

## Development of Intellectual Property Laws and Foreign Direct Investment in Jordan

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**Abstract.** Intellectual property rights (IPRs) have become increasingly important. In particular, increased international trade, global economies, and developing technologies have played a key role in the development of Intellectual Property laws. These factors determine the need for strong IPRs regimes to attract foreign investments in local enterprises. The same factors also encourage contributions for transfer of technology, and the creation of new jobs in the host country. Seeing the benefits of foreign investment and the significance of Intellectual Property laws in encouraging these, Jordan has taken important steps to reform its legal environment for the protection of intellectual property rights. This paper will examine Jordanian Intellectual Property laws concerning the promotion of foreign investment. In particular, the paper will explore the constant need for improvements in legislation, administration, the enforcement of Intellectual Property laws and the necessity to bring them in line with international standards.

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### 1 Introduction

Direct investment is a key instrument in the transfer of technology from one country to another. To attract foreign investment in support of these transfers, however, strong IPRs are considered vital. Several studies establish that intellectual property protection in developing countries, especially countries with low *per capita* incomes, directly encourages technology transfers from highly advanced technological countries through foreign direct investment (FDI).<sup>1</sup> It has also been observed that firms are more likely to invest in countries with strong legal protections. It has been found that the smaller risk of imitation leads to a relatively larger net demand for protected products.<sup>2</sup>

The Hashemite Kingdom of Jordan (hereafter "Jordan") has taken important steps to reform its legal system and encourage foreign investors. One of the most significant developments in these reforms is the creation of a new legal system for protection of intellectual property rights. The establishment of this framework complies with King Abdullah II aspiration to transform Jordan into an Information Technology (IT) centre in the Middle East, an intention that he announced during a meeting with Microsoft President Bill Gates in January 2000.<sup>3</sup>

Jordan is a developing country with modest natural resources, although this ultimately has little bearing upon its rate of development. From 1960 to 2000, for instance, economic output and *per capita* incomes grew more than three times as fast in South Korea – a country with relatively few natural resources – compared to those in Brazil, a country with abundant natural resources.<sup>4</sup> The reasoning for this can be traced to Korea's relative openness to technological and other innovations. It has, for instance, strong intellectual property laws that facilitate the importing of new technologies and the generation of business through FDI.<sup>5</sup>

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<sup>1</sup> See for example the study made by R. J. Shapiro and K. A. Hassett, *The Economic Value of Intellectual Property* (USA for Innovation, 2005). And Paul. M. Romer, "Economic Growth," in *The Fortune encyclopedia of economics*, ed. David. R. Henderson (New York : Warner Books 1993).

<sup>2</sup> See for example W. G. Park and D. C. Lippoldt, *Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries* (OECD Publishing: OECD Trade Policy Working Papers, No. 62, 2008). See also E. Mansfield, *Intellectual Property Protection, Foreign Direct Investment and Technology Transfer* (International Finance Corporation Discussion Paper No. 19, 1994). Mansfield has noting that research intensive U.S. firms with easy to imitate products will not make substantial investments in countries with weak intellectual property rights protection. See also K. E. Maskus, "The Role of Intellectual Property Rights In Encouraging Foreign Direct Investment and Technology Transfer," *Duke journal of comparative & international law* 9, no. 1 (1998): p.129. He argues that 'IPRs are an important component of the general regulatory system, including taxation, investment regulations, production incentives, trade policies, and competition rules. The joint implementation of an overall pro-competitive business environment matters most for FDI.'

<sup>3</sup> F. Ciriaci, "Microsoft Backs Jordan 100% in its Quest to become an IT Hub," *Jordan Times* 27/03/2000

<sup>4</sup> World Bank, *World Development Indicators 2005* (Washington, DC: World Bank, 2005).

<sup>5</sup> Ibid.

## 2. Factors Influencing FDI and Intellectual Property Rights

FDI refers to investments made by investors to overseas enterprises in which the foreign investor has a long-term interest as well as substantial control in the resultant venture.<sup>6</sup> FDIs can be developed in one of three ways. The foreign investor may choose to acquire interest in an already existing firm, either fully or in part. Generally speaking, this method involves forming a joint-venture. In other instances, foreign investors can establish new companies in the host country. This is known as greenfield investing.

To determine what impact weak or strong protection of IPRs has on foreign investors' decisions to invest abroad, it is important to look to the Dunning's OLI paradigm which explains activities of multinational corporations in terms of ownership (O), localization (L) and internalization advantages (I)<sup>7</sup>. Dunning's OLI paradigm maintains that foreign firms typically do not possess good information about the local business environment of countries in which they are planning to invest.

Another point is that FDIs take place when three sets of advantages are perceived by firms to exist simultaneously.<sup>8</sup> The first set focuses upon the specific ownership advantages. The firm must generally have a unique ownership advantage, which could be based on ownership of a product or a production process offering competitive advantage. Examples include patents, trademarks, exclusive access to markets and resources, trade secrets, production technology, and management and general organisational abilities<sup>9</sup>. Typically, however, the foreign investor's ownership-specific advantages are sensitive to property rights protection in the host country; the success of a foreign investment is tied to the security of its intellectual and physical property in the host country.

