal lawsuit for trademark infringement expires upon the death of the offender. This is because this offense is based on the principle of personal liability, and as a result, the heirs of the deceased infringer cannot be prosecuted except in relation to the civil aspect. However, the criminal lawsuit may continue against the living partners of the original offender if their involvement in the infringement is proven<sup>65</sup>.

It is important to note that the death of the accused does not exempt their heirs from being subject to supplementary penalties such as confiscation, destruction, or closure of the infringing establishment.

## Conclusion

In conclusion, the recognition of intellectual and industrial property rights aims to protect them from infringements, particularly trademark infringements that directly harm the rights of patent holders. Such protection is crucial to foster creativity and innovation in industrial and commercial domains. It helps prevent obstacles to the flow of inventions and innovations and alleviates the constant fear among inventors and innovators of having their creations compromised. Based on these considerations, the most significant outcomes can be summarized as follows:

- The desired benefit of achieving effective protection for inventions can only be realized through the use of criminal procedures and the initiation of criminal lawsuits.
- Imposing penalties on those who infringe on patents can provide a sense of relief and reassurance to the inventors whose rights have been violated.
- The Public Prosecution also has the responsibility to initiate public lawsuits in cases of trademark infringement, provided that all the necessary elements are present.
- As for the most important recommendations that can be put forward as suggestions, they include:
- Enacting specific criminal provisions and rules in the Patent Law No. 03/07, rather than relying on general provisions stated in the Algerian Penal Code.

- Granting judicial powers to the employees of the National Institute of Industrial Property.
  - Providing training and expertise for legal professionals such as judges, lawyers, and researchers in the field of industrial property law, including patents.
  - Supporting the educational aspect for researchers at universities, higher institutes, and research centers by organizing international and national conferences, seminars, and scientific workshops that focus on topics related to industrial property, including patents, trademarks, designs, and other relevant subjects.
  - As for the recommendations that we have reached, they can be summarized as follows:
- ❖ It is necessary to consider the validity of customs records as a regulatory mechanism for combating patent infringement.
  - ❖ The provisions and exceptions provided by Algerian legislation regarding numerous customs records for customs offenses must be highlighted.
  - ❖ Emphasize the probative value of customs records in cases of patent infringement, and that they can only be challenged through evidence of forgery.
  - ❖ Enact additional legal provisions to regulate the procedures for the judicial powers held by customs officials through the records they prepare.

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- Decree 66/156 dated 18 Safar 1386, corresponding to 8 June 1966, containing the Penal Code, as amended.
- Decree 08/09 related to the Law of Civil and Administrative Procedures, dated 18 Safar 1429, corresponding to 25 February 2008, Official Gazette dated 17 Rabi Al-Thani 1429, corresponding to 23 April 2008, issue number 21.

##### **2. Special Laws:**

- Decree 66/54, dated 3 March 1966, concerning Inventor Certificates and Patent Summaries, Official Gazette dated 8 March 1966, issue number 19.
- Legislative Decree 93/17, dated 7 December 1993, concerning the Protection of Inventions, Official Gazette dated 8 December 1993, issue number 81.

- Decree 03/07, concerning Patents, dated 23 Jumada Al-Awwal 1424 AH, corresponding to 23 July 2003, Official Gazette issue number 44.

### 3. Foreign Laws:

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- [2] Hassani Ali: Patent (Acquisition and Legal Protection in Algerian and Comparative Law), Dar Al-Jami'a Al-Jadida, Egypt, 2010, p. 170.
- [3] Al-Jilali Ajja: Intellectual Property Disputes, previous reference, p. 94.
- [4] Ahmed Boussghia: Customs Disputes, Dar Huma, Algeria, undated, p. 121.
- [5] Article 02 of Law No. 17/04 dated 19 Jumada al-Ula 1438 corresponding to 16 February 2017, amending and completing Law No. 79/07 dated 26 Sha'ban 1399 corresponding to 21 July 1979, which includes the Customs Law, Official Gazette, Issue No. 11, 22 Jumada al-Ula 1438 corresponding to 19 February 2017. It states: "Amending and completing the provisions of Articles 3, 4, and 6 of Law No. 79/07 dated 26 Sha'ban 1399 corresponding

- to 21 July 1979 mentioned above, as follows:Article 3/3: "The tasks of customs administration, in particular, include:Combating infringements on intellectual property rights and unauthorized import and export of cultural properties
- [6] Article 09 of Customs Law No. 17/04 states: "Amending and completing the provisions of Articles 22 and 22 bis 2 of Law No. 79/07 dated 26 Sha'ban 1399 corresponding to 21 July 1979 mentioned above, as follows:Article 22: Importing and exporting counterfeit goods that infringe on intellectual property rights is prohibited.
  - [7] Ajja El Jilali: Patent (its characteristics and protection), previous reference, p. 280
  - [8] Article 43 of Finance Law No. 07/11.
  - [9] Article 43 of Law No. 07/12 states: "Amends and complements the provisions of Article 22, as amended, of Law No. 79/07, the Customs Law..."
  - [10] Ajja El Jilali: Intellectual Property Disputes, previous reference, p. 96
  - [11] Article 241 of Law No. 79/07, dated July 21, 1979, which includes the amended and supplemented Customs Law.
  - [12] Article 106 amends and complements Article 245 of Customs Law No. 17/04, as amended and supplemented, stating: "The seizure report must provide information that enables identification of the violators and the goods, and proves the materiality of the crime.The report must specifically indicate the following: location of the report and the timing of sealing it.
  - [13] The article 106, amending and supplementing article 243 of Customs Law 17/04, states: "When circumstances and local conditions do not allow for the immediate direction of goods to a customs office or center, these goods may be placed under the custody of the violator or others, either at the same place of seizure or at another location."
  - [14] The article 106, amending and supplementing article 242/1 of Customs Law 17/04, states: "After examining the customs offense, the goods, including means of transport and seized documents, must be directed to the nearest customs office or center from the place of seizure and deposited there, and the seizure report shall be prepared at that office."
  - [15] The article 106, amending and supplementing article 242/2 of Customs Law 17/04, states: "However, the seizure report can be validly prepared at:
  - [16] Offices of Judicial Police officers and their agents specified in the Code of Criminal Procedure.
  - [17] Officers of the Tax Department, officers of the National Service of Coastal Guards, as well as officers responsible for economic investigations, competition, prices, quality control, and anti-counterfeiting.
  - [18] An office of an official in the departments affiliated with the Ministry of Finance."
  - [19] The article 106, amending and supplementing article 245 of Customs Law 17/04, states: "The seizure report must include the information that enables the identification of the violators and the goods and proves the materiality of the offense. The report must specifically indicate the following:

