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Balancing the Inventors' Interest against the Public Interest: The Case of the Patent Law of Qatar *

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Abstract: *In compliance with its obligations under the World Trade Organisation, Qatar issued new laws on intellectual property. With the rapid development of the country's economy, a patent regime has, undoubtedly, become a critical issue. This paper examines Qatari patent law (Law No. 30/2006). It goes on to argue that although the law contains some measures aimed at protecting the public interest, the law does not go far enough and appears to fall short of international aspirations*

1. Introduction

As a member of the World Trade Organisation (WTO), Qatar was under an obligation to issue new laws on intellectual property (IP).1 This culminated in the issuance of a number of laws concerning the protection and enforcement of intellectual property rights (IPRs).[2] The law pertaining to patents protection was issued and came into force in 2006 (Law No. 30).[3]

This paper briefly describes the background to patent law, then explores the provisions in Qatari patent law and evaluates, in depth, the measures devoted to protecting the public interest. The paper then goes on to suggest that this public interest is not protected enough by this law. A number of recommendations are proposed that are regarded as essential if Qatari legislators wish to realise their vision of public interest protection, before concluding with overall arguments and emphasising the need for reform.

2. Background

A patent is the government's grant of exclusive rights on an invention, which is a product or a process, for a limited amount of time, normally twenty years. Exclusive rights mean that the inventor, once the patent is granted, is able to exclude others from commercially exploiting the invention throughout the life of the patent.[4]

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* Many thanks to Dr. Jon Truby, Dr. Francis Botchway and James Wilson for their helpful comments on earlier drafts of this paper.

[1] Qatar has been a member of the World Trade Organisation since January 13, 1996. For more details, see <http://www.wto.org/english/theWTO_e/countries_e/qatar_e.htm> [accessed on June 19, 2011].

[2] Some of these laws came into effect in 2002, such as Law No.7 of 2002 on the protection of copyright and neighbouring rights, and Law No. 9 of 2002 on trademarks, trade data, trade names, geographical indications and industrial designs and models, while others came into force in 2005 such as Law No. 5 of 2005 on the protection of trade secrets, and Law No. 6 of 2005 related to the protection of layout designs of integrated circuits.

[3] Decree Law No. 30 for the Year 2006. The implementing regulations of the law have not been issued yet.

[4] As it will be later emphasised, the right which patents accord "is to prevent all others - not just imitators, but even independent devisers of the same idea- from using the invention for the duration of the patent", William Cornish and David Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, 5th Edition (London: Sweet & Maxwell,

It is generally accepted that a patent enhances innovation and development.[5] But the critical issue is determining the scope of patentability. A patent regime is likely to have effects on growth "indirectly by encouraging the innovative activity that in turn is the source of total factor productivity improvements. The [patent] regime could also affect the inflows of foreign direct investment, technology transfers and trade that might impinge on growth."[6] There is also a need for protecting other aspects of the public interest, such as carrying out scientific research activities without rigid obstacles and making protected products available at affordable prices.

2. The Qutari Patent Law: An Overview

Under Qatari law, a patent may be granted to any new invention which involves an inventive step and is industrially applicable, whether such an invention is connected with new industrial products, new industrial processes, or a new application of known industrial processes.[7]

The law, following the TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement approach,8 does not contain a definition of an invention. It only reveals the necessary requirements needed for an invention to be granted a patent. For the purpose of this paper, an invention can be defined as "a solution to a specific problem in the field of technology."[9]

In Qatar there are additional requirements in order to be protected by a patent. Namely, the invention must not contradict the provisions of Islamic Sharia' Law, or violate public order, public morality or national security.[10] The patent law, however, does not define what is meant by public order.[11] In many ways, this could be advantageous to Qatar since, if adopted, competent authorities would be free to determine the appropriate notion of public order. In doing so, it should be noted that the concept of public order is not limited to security reasons because it might be used to "protect human, animal or plant life or health or to avoid serious prejudice to

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2003) p. 7. For the same meaning see Tina Hart, Linda Fazzani and Simon Clark, *Intellectual Property Law*, 5th Edition (Hampshire, UK: Palgrave Macmillan, 2009) p. 9 [hereinafter Tina Hart *et al.: IP Law*].

[5] Patents "are the key to ensuring an optimal level of innovation, and without protection and enforcement of IPRs, innovation will decline", see Shari L. Boyd, William A. Kerr and Nicholas Perdikis, 'Agricultural Biotechnology Innovations *versus* Intellectual Property Rights: Are Developing Countries at the Mercy of Multinationals?' (2003) 6(2) *the Journal of World Intellectual Property* 211 (hereinafter JWIP).

[6] Nagesh Kumar, Intellectual Property Rights, Technology and Economic Development: Experiences of Asian Countries, pp. 2-3, available at: <http://www.iprcommission.org/text/documents/study_papers.htm.> [accessed on June 19, 2011]. See also Alan V. Deardorff, 'Should Patent Protection Be Extended to All Developing Countries' (1990) 13 (4) *The World Economy* 497 (pointing out –p. 501- that if there were no patent rights or any other forms of protection, such as trade secret, for an inventor to secure a reward for invention, "there would be nothing invented [as a result] inventors and the public both would lose"); and Ali M. Imam, 'How Does Patent Protection Help Developing Countries?' (2006) 37 (3) *International Review of Intellectual Property and Competition Law*, pp. 245-259 (indicating- at 252- "stronger patent protection in the development countries is necessary to provide a rapid flow of new pharmaceutical products into domestic marketplace,… [and] would encourage most developed countries to invest in R&D in such markets").

[7] Art.2 (1) of the Qatari patent law. Art.2(1) of the Patent Regulation of the Cooperation Council for the Arab States of the Gulf. The latest version of this regulation was approved in November 1999 [hereinafter Patent Regulation of the GCC].

[8] The TRIPs Agreement and the General Agreement on Trade in Services (GATS) and the General Agreement on Tariffs and Trade (GATT- 1994) are the three primary pillars of the World Trade Organisation (WTO). For a detailed study on the provisions of TRIPs concerning patents, see Nuno Pires de Carvalho, *The TRIPs Regime of Patent Rights*, 2nd Edition (The Hague: Kluwer Law International, 2005).

[9] World Intellectual Property Organisation (WIPO), *WIPO Intellectual Property Handbook: Policy, Law and Use* (Geneva: WIPO Publication No. 489(E), 2001) p. 17. [Hereinafter WIPO: *Handbook*].

[10] Art. 2 (2) of Qatari patent law. A similar provision is contained in Art. 2(1) and Art. 4 of the Patent Regulation of the GCC.