The second set of advantages refers to the location-specific advantages as perceived by firms. These are the characteristics of host countries in terms of their economic environment or government policies. This set of advantages explains why a firm wishes to produce its goods in the host country. There must be some location advantages to justify a firm's decision to locate in one place rather than another. This choice of location arises from natural differences between countries, including differences in endowment with natural resources, differences in input, production, transport costs, and cultural manifestations requiring adaptation of the product for specific markets. Oil companies, for example, must operate in particular locations where oil is available. Location specific advantages also arise from artificial differences, particularly those related to government policies on, for example, tariffs, domestic corporate taxation, investment or tax regulation of foreign firms, profit repatriation or transfer pricing, royalties on extracted natural resources, anti-trust regulation, technology transfer requirements, intellectual property protection, and labour market regulation.<sup>10</sup>

The third set of advantages relates to internalisation incentive advantages, all of which aim to reduce uncertainty and avoid transaction costs with potential licensees, controlling inputs, and protecting quality. Generally, it must be more advantageous for the investing firm to use its ownership-specific advantages in a foreign country, rather than selling such advantages to local companies<sup>11</sup>.

If only the first set (ownership-specific advantages) is met, firms will rely on exports, licensing, or the sale of patents, to service a foreign market. Given the existence of internalisation incentives, FDIs become the preferred mode of servicing foreign markets. It only applies, however, if location-specific advantages are present. There are three conditions necessary for FDIs to take place. Of these, however, locational advantages are the only ones that host governments can influence directly.<sup>12</sup> One important reason for many firms to engage in FDIs relates to protecting their IPRs in the host country. Most firms will prefer foreign investment over licensing in the case of weak protection. Internalised foreign production helps firms to maintain direct control over their proprietary assets<sup>13</sup>.

The following sections will explore the legal development of IPRs that are important to foreign investment practices in Jordan.

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<sup>6</sup> P. Brenton, *Trade and Investment in Europe: The Impact of the Next Enlargement* (Brussels: Centre for European Policy Studies, Brussels, 1999).

<sup>7</sup> John. H. Dunning, *Multinational Enterprises in the Global Economy* (Wokingham Berks: Addison Wesley, 1993).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Q. Li and A. Resnick, "Reversal of Fortunes: Democratic Institutions and Foreign Direct Investment Inflows to Developing Countries," *International Organization* 57 (2003).

<sup>11</sup> Ibid.

<sup>12</sup> United Nations Conference on Trade and Development, *World Investment Report 1998 : Trends and Determinants* (New York: United Nations; UNCTAD/WIR, 1998).

<sup>13</sup> Michael J. Ferrantino, "The Effect of Intellectual Property Rights on International Trade and Investment," *Review of World Economics* 129 (1993).

### 3. Jordan and the Reform of its IPRs Regime

Since the mid-1990s, intellectual property law has been the fastest growing and most dynamic field of law in Jordan. Before reforming their IPRs laws, however, Jordan was regarded as a weak enforcer of such rights, hindering the country's participation in international trade. A clear example of the weakness of IPRs in Jordan before the 1990s law reform, led the United States Trade Representative Office to put Jordan on a Special 301 Watch List. The Watch List established the general opinion that Jordan had what was considered inadequate intellectual property protection.<sup>14</sup> Since that time, however, Jordan's success in promoting IPRs has helped legitimate businesses capitalise on their intellectual property assets and operate without fear of illegal competition.<sup>15</sup>

#### 3.1 The Concept of Intellectual Property under Jordanian law

According to the World Intellectual Property Organisation (WIPO), IPRs in general are identified as the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields, or the rights granted to a person or a company by a state for products of intellectual effort and ingenuity<sup>16</sup>.

The meaning of 'intellectual property' is not defined with precision in the 1952 Jordanian constitution. Articles 11, 12, 44 and 75 (i) & (f) mention 'property' in general, but do not specify what constitutes 'property'. Jordanian Investment Law No. 68 of 2003 does not define the concept of intellectual property, but Article (12/B) of the same law refers to intellectual property right. It defines 'foreign capital' as: 'Intangible rights such as licenses, patents, trademarks and trade-names registered in [Jordan].' The definition of intellectual property can be found in Article 2 (viii) of the Convention Establishing the World Intellectual Property Organization (1967), amended in 1979, to which Jordan became a party on 12 July 1972. In this article intellectual property includes the rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms, and broadcasts,
- inventions in all fields of human endeavour,
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

From this definition there are various forms of Intellectual Property Rights that can be divided into two categories. Firstly, there is industrial property, which includes patents, trademarks, industrial designs and trade secrets. Secondly, there are copyright issues, which include literary, musical, artistic, and audiovisual works.