- Date, time, and place of the seizure.
  - Titles, names, positions, and administrative residences of the seizing officer or officers and the holder of the goods.
  - Titles, names, and full identities of the violator or violators and their residences.
  - Reason for the seizure.
  - Facts and circumstances leading to the discovery of the offense.
  - Applicable legal provisions regarding the offense and the corresponding penalties.
  - Declaration of seizure to the violator.
- [20] -Description of the seized goods and items, their nature, quantity, and value, as well as the nature of the seized documents.
- Attendance of the violator(s) to describe the goods or comply with the request to attend the description and the preparation of the report.
  - The place of report preparation and the time of its stamping.
  - When necessary, the title, name, and position of the guardian of the seized goods.
  - Reservations made by the violator(s).
  - Presentation of the raised hand, if possible.
  - Stamping of the report.
- [21] Article 245 of Law No. 79/07, which includes the amended and supplemented Customs Law, as referred to above.
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- [23] AjjaJilali: "Patent Reading (Characteristics and Protection)," previous reference, p. 284
- [24] Farah ZawawiSaleh: "Intellectual Property Rights," previous reference, p. 161.
- [25] AjjaJilali: "Intellectual Property Disputes," previous reference, p. 100.
- [26] Article 9 of Order 03/07, dated 23 Jumada Al-Awwal 1424 H (corresponding to 23 July 2003) in the Official Gazette No. 44. Similarly, Article 09 of Legislative Decree 93/17, dated 07 December 1993, related to patent protection, published in the Official Gazette on 08 December 1993, Issue No. 81. Also, Article 6 of Order 66/54, dated 03 March 1966, related to inventors' certificates and invention abstracts, published in the Official Gazette on 08 March 1966, Issue No. 19
- [27] Article 57 of Order 03/07, and similarly, Article 32 of Legislative Decree 93/17, and Article 63 of Order 66/54 mentioned earlier.<sup>4</sup>
- [28] Article 53 of Order 03/07, and similarly, Article 28 of Legislative Decree 93/17, and Article 56 of Order 66/54 mentioned earlier.
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- [30] BarshSulaiman: Explanation of Criminal Procedure Law, Dar Ashshihab, Batna, Algeria, 1986, p. 61.
- [31] Article 56 of Order 03/07, referred to previously.
- [32] BarshSulaiman: Previous reference, p. 66.
- [33] Article 72 of Order 66/155 dated 18 Safar, 1386 AH, corresponding to June 8, 1966 AD, which includes the amended and supplementary Criminal Procedure Law.
- [34] Aja Al-Jilali: Patent (Characteristics and Protection), First Edition, Zain Al-Huqooqiah Publications, Beirut, Lebanon, 2015, p. 321.
- [35] Aja Al-Jilali: Intellectual Property Disputes, Part Six, First Edition, Zain Al-Huqooqiah Publications, Beirut, Lebanon, 2015, p. 13
- [36] Article 31 of Order 66/156 dated 18 Safar 1386 AH, corresponding to June 8, 1966 AD, which includes the amended and supplementary Penal Code.
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- [38] Aja Al-Jilali: Patent (Characteristics and Protection), previous reference, p. 323.
- [39] Hassani Ali: previous reference, p. 191.
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- [44] Same reference, p. 150.
- [45] Samir Jameel Hussein Al-Fatlawi: Industrial Property according to Algerian Laws, Diwan Al-Matba'at Al-Jami'a, Algeria, 1988, p396.
- [46] The references provided state the following:
- [47] The court has jurisdiction to consider misdemeanors and violations, and misdemeanors are considered crimes punishable by imprisonment for a period exceeding two months up to five years or a fine exceeding 2,000 dinars, except for the exceptions specified in special laws. (Source: Egyptian Code of Criminal Procedure, Article 328)
  
- [48] Anwar Talba: Protection of Intellectual Property Rights, University Modern Office, Alexandria, publication year not mentioned, page 154.
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- [50] Article 645 of Order No. 08/09 related to the Civil and Administrative Procedure Law, dated Safar 18, 1429, corresponding to February 25, 2008, Official Gazette dated Rabi Al-Thani 17, 1429, corresponding to April 23, 2008, issue 21. It states that any person who

has an invention or a registered and legally protected product may seize a sample of the counterfeited goods or models. This seizure is done through a report prepared by a judicial officer who examines the counterfeited product and places it in a sealed and waxed enclosure, which is deposited along with the report with the custody of the competent regional court.

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- [52] Same reference: page 151.
- [53] Ajja El-Jilali: Patent (Characteristics and Protection), previous reference, p. 327.
- [54] Na'im Ahmed Na'imShaniar: Legal Protection of Patents, Dar Al-Jame'a Al-Jadida, Alexandria, 2010, p. 437.
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