[11] Public order or *ordre public* "is a French legal concept that refers to the compelling issues of public policy necessary for a well-ordered society", see Judy Winegar Goans, G. Lee Skillington, David Weinstein and Patricia Drost, *Intellectual Property: Principles and Practice* edited by Jaleen Moroney (Cairo: Publisher unknown, 2003) pp. 37-8 [hereinafter Goans *et al.: IP: Principles & Practice*].

the environment."[12] Therefore, any invention that may adversely affect the public order (or public morality) in its broadest meaning shall not be protected by the patent regime in Qatar.

Any Qatari, whether a natural person or legal entity, has the right to submit a patent application. This right is also granted to foreigners.[13] A foreigner is defined as a person, whether a natural person or legal entity, who belongs to, or adopts an actual and effectual centre of activity for himself or itself in a member or entity of the WTO, or that applies reciprocity with Qatar, even if this country is not a member of the WTO.[14]

A patent, in Qatari patent law, allows its owner the right to exploit the protected invention by making, using, offering for sale, selling, or importing the necessities of legitimate exploitation.[15] No one can exploit the patented invention without a written permission issued from its owner.[16] Qatar's law allows any concerned person, from three years after the date the patent was granted, to apply for a compulsory licence[17] for exploitation of an invention for any of the following reasons:[18]

There has been no serious or effective exploitation of the patent throughout a period of three years since the patent was granted;[19]

The patent holder has ceased exploiting the protected invention for two consecutive years without giving any acceptable reasons to the Patent Office;

The patent holder has refused to grant contractual licensing for exploiting the invention thus impeding the establishment or development of industrial and commercial activities in Qatar.[20]

3. The Qatari Patent Law: A Critical Analysis

Qatari legislators consciously developed a series of measures to protect the public interest when drafting the Patent Law. These measures, it is suggested, are generally consistent with the TRIPs Agreement. They reflect the provisions of Article 7 (objectives)[21] and Article 8 (principles)[22] of the TRIPs Agreement.

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[12] Art. 27 (2) of TRIPs and Art. 4 of the Patent Regulation of the GCC.
[13] Art. 5 of Qatari patent law.
[14] *Ibid.*
[15] Art.9 (2) of Qatari patent law.
[16] *Ibid.*
[17] Under the TRIPs Agreement (Art.31 of TRIPs), compulsory licences and government use without the authorisation of the right holder are allowed. They are however made subject to a number of conditions designed to protect the legitimate interests of the right holder (Adrian Otten and Hannu Wager, 'Compliance with TRIPs: the Emerging World View' (1996) 29 *Vanderbilt Journal of Transnational Law* 391, p. 401). The TRIPs Agreement does not exclusively specify all the grounds under which compulsory licences are to be granted (Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* (London: Sweet & Maxwell, 1998, p.165). Thus, TRIPs members are allowed to grant such licences on other grounds that might be established in their national laws, Michael Blakeney, *Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPs Agreement* (London: Sweet & Maxwell, 1996, p. 90).
[18] Art.15 (1) of Qatari patent law. See Mohammad T. Islam, 'TRIPs Agreement and Public Health: Implications and Challenges for Bangladesh' (2011) 17 (1) *International Trade Law and Regulation*, pp.10-38 (highlighting the compulsory licensing regime as one of the flexibilities stated in TRIPs).
[19] Art.19(1) of the Patent Regulation of the GCC contains similar cases but also stipulates a number of requirements that must be observed before granting the compulsory licensing in such cases.
[20] Adequate remuneration should be paid to the owner of the patent. For a critical interpretation of such situations, see Antony Taubman, 'Rethinking TRIPS: "Adequate Remuneration" for Non-Voluntary Patent Licensing' (2008) 11(4) *Journal of International Economic Law*, pp.927-970.
[21] Art. 7 of the TRIPs Agreement sets out that "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

Generally speaking, it is difficult to exclusively and exhaustively define what the "public interest" principle means. Therefore, outlining an indicative meaning of such a principle will have to suffice. For the purposes of this study, "public interest" is taken to include measures which aim at preserving and protecting national security, health, environment, food safety, consumer welfare, the right of other producers to use technology and the right to development and advancement. This definition also includes measures taken to promote competition, encourage foreign direct investment (FDI), facilitate transfer of technology and stimulate local innovation.

The following discussion presents an analytical examination of the provisions of Qatari patent law with a view to protecting the public interest.

3.1 Exclusions from Patentability

Qatari patent law contains a number of subject matters for which a patent will not be granted, for instance, scientific theories, mathematical methods, and computer programs.23 In addition, plants and animals, and essentially biological processes for the production of plants or animals, other than microbiological processes and its productions, shall be excluded from patentability.24 Furthermore, patentability shall not include methods of surgical or therapeutic treatment of humans or animals and methods of diagnosis applied to humans or animals.[25]

The purpose of these exclusions is to protect the public interest, particularly to avoid monopolisation in an important area that could affect human and animal health. In addition, particularly with diagnostic, therapeutic and surgical methods for the treatment of humans or animals, these exclusions are consistent with the policy that new techniques of medicine should be freely disseminated.26 Finally, Qatari law, through the exclusion of plants, animals and essential biological processes, "expresses ethical objections to human intervention in the generation of animals and plants." [27]

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[22] Art. 8 provides that "1-Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement. 2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology. For further details on this Article, see Nuno Pires de Carvalho, *op.cit*, pp.137-163; Mohamed El Said, 'The Implementation Paradox: Intellectual Property Regulation in the Arab World' (2010) 9 (3) *Journal of International Trade Law and Policy*, 221-235 (referring- at 225-226- to TRIPs provisions, particularly Art. 7 and 8, which must be taken into consideration when drafting a development policy) and Michael Blakeny and Getachew, 'Intellectual Property Policy Formation in LDCs in Sub-Saharan Africa' (2011) 19 (1) *African Journal of International and Comparative Law*, pp.66-98 (examining policy options available for LDCs to secure access, *inter alia*, to essential medicines. These options are based upon TRIPs provisions, such as Art.8/1, and the Doha Declaration (discussed later in this paper)).

[23] Art.4(2) of Qatari patent law. It should be mentioned that computer programs are protected by the provisions of copyright and related rights contained in Law no.7 of 2002 on the protection of copyright and neighbouring rights.