#### 3.2 IPRs and National Treatment under Jordanian Law

National legislation of any country primarily protects its own citizens and those who are on an equal footing with them. Where no treaty obligation exists, the question of whether foreigners and those without nationality may enjoy protection of national laws is decided according to different rules in each particular country. This is also the case in Jordan.

Jordan is, however, a member of the Paris Convention for the Protection of Industrial Property. As such, it has the obligation to protect the rights of citizens of other countries who have signed up to the convention. This protection is also found in the three main WTO agreements (Article III of GATT, Article 17 of the GATS and Article III of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)), to which Jordan is a party.

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<sup>14</sup> Jordan Times, "Prince Hassan Named Chairman of Intellectual Property Body Commission," *Jordan Times* 17/04/1999

<sup>15</sup> E Garduño and F Pietrucha, "Intellectual Property Rights in the Arab World," *Georgetown Journal of International Affairs*, no. 4.1: Winter/Spring (2003).

<sup>16</sup> World Intellectual Property Organisation, *Intellectual Property Handbook: Policy, Law and Use* (Geneva WIPO Publication No.489 (E) 2001).

Jordan has also adopted the principle of reciprocity to protect foreign nationals whose home States are not parties to the Paris Convention. For instance, in Article 41 of the Trademark law, Jordan is bound by a bilateral agreement or it is established as a member of an international convention granting a reciprocal protection to the trademarks registered with any of them. Any national of the member state or party to the agreement may file an application to the registrar to protect their trademark. There is also a priority given to those who file prior applications in Jordan within six months of their application in their home country.

Another provision can also be seen in Article 43 of the Jordanian Trademark Law which gives the same treatment mentioned in Article 41 and 42 of the Trademark Law, to foreign nationals whose countries are not party to the Paris Convention and have not yet concluded a bilateral agreement with Jordan, for reciprocal protection of intellectual property rights, on condition that the government of Jordan, by a decision of the Council of Ministers, declares these provisions applicable to them.

In many respects, the TRIPS Agreement represents a new challenge to the Jordanian legal system. Jordanian domestic law before accession to the WTO covered only basic aspects of copyright, trademark, and patent law.

The basic objective of the TRIPS Agreement is to provide protection to intellectual property and to ensure that innovators benefit from their creativity and investment in it.<sup>17</sup> It is also designed to help and encourage innovators to continue in their creation under the protection of the law. It contributes to the promotion of technological innovation and, thereby increases the amount of FDI.

### *3.3 Copyright Law*

Jordan's copyright laws are set out in the Copyright Law No. 22 of 1992 and its amendments, Regulation on the Department of the National Library of 1994, Regulation on the Work Depository of 1994, Border Procedures Instructions for the Protection of Intellectual Property Rights of 2000, as well as other legislation related to enforcement of copyright, or affecting copyright protection.

Copyright law was originally designed to cover the work of authors, composers, artists, and similar creative private individuals. It protects original content from use by others without their permission. In complying with TRIPS Agreement Article 9.1, Jordan adhered to the Berne Convention of July 1999. However, the Jordanian copyright law has been influenced enormously by the TRIPS Agreement. The protection of copyright in Jordan was governed by the Copyright Protection Law No. 22 of 1992. This law has been amended seven times since 1992.<sup>18</sup> The Jordanian Copyright Protection Law of 1992 did not comply with copyright provisions under the TRIPS Agreement, because its Article 53 provided protection only to works by Jordanian and foreign authors that are published in Jordan, and works by Jordanian authors published abroad. As this means that works published abroad by foreign authors was not protected, this law did not meet international standards for the protection of intellectual property rights. Perhaps the reason behind this inadequacy is because before accession to the WTO Jordan did not adhere to many international copyright conventions such as the Berne Convention. However, the government of Jordan amended its 1992 copyright law by Law No. 14 of 1998, Law No. 29 of 1999, Law No. 52 of 2001, Law No. 78 of 2003, Law No. 88 of 2003, Law No. 8 of 2005 and Law No. 9 of 2005. The country also joined the WIPO's and Berne Convention on Copyright, to meet their obligations under the provisions of copyright in the TRIPS Agreement.

#### *3.3.1 Protection of Foreign Investment Copyright*

The scope of protection in the Copyright Amendment Law No. 14 of 1998, Law No. 29 of 1999 and Temporary Law No. 52 of 2001 under Article 3 paragraphs (a) and (b) protected original works of literature, art and science irrespective of type, importance or purpose, including works of art expressed in writing, sound, drawing, photography and motion such as books, speeches, plays, musical compositions, films, applied art, three-dimensional works, and computer software. Article 3(d) extended the protection of copyright to cover 'selections and collected data whether or not collected in a machine readable form' and 'collections of literary or artistic works such as encyclopaedias.' Additionally, this law, under Articles (30) and (31), came to comply with Article (12) of the TRIPS Agreement. Compliance was established by extending the duration of the protection of an author's work to the lifetime of the author plus 50 years, started from the first of January of the calendar year

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<sup>17</sup> United Nations Conference on Trade and Development, *The TRIPS Agreement and Developing Countries* (New York and Geneva: United Nations Publications, 1997), p.7.