[24] *Ibid.*

[25] *Ibid.*

[26] Blakeney, *op. cit.*, p. 82. See also David Bainbridge, *Intellectual Property*, 5th Edition (London: Longman, 2002) p. 359; and Carlos M. Correa, 'Public Health and Patent Legislation in Developing Countries' (2001) 3 *Tulane Journal of Technology and Intellectual Property* 1 (the author (p. 16) highlights the fact that such methods are not granted patents in most countries due to: i) ethical reasons; ii) difficulties in enforcing such patents in real life; and iii) the methods not meeting industrial applicability requirement for patentability, since any method that is applied to the human body is not "industrially applicable") (hereinafter Correa: *Public Health and Patent Legislation in Developing Countries*).

[27] Cornish & Llewelyn, *op. cit.*, p. 224.

3.2 Term of Protection

The period of patent protection under Qatari law is twenty years, effective from the patent granting date.[28] In some countries, such as the U.S. and most countries in Europe, the term of protection for certain products (such as pharmaceuticals and agro-chemicals) can be extended where the commercialisation is delayed due to lengthy regulatory procedures.[29] Nevertheless, in the U.S., such an extension is subject to a number of limitations.[30] Despite the fact that this issue of extension was raised in the negotiations of the TRIPs Agreement,[31] neither this Agreement nor the Qatari law involves any provisions dealing with such an important issue.

With respect to Qatar, its stance is very satisfactory. The law, by not providing for such an extended protection, takes into account the protection of the public interest. Additionally, Qatari law is completely consistent with the TRIPs provisions which, as mentioned above, do not incorporate obligations for extended protection.

3.3 Opposition System

By putting into operation an "opposition system",[32] in which any concerned party may submit to the Patent Office, within a limited time, a written notice to appeal against the granting of the patent, the law seems effective. It is assumed that the concerned party shall list the reasons for his appeal. For example, a concerned party may raise various issues with the patent application. Reasons might include that the invention lacks novelty, for instance, or its exploitation would likely be contrary to Islamic Sharia Law, public order or morality. The opposition system might, it is hoped, assist the Patent Office in its search and examination of patent applications. Also, such a system allows interested parties to provide, as mentioned, information and details about important issues concerning patent applications such as relevant prior art.

3.4 Cancellation of Patents

The law should also be commended as it gives any interested party the right to request the cancellation of a patent, in the event that it is granted in violation of the requirements stated in the provisions of the Patent Law or its executive regulations.[33] Therefore, if the patent in question is granted to an invention that relates to scientific theories, or it is concerned with diagnostic, therapeutic and surgical methods for humans and animals, it would be possible to request the cancellation of such a patent. The rule also applies when there has been non-observance of the priority of previous applications.[34]

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[28] Art. 11 of the Qatar patent law. The same Article goes further to indicate that the invention shall be provided with the same protection granted for the patent within the period of submitting the application and the granting date. In accordance with Art. 15 of the Patent Regulation of the GCC, the term of a patent is twenty years *counted from the date of filing* the patent application.

[29] For example, in accordance with Council Regulation (EEC) No. 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate (SPC) for medicinal products, it is possible to grant additional protection for medicinal products for up to five years. See also, Paul Torremans, *Holyoak and Torremans Intellectual Property Law*, 4th Edition (Oxford: Oxford University Press, 2005) p.153 *et seq*. (examining the 1768/92 Regulation and referring to its extension to agro-chemicals by Regulation 1610/96 on plant protection products) [hereinafter Torremans: *IP Law*]; Bainbridge, *op. cit.*, p. 382-3; and Cornish & Llewelyn, *op. cit*., p. 159. In justifying such an extension for pharmaceuticals, it has been said that "it takes an average of 12 years between the discovery of a new medicinal product and the time when it is put on the market for sale…", see S.K. Verma, 'TRIPs: Development and Transfer of Technology' (1996) 27(3) *IIC* 331, p. 348 (n 58).

[30] These limitations, as cited in Jayashree Watal, *Intellectual Property Rights in the WTO and Developing Countries* (The Hague: Kluwer Law International, 2001) p. 116, are: i) that the extension cannot exceed five years; and ii) that the total period of patent protection cannot exceed fourteen years from the date the drug was approved.

[31]World Trade Organisation, *Pharmaceutical Patents and the TRIPs Agreement*, *World Trade Organisation*, p. 3, available at: < http://www.wto.org/english/tratop_e/trips_e/pharma_ato186_e.htm > [accessed on June 19, 2011]. See also Jacques J. Gorlin, *An Analysis of the Pharmaceutical-Related Provisions of the WTO TRIPs (Intellectual Property) Agreement* (London: Intellectual Property Institute, 1999) p. 41 (referring to proposals presented by the U.S.).

[32] Art. 8 (2) of the Patent Law.

[33] *Ibid.*, Art.20 (1).

[34] *Ibid.*

3.5 Compulsory Licensing

Qatari law,[35] as with the TRIPs Agreement,36 deals with the issue of compulsory licences. It is widely recognised that the use of compulsory licensing in some of these cases is an efficient tool for providing essential products particularly pharmaceutical drugs at affordable prices.[37] In addition, the likely use of these licences would certainly meet other aspects of Qatar public interests. These interests are reflected in the fact that: i) the possible use of such licences could be an incentive (and at the same time an obligation) for any foreign intellectual property right-holder to work their patents in Qatar; and ii) the use of such licences could prevent the intellectual property right-holders, in particular foreigners, from using their rights in a manner that might restrict trade or adversely affect transfer of technology.[38]

3.6 No Patent Protection for Computer Programs

The TRIPs Agreement requires that computer programs be protected as literary works under the Berne Convention for the Protection of Literary and Artistic Works.[39] The Agreement, on the other hand, obligates WTO members to make patents available for any inventions in all fields of technology.[40] The question is how to reconcile these two provisions. Indeed, one could point out that protecting computer programs through copyright will be sufficient to comply with the TRIPs Agreement. That is what the Qatari law tries to do.