<sup>18</sup> The Copyright Protection Law No. 22 of 1992 has been amended by Law No. 14 of 1998, No. 29 of 1999, No. 52 of 2001, No. 78 of 2003, No. 88 of 2003, No. 8 of 2005 and No. 9 of 2005

following the actual date of death of the author, or the death of the last survivor of those participating in the work if there were more than one author.<sup>19</sup>

There is no clear definition of copyright infringement under the Jordanian Copyright Law. However, definition can be deduced from Articles 36, 51, 53, 54 and 55 of the Copyright Law which identify acts that constitute copyright infringements. The Copyright Law set a prison sentence of between three months and three years and a 1,000-6,000 Jordanian Dinar (JD) fine on violators.<sup>20</sup> In case of recidivism, Article 51/B states that any person who has committed more than one copyright violation will be sentenced to the maximum term of imprisonment and the maximum fine shall be imposed. In such circumstances, the court may also issue a ruling for the closure of the institution in which the crime was committed for a period not exceeding one year, or the suspension of the infringer's business licence, for either a defined period of time or permanently.

This extension gives Jordanian and foreign investors more protection over their works. In the case of cinematographic and television works, any work whose author or rights holder was a legal entity, any work published for the first time after the death of its author, and anonymous and pseudonymous works; computer programmes, manuscripts, translated works, paintings, sculptures, pictures, drawings, architectural and geographical maps or topography, surface or three-dimensional maps, protection has also been extended from 30 years to 50 years from the date of publication or after the death of the author.<sup>21</sup> The provisions of this law extend the scope of protection of any rights holder habitually resident in any of the member countries of International Agreements on the Protection of Copyrights, to which Jordan belongs. They are to be accorded the same treatment as Jordanian nationals.<sup>22</sup>

On 24 May 2004, Jordan acceded to the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty. In all fairness, the copyright law has been constantly modified to keep pace with changing business needs. For instance, a new amended Copyright Law No. 9 of 2005 aimed to encourage media investment in Jordan. This amendment added paragraph (b) to Article 13, stating that successors or assignees of financial rights over the copyrighted materials would have the same prosecution rights as of the original owner. Performers have been given additional rights compared to the previous law by granting them exclusive rights over broadcasting and transmission to the public, fixing the performance in media, copying the performance in any way, either direct or indirect, temporarily or permanently, including digital and electronic recording. Performers were also given the right of distribution by way of selling or any other method of transferring the ownership, commercial leasing, and commercial importing. Moral rights of performers have been recognised by allowing them to claim such rights even after the financial rights have been transferred to another party.

The new copyright law strengthens the protection of IPRs by establishing an enforcement mechanism. This mechanism has been attached to the National Library Department, whose officers are given broad powers to search and investigate violations of the law. For instance, the enforcement of the copyright law by the National Library Department since 1994 has seen a steady decline in software piracy in Jordan, from a rate which had reached 87%.<sup>23</sup> In addition, up to the end of 2009, the Library enforcement authority has issued 2883 infringements fines.<sup>24</sup>

The new laws have laid an essential foundation for Jordan's IT sector, particularly the software sector. As a result, since 1999, the IT sector in Jordan has flourished. This has been despite a global industry slump in 2001. Between October and November 2001, for example, twenty-five IT companies with a combined capital of JD 711,000 were registered at the Ministry of Industry and Trade.<sup>25</sup> Furthermore, the number of employers in 2007 was 11,034; five times as many as in 1998.<sup>26</sup> According to the 2004 REACH Report, Jordan's software, Information and Communications Technologies (ICT) services industry has experienced rapid growth and become increasingly export-oriented, quickly developing the necessary capabilities to compete on a global basis.<sup>27</sup> In 2007

<sup>19</sup> Article 30 of the Copyright Law No. 22 of 1992, the Law Amending the Copyright Law No. 14 of 1998, the Law Amending the Copyright Law No. 29 of 1999, and the Amending Law No.52 of 2001- under the previous law the protection was for the life of author plus 30 years from the date of his death.

<sup>20</sup> Article 51/A of the Copyright Law No.22 of 1992.

<sup>21</sup> Article 31 of the Copyright Law No. 14 of 1998, the Law Amending the Copyright Law No. (29) of 1999.

<sup>22</sup> Article 53 of the Copyright Law No. 14 of 1998, the Law Amending the Copyright Law No. (29) of 1999.

<sup>23</sup> A. El Sheikh and others, "An Exploratory Study of Software Piracy in Jordan," *The Electronic Journal on Information Systems in Developing Countries* 23, no. 4 (2006).

<sup>24</sup> National Library Department, "The Protection of Copyright Office" [http://www.nl.gov.jo/arabic/office\\_a.html](http://www.nl.gov.jo/arabic/office_a.html) (2010).

<sup>25</sup> F. Sawalha, "Progress with IT not as Fast as Leadership, Private Sector wish, but Outlook Remains Positive," *Jordan Times* 02/12/2001

<sup>26</sup> Information Technology Association of Jordan, *Jordanian IT Industry Statistics 2007* (Information Technology Association of Jordan, 2009), p.3.

<sup>27</sup> Information Technology Association of Jordan, *REACH 4.0: Launching Jordan's Software and ICT Services Industry, An Updated Strategy and Action Plan for His Majesty King Abdullah II* (Information Technology Association of Jordan, 2004).



Jordan had attracted \$109,665,208 in FDI in its IT sector, as consequence of increased protection on software.<sup>28</sup> The protection of software in Jordan has attracted local and foreign investors, as well as leading large multinational IT firms like Intel and Microsoft to invest in the IT industry.<sup>29</sup> The recent trust in the Jordanian IT sector can be seen in the success made by the takeover of the Jordanian company Maktoob.com. The company was bought in 2009 by the US internet giant Yahoo!, as part of their plan to expand into the potentially lucrative Middle Eastern market.<sup>30</sup>

### 3.4 Patents

The World Trade Organization Agreement on TRIPS required its members to adopt high minimum standards for patent rights. The TRIPS Agreement left the door open for invention definition, leaving the WTO Contracting Party to define it in their nationals' law or through administrative and judicial practice. Article 2 of the Jordanian Patent law defined a Patent as 'the certificate granted for the protection of an invention.' In the same article, 'invention' is defined as 'any innovative idea, in any of the fields of technology, which relates to a product or a manufacturing process or both and practically solves a specific problem in any of those fields.'<sup>31</sup>

The TRIPS Agreement specifies under its Section 5 Part II the standards relating to patents. Article 27 of TRIPS provides that members are obligated to provide patent protection for any invention, whether products or processes, in all fields of technology without discrimination, based on the place of invention or production or field of technology. However, an exception is preserved by the Agreement allowing Members to exclude from patentability: 'diagnostic, therapeutic and surgical methods for the treatment of humans or animals.'<sup>32</sup> Additionally, the Agreement sets out under Article 28 the exclusive rights of a patent-holder to use, sell, or import any product made from these processes. The holder also has the right 'to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product.'<sup>33</sup> A Member may authorise compulsory licensing and the government use of a patent without the owner's authorisation, but only subject to a number of conditions.<sup>34</sup>

The above-mentioned provisions are based on standards and rules established by Paris Conventions, under article 2(1) of TRIPS Agreement, which states that members shall comply with Articles 1-12 and 19 of the Paris Convention. Additionally, all WTO Contracting Parties who do not adhere to this convention must respect it. The TRIPS has in general strengthened protection or extended the scope of protection by including new items within the patent protection field. A patent is to be available for any invention in all fields of technology, without discrimination as to the place of invention. Moreover, the invention should meet three conditions to be patentable: it must be new, involve an inventive step, and be capable of industrial application. Jordan's patent law provides for the same three conditions under Article 3 for an invention to be eligible for patent protection.

In 1999, Jordan promulgated a new patent law revision to enter into compliance with TRIPs requirements.<sup>35</sup> This new law abrogated the Patents and Designs Law No. 22 of 1953.<sup>36</sup> The major changes to the law are: 1) Subject to the payment of annuity fees, the term of patents is extended from sixteen years to twenty years beginning from the date of filing the application for registration pursuant to the provisions of the Law.<sup>37</sup> 2) Novelty provisions have been changed from assessing novelty on the basis of what had been disclosed in Jordan to assessment on a world-wide basis. 3) To permit the grant of patents for foodstuffs and pharmaceutical inventions. Jordan has signed the Patent Cooperation Treaty and the protocol relating to the Madrid Agreement Concerning the Registration of Marks, but ratification is still pending.<sup>38</sup>

Patents are the primary vehicle for protecting technology in most technology based-businesses. As shown above, the basic idea behind the patent system in Jordan is based on exchange for publishing details of an invention, the state grants the inventor a monopoly over his invention for a period of 20 years.<sup>39</sup> Article 3 of Jordan's Patent Law provides that any invention for which a patent right may be granted must be a novel inventive

<sup>28</sup> Information Technology Association of Jordan, *Jordanian IT Industry Statistics 2007* (Information Technology Association of Jordan, 2009), p.5.

<sup>29</sup> D. Lidstone, "Between Iraq and a Hard Place. (Special Report Jordan)," *Middle East Economic Digest* 2002.