The law on the protection of copyright and neighbouring rights in Qatar provides for computer programs be protected through copyright.[41] In doing so, the law takes a significant stance since protecting computer programs through patents could "impede both independent redevelopment of functional equivalents and reverse engineering, while enhancing the market power of large firms whose cross-licensing agreements to erect barriers to entry that smaller firms find difficult to overcome."[42]

Computer programs as such are excluded from patentability in the UK under the Patents Act 1977.[43] Copyright, on the other hand, is expressed as the proper way for the protection of such programs.44 Following

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[35] See above under section "The Qatari Patent Law: an Overview."
[36] Art.31 of TRIPs. Note that this Article does not refer to the widely accepted notion of "non-voluntary" or "compulsory licensing." It only refers to "[o]ther use without the authorisation of the right holder."
[37] "Probably the most controversial issue in the patents area in the last decade has been the question of access to patented medicine…" Ng-Loy Wee Loon, 'Exploring Flexibilities within the Global IP Standards' (2009) 2 *Intellectual Property Quarterly*, pp.162-184, at p. 179.
[38] See Third World Network Report on TRIPs, Drugs and Public Health: Issues and Proposals (Penang, Malaysia: Third World Network Publications, 2001) p. 20; Ana Maria Pacon 'What Will TRIPs Do for Developing Countries' in Friedrich-Karl Beier and Gerhard Schricker (eds.), *From GATT to TRIPs: The Agreement on Trade-Related Aspects of Intellectual Property Rights*, Vol.18 (Munich: Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, 1996) p. 339 (indicating that developing countries regard compulsory licences "as a necessary counterweight to prevent abuses of patent law and to guarantee competition on the national markets"); Tshimanga Kongolo, 'Compulsory Licence Issues in African Arab Countries' (2004) 7 (2) JWIP 185, p. 185 (describing such a system as a "safeguard measure against the abuse or non-use of the patentee's exclusive rights"); and Correa: *Public Health and Patent Legislation in Developing Countries*, *op. cit.*, p. 43 (indicating that these licences may constitute an important element to promote competition).
[39] Art.10 (1) of TRIPs. It is worth mentioning that Qatar has been a party to the Convention since July 5, 2000, for more details, see < http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=145C > [accessed on June 19, 2011].
[40] As required by Art.27 (1) of TRIPs.
[41] Art.2 (2)(10).
[42] J. H. Reichman, *Implications of the Draft TRIPs Agreement for Developing Countries as Competitors in an Integrated Market*, UNCTAD Discussion Paper No. 73, UNCTAD/OSG/DP/73 (1993) p. 13. See also Martin Khor, *Rethinking IPRs and the TRIPs Agreement* (Penang, Malaysia: Third World Network, without date) p. 6 (referring to the fact that consumers in developing countries are not able to purchase software products because of their high prices which would have a negative effect in "shut[ing] them out of an important part of the "knowledge society"" and being a major contributor to the global "digital divide").
[43] S.1 (2) which implements EPC Art.52 (2) (c). See also Bainbridge, *op. cit.*, p. 364; Lionel Bently and Brad Sherman, *Intellectual Property Law* (Oxford: Oxford University Press, 2004) p. 419 and Tina Hart *et al.: IP Law*, *op. cit.*, p. 18.
[44] Bainbridge, *op. cit.*, p. 364.

recent developments on this issue, a computer program which "is run in a computer to produce some technical result which is a contribution to the state of the art" may be patentable, provided that the "the application is directed towards that result rather than the program only." [45]

In all cases, it is important, before extending patent protection to software in Qatar and in other developing countries, to conduct a study in order to examine the exact implications of the increasing trend of granting software patents in some developed countries. The WIPO venue would be the appropriate forum for this proposed discussion.[46]

3.7 Licensing Agreements

Under the law, it is permissible for the patentee, whether a local or foreigner, to license his/her patent to a local third party.[47] Such a system should increase the possibility of obtaining access to the latest technologies in all fields "while increasing the pool of local skills capable of eroding monopoly rents."[48] Also, this system is of interest to patent owners who do not have the necessary capabilities to exploit (i.e. work) the invention and at the same time desire to obtain rewards and benefits for their monopoly of the invention. It should be noted that licensing agreements may, in a number of specific fields, notably information technologies, "afford the only means of circumventing oligopolistic prices and practices."[49]

4. Recommendations

Patent law in Qatar, as it stands now, represents a significant development as far as Qatar's obligations as a member of the WTO are concerned. Nevertheless, a number of recommendations particularly in the areas of novelty requirement, disclosure requirements, use of expired patents, among others, are thought to be essential.

4.1Novelty Requirement

For an invention to be qualified for patent protection, it must meet the three criteria of patentability; i.e. novelty, inventive step, and industrially applicable.[50] For the novelty requirement, patent laws employ either the "absolute novelty" standard or the "relative novelty" standard.

In Qatar, nothing is mentioned to support any of these standards. In my view, the "absolute novelty" standard should clearly and expressly be adopted.[51]

In line with the "absolute novelty" standard, novelty is lost by divulgence of an invention whether by a written or oral description, by use (including use by local and indigenous communities) or by other means made anywhere in the world before the patent was filed. Such a broad concept is a key rule which would help Qatar - and other developing countries - to avoid attempts by multinational companies (MNCs) to patent materials that are already in the public domain and knowledge or materials developed by or diffused within its local or indigenous communities.[52] If a patent is granted or maintained in these circumstances, it would certainly have adverse effects on indigenous communities (e.g. by denying them access to the lucrative U.S. market or other

[45] *Ibid.* See also Bently & Sherman, *op. cit.*, p. 419 and Tina Hart *et al.: IP Law*, *op. cit.*, p. 18-22.
[46] Watal, *op. cit.*, p. 125-6.
[47] Art.13 and 14. Art. 17 and 18 of the Patent Regulation of the GCC deal with the issue of contractual licence.
[48] Reichman, *op. cit.*, p. 8.
[49] *Ibid.*
[50] Art.2(1) of the Patent Law of Qatar and Art.27 (1) of the TRIPs Agreement.
[51] Attention must be drawn to Art.2 (2) of the Patent Regulation of the GCC which adopts *the absolute novelty* standard.
[52] Carlos M. Correa, *Integrating Public Health Concerns Into Patent Legislation in Developing Countries* (Geneva: South Centre Publications, 2000) p. 42, available from: < www.southcentre.org > **[**accessed on June 19, 2011**] [**hereinafter Correa: *Integrating Public Health Concerns*].

important markets around the world) from where traditional knowledge and biological materials originate.[53] Since in such a situation U.S. patent holders will have the right to prevent importation of products made anywhere in the world as long as these products contain the protected "invention."[54]

Under U.S. law, "prior non-U.S. (i.e. foreign) use or knowledge is not considered a patent bar, only a foreign-granted patent or a description in a printed publication will suffice to counter a novelty claim."[55] To exacerbate this situation, "some U.S. courts have interpreted "published" very strictly; in rejecting a claim that a prior Argentinean -registered patent represented the state of the art, one court decided that "since the Argentine patent is a typewritten document, it could not qualify as printed."[56]

The "absolute novelty" standard is regarded as a useful tool for Qatar, as a developing country, to prevent or at least reduce so-called "bio-piracy." This situation should be strengthened by the exclusion from patentability of any biological materials found in nature. The case of bio-piracy has been a major concern for developing countries, since their biological materials and traditional knowledge have been patented by MNCs.