<sup>30</sup> Jordan Times, "King Congratulates Maktoob Founders on Yahoo! Deal," *Jordan Times* 10/09/2009

<sup>31</sup> See Article (2) of the Jordanian Patent Law No.32 of 1999 (amended in 2001 by Law No.71 of 2001)

<sup>32</sup> TRIPS Agreement Article 27(3)(a)

<sup>33</sup> TRIPS. Article 28

<sup>34</sup> TRIPS. Article 33

<sup>35</sup> The Patents of Invention Law No. 32 of 1999 and its amendment by Temporary Law No. 71 of 2001 and Patents Law No. 28 of 2007.

<sup>36</sup> The first Patents and Designs Law in Jordan was approved by the Jordanian Parliament in January 1953.

<sup>37</sup> Article 17 of Patents Law No. 32 of 1999 and its amendment by Temporary Law No. 71 of 2001

<sup>38</sup> Nuria Ackermann and Economic and Commercial Office of Spain in Amman., *Estudio de Mercado. El mercado de medicamentos en Jordania* (Jrdania Red de Oficinas Económicas y Comerciales de España en el Exterior, 2008), p.50.

<sup>39</sup> Article 17 of the Patents of Invention Law No. 32 of 1999

step and capable of industrial application. However, under Article (4) of the Patents of Invention Law of 1999, some subject matter is considered statutorily non-patentable. This includes (a) discoveries, scientific theories, and mathematical theories. However, Jordan's Free Trade Agreement with the United States of America, under the Memorandum of Understanding on Issues Relating to Intellectual Property Rights Article 5, requires Jordan not to exclude 'business methods or computer-related inventions'. Article 5 stated that Jordan shall take all steps necessary to clarify that the exclusion from patent protection of mathematical methods in Article 4(B) of Jordan's Patent Law, does not include such 'methods' as business methods or computer-related inventions. (b) Inventions that are contrary to public order and morality are not eligible for patent protection.<sup>40</sup> Morality and public order must be interpreted in a broad sense to include morality and public order as taught under Islam in accordance with the Koran; (c) Diagnostic, therapeutic and surgical methods necessary for the treatment of humans or animals; (d) Plants and animals other than micro-organisms; and (e) biological processes for the production of plants or animals other than non-biological and microbiological processes.

### *3.4.1 Patent Registration*

If an inventor chooses to apply for a certificate of invention, an application must be filed with the Registrar. The application must be accompanied by a detailed description of the invention, including a clear and complete disclosure sufficient to enable a person skilled in the art to construct it. The application must also bear an indication by the inventor of the best means of carrying out the invention known at the filing date, or at the priority date of the application. If the applicant applies for the patent in another country, they will be required to submit complete information about any patent applications filed in those countries for the same invention before or at the same time, and the results of such applications. If the applications filed are related to biological materials or micro-organisms, the applicant will provide proof of having submitted samples to any of the specialised facilities. Finally, the application should include a brief summary description of the invention, the new specifications for which protection is sought, the name of the inventor and the applicant and their addresses for purposes of publication in the Official Gazette. However, once an application for the grant of a patent is filed, the Patent Office will examine its compliance with formalities and patentability provided for under the Patent Law.

A novelty examination takes into consideration any specification previously lodged with the Patent Office or any patent previously registered. The Patent Office may require whatever amendments it deems necessary to bring the application into conformity with the Law. If the applicant does not comply with the requirements of the Patent Office as authorized by the Registrar of Patents, the Registrar will reject the application. Under Article 13.b/1, the amending law identified the duration of temporary protection for the patent application to be the period between the acceptance date of the application and the granting date of the patent, giving the right to use the invention and legally act against any infringement on the invention.

A priority system in respect of certain foreign applicants has been adopted by Jordan. The new law established the rule of priority claim when filing a patent application. Under Article 10, the applicant may include a notice of priority claim of a national regional or international application, which the applicant or their predecessor have previously filed in any state related to Jordan by a bilateral or multilateral agreement for the protection of industrial property; provided that the application is filed in Jordan within a period of no more than 12-months calculated from the day following the filing day of the first application.

An applicant is entitled to appeal against the requirements and conditions of the Patent Office by means of submitting a petition to the High Court of Justice, within 60-days as from the date of the Registrar's decision. Approved applications are published in the Official Gazette and are open to public inspection. Any party may oppose the grant of a patent within three months as from the date of publication. If no opposition to the grant of a patent is filed, the letters patent is granted. The Patent rights are freely transferable, but notice of the transfer must be published in the Official Gazette and properly registered with the Patent Office so that they may become valid as third parties.<sup>41</sup>

The rights conferred by a patent on the registered patentee expire on the lapse of the protection period as prescribed by the Law, lawful assignment of the patent rights, final court decision to this effect, or non-payment of annuity fees within six months after the respective due date.<sup>42</sup>

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<sup>40</sup> Article 4 of the Patents of Invention Law No.32 of 1999

<sup>41</sup> Article (28) of Patents of Invention Law No. 32 of 1999 and its amendment by Temporary Law No. 71 of 2001