4.2 Disclosure Requirement

The requirements concerning the full description of the nature of an invention as well as the best mode to carry out the invention should be explicitly adopted in Qatar.[57] These are highly constructive requirements,58 the significance of which may be seen when implemented with a view to "facilitating competitive innovation, adapting protected inventions to local conditions, or merely practising them once the term of protection expires."[59] In addition, the full description of the invention helps the licensee to carry out the invention whenever compulsory licensing is granted.

Indeed, it has been pointed out that:

> "...since disclosure makes publicly available significant technical information which may be of use to others in advancing technology in the area, even during the patent term, it represents an essential element of the social contract that the grant of a patent constitutes. Furthermore, disclosure aims at ensuring that, after the expiry of the patent term, the invention truly falls into the public domain because others have the necessary information to carry it out."[60]

[53] Gavin Stenton, 'Bio Piracy within the Pharmaceutical Industry: A Stark Illustration of How Abusive, Manipulative and Perverse the Patenting Process Can Be Towards Countries of the South' (2004) 26(1) *European Intellectual Property Review [EIPR]* 17, p. 20.
[54] *Ibid.*
[55] See Alan Story, 'Bio Piracy and the Danger of Patent Over-Protection' (1999) 149 *New Law Journal* 158, p. 162.
[56] *Ibid*.
[57] Art.5 (2)(2) of the Patent Regulation of the GCC provides that "the specification shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art."
[58] *Cf.* Edmund W. Kitch, 'The Patent Policy of Developing Countries' (1994) 13 *UCLA Pacific Basin Law Journal* 166, p. 172 (doubting the importance and value of these requirements that exist in U.S. patent law and stating that "these requirements do not mean what they seem to say. They are terms of art…"). See also Cornish & Llewelyn, *op. cit*., p. 229 (stating that "…patentees can no longer be expected necessarily to give full instructions for performance").
[59] United Nations Conference on Trade and Development (UNCTAD), *the TRIPs Agreement and Developing Countries* (New York: United Nations Publications, 1996) p. 33.
[60] Mohamed Balat and Mohamed Hossam Loutfi, 'The TRIPs Agreement and Developing Countries: A Legal Analysis of the Impact of the New Intellectual Property Rights Law on the Pharmaceutical Industry in Egypt' (2004) 2 *Web Journal of Current Legal Issues*, under section 7 [references omitted].

4.3 Requirement of Lawfully Obtaining Biological Materials of Plants, Animals and Others

It is very important that an applicant be required to have obtained lawfully the subject matter of his/her application if it relates to an invention concerning biological materials of plants or animals, or if it relates to traditional knowledge pertaining to medicine, agriculture, industry, craftsmanship, or if it concerns environmental and cultural heritage. Such an obligation would undoubtedly help Qatar to appropriately maintain and protect its own and other countries' biological materials and traditional knowledge. Furthermore, it is hoped that the execution of such requirements would eliminate the practice of "bio-piracy". The elimination of such piracy is essential for developing countries which have such materials and knowledge in abundance.

4.4 Deposition of Micro-organisms

Normally if a patent application relates to micro-organisms, then the applicant is obliged to disclose such micro-organisms and deposit a live culture sample with the authority as determined by the law or the executive regulations.[61] It is worth mentioning that the use of the deposited sample of the micro-organism is widely known in the pharmaceutical industry particularly after the expiry of the patent term or even during its life through compulsory licensing.[62] The deposition requirements therefore form a significant tool in disseminating, promoting, and practising new technology.

In this regard, one should stress the fact that although micro-organisms are a patentable subject matter under both Qatari patent law and TRIPs, this should be interpreted as applicable only to genetically modified or "transgenic" micro-organisms, and not to those pre-existing in nature. [63]

4.5 Corresponding Foreign Applications

Qatari patent law should request a patent applicant to provide information related to any previous corresponding foreign applications.[64] Obtaining access to information on decisions taken in other countries may be of particular importance for patent offices and courts in Qatar and other developing countries, which in general lack adequate staff and resources to fulfil their tasks in examining these applications and making eventual decisions on the invalidation or revocation of patents.[65] Furthermore, this could be of assistance to Qatari innovators since the protected technology would be available.

4.6 Exceptions to Rights Conferred

In accordance with the Qatari patent law, a patentee is to have the exclusive right to exploit the invention. The law, on the other hand, does not encompass a series of exceptions to the rights conferred on the patentee.[66] The only exception expressly indicated is "prior use."[67] It is hoped that the law be amended in order to include

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[61] Art.12 of the Implementation Bylaws of the GCC Patent Regulation contains regulations on such an important issue.
[62] See Mohamed Balat & Hossam Loutfi, *op. cit.*, under section 7-9.
[63] South Centre, *The TRIPs Agreement: A Guide for the South. The Uruguay Round Agreement on Trade-Related Intellectual Property Rights* (Geneva: South Centre Publications, 1997) under section III. See also Carlos M. Correa, *Intellectual Property Rights, the WTO and Developing Countries: The TRIPs Agreement and Policy Options* (London: Zed Books Ltd, 2000) p. 68. [hereinafter Correa: *IPRs, the WTO and Developing Countries*].
[64] One should mention that Art.13(1) of the Implementing Bylaws of the GCC Patent Regulation sets forth that a patent applicant shall, upon request, advise the Director General of Patent Office the dates and numbers of any patent application he filed with another office for the same invention, or for an invention that is identical to that applied for in the application submitted to the Director General of Patent Office.
[65] Carlos M. Correa, 'Patent Rights' in Carlos M. Correa and Abdulqawi A. Yusuf (eds.), *Intellectual Property and International Trade: the TRIPS Agreement* (The Hague: Kluwer Law International, 1998) p. 207 [hereinafter Correa: *Patent Rights*].
[66] For more on this issue in relation to TRIPs, see Duncan Matthews, 'TRIPS Flexibilities and Access to Medicines in Developing Countries: the Problem with Technical Assistance and Free Trade Agreements' (2005) 27 (11) EIPR, pp.420-427, at pp. 422-423.
[67] Art.10 of the Patent Law of Qatar.

important exceptions for the protection of the public interest in Qatar. Acts undertaken for scientific research purposes should top such a list. In fact, this exception may cover, inter alia, the use of the invention for research, experimentation on the invention to test or improve it, and the use of the invention for teaching purposes. By stipulating the experimental use exception, a strong basis for innovation and research is created, as well as the likelihood of providing more sources of technical information that would be beneficial to the public.

4.7 The Doctrine of Exhaustion of Intellectual Property Rights

Under this doctrine, once a patent holder, or anyone else authorised by the patent holder, has marketed his/her protected products in a country, region or on the international market, his/her rights are said to be "exhausted." The doctrine gives a legal justification for the adoption of what is known as "parallel imports."[68] Qatar's patent law opts for the non-inclusion of the doctrine of international exhaustion of rights. Accordingly, parallel imports are not allowed; thereby any invention related to pharmaceutical drugs or other products which has been put on the market of the exporting country at a lower price, either by the patent owner or anyone else who has the authority to do so, will not be available on the domestic market at these prices.

Allowing parallel imports of any product, especially pharmaceuticals, could also be considered an effective tool in forcing intellectual property right-holders to sell their protected products at reasonable and affordable prices, bringing welfare benefits to the public. Moreover, allowing parallel imports is an important factor in preventing market segmentation and price discrimination by manufacturers on a regional or international scale.69 For these reasons, the doctrine should be adopted and, if introduced, will without doubt represent a significant step for the people of Qatar and other developing countries.

This paper takes the view that the suggested method is consistent with Article 6 of the TRIPs Agreement, which grants WTO members sufficient freedom to adopt the appropriate policy on the subject being examined (national, regional or international exhaustion), as well as with the Doha Declaration on the TRIPs Agreement and Public Health70 which reaffirms this right for TRIPs members in relation to pharmaceuticals.[71]

The adoption of the doctrine of international exhaustion of rights is furthermore consistent with the WTO's objectives of free trade and competition, as well as the objectives of the TRIPs Agreement itself "… to reduce distortions and impediments to international trade…and to ensure that measures and procedures to enforce IPRs do not themselves become barriers to legitimate trade."[72] Since the system established under the WTO aims to

[68] Correa: *Integrating Public Health Concerns*, *op. cit.*, p. 75.
[69] In this regard, see M.C.E.J. Bronckers 'The Impact of TRIPs: Intellectual Property Protection in Developing Countries' (1994) 31 *Common Market Law Review* 1245 (noting- p. 1269 - that "if a developing country opts for the principle of worldwide exhaustion, doing so will at the same time, by virtue of the national treatment obligation, restrict that country's domestic industries and their licensees in their ability to conduct a differentiated pricing policy in other countries. In that case they too will have to reckon with parallel imports"). See also Peter Kolker, *TRIPs Agreement: Patent Protection* (Luxembourg: European Commission, 2000) p. 27 (pointing out that if the worldwide exhaustion is introduced, it "would be viewed by all owners of intellectual property rights with the utmost consternation").
[70] The Declaration was adopted on November 14, 2001 in the Fourth Ministerial Conference of the WTO, held in Doha, Qatar. On the new system, see the study of F. Abbott and H. Reichmen, 'The Doha Round's Public Health Legacy: Strategies for the Production and Diffusion of Patented Medicines under the Amended TRIPs Provisions' (2007) 10 (4) *Journal of International Economic Law*, p.921.
[71] In this context, and for the interest of consumers in poorer countries, it has been suggested that an agreement should be reached with wealthier countries "whereby sales by the patentee in the poorer countries will not be treated as an exhaustion of patent rights in the wealthy countries", otherwise patent holders will not accept selling their products at cheaper prices, see Martin J. Adelman & Sonia Baldia, 'Prospects and Limits of the Patent Provision in the TRIPs Agreement: The Case of India' (1996) 29 *Vanderbilt Journal of Transnational Law* 507, p. 532. See also Sandra Bartelt, 'Compulsory Licences Pursuant to TRIPs Article 31 in the Light of the Doha Declaration on the TRIPs Agreement and Public Health' (2003) 6 (2) JWIP 283, p. 305 (mentioning that since the patent owners would be likely to refrain from marketing the protected products in developing countries as a result of adopting such a doctrine, this could have harmful effects on local health systems in these counties in the long-term).
[72] Paragraph 1of the Preamble of TRIPs.

avoid any trade distortion and to safeguard the multilateral trading system, adoption of one system or policy on the subject of exhaustion of rights between all WTO Members is necessary, notably if such countries opt for the international exhaustion of IPRs.73

4.8 Regulatory Review Exception

In some Arab countries, for example Egypt, the law on IPRs permits pharmaceutical firms or any other types of companies or persons[74] to make, construct, use or sell the protected product during its protection term for the purpose of obtaining marketing approval, provided the marketing of the product itself will not be carried out until the expiry of that term.[75] The provision, which is permitted under Article 30 of TRIPs,[76] is undoubtedly of interest to pharmaceutical drug manufacturers in any country of the developing world. It should be acknowledged that this exception is allowed in a number of countries, such as the U.S.[77] It was recently decided by a WTO panel that the manufacture and storage (known as stockpiling exception) of pharmaceutical products during the patent term for purposes of sale after the patent expires should not be allowed under the TRIPs Agreement.[78] The panel considered that the stockpiling exception was a substantial curtailment of the exclusive rights granted to the patent owner under the TRIPs Agreement and therefore could not come under the limited exceptions allowed under the Agreement.

4.9 Patents for Modification

The inclusion of a provision setting forth that a patent will be granted independently to a third party who has made any modification, improvement, or addition to an invention that was previously granted a patent, will be a significant step if it is adopted in Qatar. A similar provision is contained in the Egyptian IPRs law. In the old and repealed Egyptian Patent Law of 1949, such a right was given to the owner of the old patent and regarded it only as an additional patent.[79] The purpose of the provision is to offer young and prominent innovators in Qatar and skilled Qatari workers the chance to obtain patents for any modification, improvement, or addition made by them.

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[73] In allowing parallel imports of products, particularly pharmaceutical drugs, strict measures should be adopted to ensure that substandard and counterfeit products, especially drugs, do not find their way into the country. For example in Egypt, a significant step was recently taken with a view to protecting ordinary consumers from counterfeited and expired drugs with the establishment of the Association for the Protection of Consumers from Counterfeit Drugs. On the danger of counterfeited drugs coming through parallel imports, see Duane Nash, 'South Africa's Medicines and Related Substances Control Amendment Act of 1997' (2000) 15 *Berkeley Technology Law Journal* 485, p. 499 (referring to the case in which Kenya experienced difficulties in ensuring the quality of parallel imports and its inability to recall unsafe products. Kenya also experienced problems with customer confusion over multiple brands of the same product. All this led Kenya to outlaw parallel imports of pharmaceutical drugs for safety reasons).

[74] As long as they are capable of marketing the protected products after the expiry of the legal term.