<sup>42</sup> Article (30) of Patents of Invention Law No. 32 of 1999 and its amendment by Temporary Law No. 71 of 2001

### *3.4.2 Foreign Investment and Jordan's Patent Law*

The amendments to the Patents of Invention Law No. 32 of 1999 by Temporary Law No. 71 of 2001 came as a response to criticism for granting the employee a legal right to claim ownership of the programme, particularly from foreign investors in the IT sector. The Jordan Times newspaper reported on 17 October 2001 that information technology corporations had long complained that if an employee had a legal right to claim ownership of the programme on which they had worked even marginally, this would lead IT corporations to be discouraged from investing in Jordan.<sup>43</sup> The government amended Article 5 by eliminating the provisions of the paragraphs (C and D) referring to the ownership of the Patent right, replacing them with new formulation. The previous provisions of paragraph (C 1-2) gave the employer the right to a patent, if the invention is a result of an employment contract which requires the employee to carry out a particular inventive activity, unless otherwise stipulated by contract. In addition, if the economic value of the invention is not foreseen by the employer and employee upon concluding the contract, then the inventing employee will be entitled to a fair compensation proportionate to such value. If the two parties fail to reach an agreement regarding the amount of compensation, the dispute will be determined by the competent court.

Comparing the old provisions of old paragraph (c), the new paragraph gives more rights to the employer to ownership of the patent, if the invention conducted by the employee during his employment relates to the activities or business of the employer, or if the employee uses in his attempt to conduct his invention the experiences, business, information, instruments or the articles of the employer under his own disposal, unless the employer and the employee agreed in writing to give the right of patent to the latter. The amended paragraph (d) gives the employee the patent right if the invention is not related to the activities or business of the employer and the employee does not use in his attempt to create this invention the experiences, information, instruments, or raw materials of the employer, under the employee's own disposal, unless there is prior written agreement between the employee and the employer which give the right of patent to the latter.

Foreign investors often request that host governments strengthen the legal framework for IPRs, and this issue is particularly sensitive for trade in electronic and pharmaceutical products, because these products are easily pirated. The scope and strength of IPR protection differ significantly among host economies. Before joining the WTO Jordan's patent law, for example offered pharmaceutical firms protection for the 'process' but not for the end product. Therefore, altering the process of production by companies operating in Jordan would make it legal. As result, in 1999, the American pharmaceutical industry, had '[accused] the Jordanian government of lacking transparency in its drug manufacturers' registration process, discriminatory pricing, and protectionist policies in public procurement'.<sup>44</sup> However, the case was changed when Jordan entered WTO and free trade agreements with the US and EU, which obligated Jordan to amend its patent laws regarding the pharmaceutical sector into conformity with the WTO's TRIPS Agreement requirements.

The United States and the European Union have used Bilateral Investment Treaties and Bilateral Trade Agreements to build more extensive protection for intellectual property than that set out in the WTO TRIPS Agreement.<sup>45</sup> Jordan is one of those countries that have signed a Bilateral Free Trade Agreement with the United States. It is a wide-ranging agreement containing provisions on trade in goods, in services, intellectual property rights, government procurement, labour, electronic commerce, and environment. As a general point, it is clear that the United States-Jordanian Agreement has constructed a model that meets perceived problems with TRIPS and resolves some of the ambiguities of TRIPS.<sup>46</sup>

The United States-Jordan Free Trade Agreement contains a Memorandum of Understanding on Issues Related to the Protection of Intellectual Property Rights (MOU). To protect their business professionals, the United States, through the MOU, set further prescriptions and standards on IPRs, which Jordan has to meet. For instance, the exclusion from patentability by Jordan's Patents law of mathematical methods has to be clarified by the law to avoid the exclusion of business methods and computer-related inventions.

The MOU also required Jordan to raise its criminal penalties to JD 6,000, so as to meet its obligation under Article 4.25 of the Free Trade Agreement to ensure that statutory maximum fines are sufficiently high to deter future acts of infringement. Furthermore, paragraph (F) of Article 4 of Jordan's Patent Law has been removed to comply with the country's commitments under the MOU. The MOU required Jordan to take all steps necessary to 'clarify that Article 4(F) Jordan's Patent Law shall be understood to exclude from patent protection inventions whose application for registration for the first time outside Jordan has been filed by the owner and published more than eighteen months prior to the date of filing for registration in Jordan. Thus, an inventor, who outside of Jordan

<sup>43</sup> Jordan Times, "It All Ties in," *Jordan Times* 17/10/2001

<sup>44</sup> G. Taher, "Pharmaceutical Industry Concerned over WTO's Patent Requirements," *Jordan Times* 13/05/1999

<sup>45</sup> P. Drahos and H. Smith, *Bilateralism in Intellectual Property* (Oxfam, 2001).