[75] This exception was allowed by a WTO panel in a dispute brought by the E.C. against Canada, see Document WT/DS114/R dated March 17, 2000, entitled "Canada - Patent Protection of Pharmaceutical Products - Complaint by the European Communities and their Member States - Report of the Panel." In this dispute, the panel considered that the regulatory review exception was a limited exception within the meaning of Art.30 of TRIPs. Also, the panel regarded the activities allowed under this exception as merely regulatory rather than commercial. For a discussion of the panel report, see Duncan Matthews, *Globalising Intellectual Property Rights: The TRIPs Agreement*, (London: Routledge Publications, 2002) p. 100.

[76] On the history of this exception, see Gorlin, *op. cit.*, pp. 30-1.

[77] Correa: *IPRs, the TRIPs Agreement and Developing Countries*, *op cit.*, p. 77 (illustrating that in the U.S., the Drug Price Competition and Patent Term Restoration Act permits the carrying out of testing to establish the bio-equivalency of generic products before the expiration of the relevant patent). *Cf.* Kolker, *op. cit.*, p. 29 (expressing that such an act would not be allowed); and Cornish & Llewelyn, *op. cit.*, p. 246 (pointing out that in Europe, it is almost accepted that this act is not permitted under the experimental use defence).

[78] This was the decision of the WTO panel in relation to the dispute between the E.C. and Canada, see above footnote no.75 (this ruling was aimed at the Canadian Patent Act, which set forth that it would not be an infringement to make, construct, or use the invention, during the applicable period provided for by the regulations (6 months), for the manufacture and *storage* of articles intended for sale after the date on which the term of the patent expires).

[79] Art. 14 of the old Patent Law.

4.10 Utility Models

Unlike the Qatari patent law, the IPRs law of Egypt regulates the topic of utility models.[80] A utility model is granted for very new technical additions in the shape or formation of means, tools, kits or their parts or products, preparation or production methods of the aforementioned and the like that are in current use.[81] The understandable objective to implement a utility model system into the law is to "encourage domestic innovation."[82] Additionally, the adoption of a utility models regime is strongly advised by experts "because of their proven efficacy in stimulating local adaptation and improvement of foreign inventions."[83]

4.11 Protection of Public Interest in Specific Cases

With a view to protecting the public interest in its broadest sense, the Qatari patent law should be amended in order to include a provision allowing the suspension of the acceptance of patent applications if the invention could be used, in addition to its legitimate purposes, in aspects that the exploitation of which might be contrary to public order or morality, or prejudicial to the environment, human, animal or plant life or health.[84] If applicants accept to surrender the exploitation in these cases, the Patent Office should continue to examine their applications.

4.12 The Right to Oppose the Grant of Patents in Certain Circumstances

The Qatari patent law should be amended in order to clearly empower the Minister of Defence, the Minister of Interior or the Minister of Health to oppose either the publication of a patent application or the procedure of granting such a patent if it appears that the application relates to defence, military production, security or is of military, security or health significance.[85]

4.13 Guidelines on Inventive Step

As there is no guidance given by the law or the executive regulations[86] regarding "inventive step" as a requirement of patentability,[87] it seems, therefore, advisable for courts in Qatar to evaluate and develop an effective policy. This will benefit the country as it will create a high standard of inventive activity since there will be incentives for local inventors.[88] Apparently, if a high standard of inventive activity, which would "tend to narrow the scope of patentability and broaden the prospects for competitive innovation around patented inventions" is applied; local inventors could be affected as they will be required to meet such a standard.[89] On

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[80] On utility models, see generally Uma Suthersanen, 'A Brief Tour of "Utility Model" Law' (1998) 20 (2) EIPR 44.
[81] Art. 29 of the Egyptian law.
[82] Ruth L. Gana, 'Prospects for Developing Countries under the TRIPs Agreement' (1996) 29 *Vanderbilt Journal of Transnational Law* 735, p. 757 (referring to China where utility models have been used successfully. The author (Ruth Gana), on the other hand, indicates that "no country has made significant progress in technological advancement through a regime of utility models"). See also Christopher Arup, *The New World Trade Organisation Agreements: Globalising Law Through Services and Intellectual Property* (Cambridge: Cambridge University Press, 2000) p. 193 (pointing out that utility models may be seen as suitable for small and local inventors because of their less demanding requirements).
[83] Reichman, *op. cit.*, p. 39.
[84] A similar provision is contained in Art.18 of the executive regulation of the Egyptian IP law.
[85] Art. 17 of the Egyptian IP law includes similar provisions. If an invention has passed the formal and substantive examinations and it relates to the security of any of the GCC States, it shall be exempted from the *publication fee*. The patent shall be granted and delivered to the applicant and the Patent Office shall advise the concerned State or States accordingly. Member States are required to provide the Patent Office with the fields deemed relevant to security. These rules are contained in Art. 15 of the Implementation Bylaws of the GCC Patent Regulation.
[86] These Regulations have yet to be issued.
[87] Under PA (and the EPC), an inventive step will be regarded as present if, having regard to the state of the art, the invention is not obvious to a person skilled in the art. For more details, see Andrew Griffiths, 'Windsurfing and Inventive Step' (1999) 2 *IPQ* 160; Cornish & Llewelyn, *op. cit*., p. 192; and Torremans: *IP Law, op. cit*, p. 64 *et seq*.
[88] UNCTAD, *op. cit.*, p. 33.
[89] *Ibid.*

the other hand, if a low level of inventiveness is required, stimulation for local inventors to develop and progress will surely increase. However, this gives rise to an important concern. A lower standard of inventiveness would also, under the national treatment principle, apply to foreign inventions, providing foreigners with an advantage to obtain a "monopoly in the domestic market."[90]

> "[Nevertheless] [t]his concern may not be as serious if one considers the relatively high transaction costs for a foreign investor to develop an obvious invention since the product would not be patentable in most developed countries. The developing country could assess fees and other ancillary costs to discourage foreign investors from embarking on trivial innovations. The important issue is to stimulate local inventiveness; the suggestion simply is that a lower level of innovation may contribute to wide scale indigenous creative activity."[91]

4.14 New Use for a Known Substance

The Qatari patent law, following TRIPs, has no provisions dealing with the patentability of new uses of known substances or products, especially second or subsequent therapeutic uses for known pharmaceutical products, e.g. an anticancer drug with a new and widely accepted use for treating HIV/AIDS.[92] It could be concluded that the second use of known substances, which are already in the public domain, should be excluded from patentability.[93] The search for newer and more effective treatment of diseases must, however, be taken into account especially where the accomplished achievements could make a disease or anything else treatable or useful. Therefore there should be a balance between allowing the patentability of the second use of known substances and rewarding accomplished achievements in the area of treatable diseases.[94]

4.15 Use of Off-Patent Inventions

The use of expired inventions should be drawn to the attention of the relevant authorities and parties in Qatar. The use of such inventions is free of charge as they are in the public domain. In this regard, it is important to know and recognise which patents have entered into the public domain. The Patent Office in Qatar[95] should be required to publish in the Patent Gazette patents whose owners' rights are terminated in line with the law.

Accordingly, once these expired patents have been published and declared freely available, any concerned party might then be interested in exploiting any of them. It is suggested that the Qatari Patent Office should collaborate with other regional or international organisations (such as WIPO or the World Health Organisation (WHO)) in order for benefits to be realised to an optimum level. Making information about off-patent inventions available is significant as far as pharmaceutical drug manufacturers are concerned. Indeed "the great majority of "essential drugs" as identified, for instance, by WHO, are "off-patent" and the access thereto will not be affected by the implementation of new patent policy."[96]

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[90] Ruth L. Gana, *op. cit.*, p. 751.
[91] *Ibid.*
[92] Watal, *op. cit.*, p. 104; and Correa: *Patent Rights*, *op. cit.*, p. 201.
[93] New uses of a known substance or composition particularly second and subsequent medical uses of a known product are patentable subject matters under both the EPC and the UK Patents Act 1977, see the explanatory notes to Patents Act 2004, available at < http://www.legislation.gov.uk/ukpga/2004/16/notes/division/6/1 > [accessed on June 19, 2011]; Bently & Sherman, *op. cit.*, p. 457-466; Cornish & Llewelyn, *op. cit.*, p. 186 *et seq*. and Torremans: *IP Law*, *op. cit*, p. 63.
[94] Watal, *op. cit.*, p. 105.
[95] And that of the GCC.
[96] Correa: *Integrating Public Health Concerns*, *op. cit.*, p. 6 (fn. 16). For a recent analysis of the situation of South Africa's attempts to obtain access to essential medicines, Rachel Roumet, 'Access to Patented Anti-HIV/AIDS Medicine: The South African Experience' (2010) 32 (3) EIPR, pp.127-141.

4.16 Licences Available as of Right

It is hoped that in future amendments of the law a provision like the one contained in s.46 of the UK Patent Act of 1977 is incorporated. This section gives the patentee the possibility to apply voluntarily for entry to be made on the Register of Patents that licences are available as of right. The section may be used by a patent owner who has not been able to "exploit his patent to good effect."[97] It is also beneficial to the patent owner since he/she pays only half of the renewal fees.[98] The encouragement of a wider working of a patent where the patentee is more interested in financial return rather than monopoly is another reason why it should be considered.[99]

4.17 The Patent Office

It is important to consider how the Qatari Patent Office can be improved and further developed in order to accommodate the new surrounding challenges. The Patent Office should be provided with experts, necessary equipment and reference materials to examine the submitted patent applications.

4.18 The Patent Office Library

Future amendments of the law must provide for the establishment of a library that should be attached to the Patent Office. To maximise its vital role, it should contain, among other things, publications and periodicals that relate to intellectual property. In all cases, the public should be allowed to use this library. It is expected that the establishment of a library will be of great help for both the examiners and other interested parties such as inventors and researchers. Likewise, any interested parties should be granted access to patent applications and other related documents, drawings and samples submitted to the Patent Office and these parties could even obtain copies of these documents in exchange for a fee.

4.19 Publication of the Decisions of Courts

In order to obtain adequate and effective protection, and to facilitate enforcement of the law, the courts' decisions relating to the interests of the public and IPR should be published in special collections. The publication of such decisions will also increase awareness among the public and the authorities.

5. Conclusion

This paper has investigated the manner in which the patent law of Qatar implemented the TRIPs Agreement's minimum standards of protection concerning patents. It also examined how the law made use of the room for manoeuvre left by the Agreement for Qatar and other developing countries to formulate their own national laws and policies in accordance with their best interest in promoting access to new technology, stimulating innovative and inventive activities at national level, preserving and protecting national security, health, environment and consumer welfare.

In this regard, Qatar, to some degree, made use of the flexibilities inherent in the TRIPs Agreement. Qatari patent law excludes a number of subject matters, such as inventions that are inconsistent with public order or morality; diagnostic therapeutic and surgical methods for the treatment of humans and animals. It is generally accepted that the measures adopted in Qatari law serve the national interest in its very broadest meaning and are consistent with both the TRIPs Agreement and the Paris Convention.

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[97] Bainbridge, *op. cit.*, p. 382. See also Bently & Sherman, *op. cit.*, p. 554 (the authors also refer to the fact that using such a facility is seen as "an advertisement" by whoever wishes to exploit the invention).
[98] *Ibid.* See also Cornish & Llewelyn, *op. cit*., p. 158; and Torremans: *IP Law*, *op. cit*, p. 98.
[99] Peter Hayward, 'Licences for Patents, Registered Designs and Design Right' a lecture given for the Postgraduate Certificate in Intellectual Property Law course at Manchester University, December 3, 2002 (the author also –p. 7- indicates that such voluntary endorsements are popular (nearly 700 applications in 2000/01)).

It is submitted that under the Qatari patent law there is no discrimination in rights or obligations. Qataris and foreigners enjoy equal rights and obligations.[100] Although there are no provisions concerning the principle of most-favoured nation treatment, Qatar undoubtedly will respect such a principle since the country is already included in the TRIPs Agreement.[101] Even though the law allows the use of compulsory licensing in very limited and specific circumstances, such as cases concerning refusal to deal by the patent owner, such a facility has- as far as I can tell- never been used in Qatar.

To achieve the fullest benefits expected from implementing a strong patent regime and at the same time reducing any potential adverse effects of such a regime, the paper has proposed a number of recommendations. Most importantly, adopting a universal standard of novelty, requesting patent applicants to disclose the full description of the nature of their inventions as well as the best mode to carry out the inventions, adopting the system of utility models that aims to "encourage domestic innovation" and stimulate "local adaptation and improvement of foreign inventions."

Patents are "valued very highly as the bearers of technology, which by their exploitation and disclosure give access to technology and help in the economic development of the country by stimulating inventive and innovative activities."[102] To sum up, the law serves the public interest and at the same time protects intellectual property holders.

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[100] This view is based upon a deep examination of the provisions of the Qatari patent law.
[101] Art. 4 of TRIPs.
[102] Verma, *op. cit.*, p. 335 (the author, however, reminds us of the fact that patents are in the majority of cases held by multinational companies that are based in the developed world).