<sup>46</sup> Ibid.



files but then withdraws a patent application prior to publication, shall be permitted to file for a patent application in Jordan.<sup>47</sup>

Oxfam International claims in their Briefing Paper no. 102 “All Costs, No Benefits” that the legal reforms made by Jordan to meet the US-Jordan FTA obligations “has not encouraged FDI into Jordan’s local drug industry,...[that] there was hardly any investment in Jordanian pharmaceutical manufacturing, [and] ...furthermore, local generic companies complain that multinational pharmaceutical companies neither signed more licensing agreements nor transferred technology to local manufacturers.”<sup>48</sup>

This claim has been contradicted by Ryan a director of the Creative and Innovative Economy Center at the George Washington University Law School. He stated that “unfortunately, Oxfam does not explain that the paucity of pharmaceutical manufacturing investment owes to the nature of the product—high-value but small and inexpensive to ship, which means that drug companies are not in general big global manufacturing investors. Second, Jordan is a small pharmaceutical market in a region riddled with pharmaceutical import barriers, so there is little business reason to invest in manufacturing capacity in the country.”<sup>49</sup>

Moreover Ryan shows that pharmaceutical innovator-company FDI is taking place in all links in the value-chain: Clinical Research and Development (R&D) went from zero to substantial; licenses to manufacture, package, and distribute have been granted to four major local companies; 78 innovative drugs entered the market after reforms with an associated nearly \$4 million in medical education.<sup>50</sup> This study also reported that by 2004 medical tourism in Jordan had grown to about \$650 million. By 2005 medical tourism exceeded \$1.3 billion and represented a substantial proportion of all Jordanian tourism.<sup>51</sup> The study also revealed that Multinational clinical R&D introduces the newest drugs and cutting-edge medical knowledge to Jordanian doctors and health administrators. In addition, local company good manufacturing practice production contributes and assures that quality drugs are supplied in Jordan, a condition that does not exist in many developing countries around the world.<sup>52</sup> He has also noted that during the Jordanian IPRs post-reform, Jordanian pharmaceutical exports have grown from about \$49 million to more than \$280 million, making Jordan now the leading Arab drug exporter.<sup>53</sup>

### 3.4.3 Infringement and Penalties

Article 12 of Jordan’s Patent Law sets out what constitutes infringement. No person may, without the authorisation of the patentee, make, use, offer to sell, sell or import the patented product; or use the patented process or use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

The patent owner has the right to institute court proceedings against any person infringing the patent. In addition, the owner has the same right against any person performing acts which make it likely that infringement will occur, become imminent and is likely to suffer irreparable harm if it occurs, or fear of the disappearance of evidence or destroyed<sup>54</sup>. However, the law does not set a time limit on how long the patent owner has the right to institute court proceedings, when an infringement has occurred. The patentee can institute either civil or criminal action. Penalties for any person who commits, attempts to commit, aids or incites others to commit the crime of infringement, are imprisonment for a period not less than three months and not more than one year, or a fine of not less than one hundred (100) Jordanian Dinars and not more than three thousand (3000) Jordanian Dinars, or both.<sup>55</sup>

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<sup>47</sup> Memorandum of Understanding on Issues Related to the Protection of Intellectual Property Rights under the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Paragraph 6.

<sup>48</sup> International, Oxfam. *All Costs, No Benefits: How Trips-Plus Intellectual Property Rules in the Us-Jordan FTA Affect Access to Medicines*: Oxfam International Briefing Papers 201, 2007, p.15

<sup>49</sup> M.P. Ryan, *Intellectual property reforms, pharmaceuticals, and health competitiveness in Jordan: misunderstanding and misinformation from Oxfam International* (The George Washington University Law School, 2007), p.5.

<sup>50</sup> M P Ryan, *Pharmaceutical Foreign Direct Investment, Technology Transfer, Health Competitiveness, and the Jordan-United States Free Trade Agreement* (The George Washington University Law School Washington, DC., Creative and Innovative Economy Center, 2007), p.22.

<sup>51</sup> *Ibid.*, p.23.

<sup>52</sup> *Ibid.*

<sup>53</sup> M.P. Ryan, *Intellectual property reforms, pharmaceuticals, and health competitiveness in Jordan: misunderstanding and misinformation from Oxfam International* (The George Washington University Law School, 2007), pp.3-6.

<sup>54</sup> Article 33 of Patents of Invention Law No. 32 of 1999 and its amendment by Temporary Law No. 71 of 2001

<sup>55</sup> Article 32 of Patents of Invention Law No. 32 of 1999 and its amendment by Temporary Law No. 71 of 2001

### *3.5 Protection of Varieties of Plant*

Jordan had no legislation to protect varieties of plant before the country's accession to WTO membership<sup>56</sup>. The TRIPS obliged WTO member countries to protect plant varieties either by patents or by an effective *sui generis* system, or any combination thereof. Obligated to comply with this, Jordan has established the Act of Protecting New Varieties of Plants Law No. 24 of 2000. This law set the standard rules to protect plants and forms the basis of food security.

### *3.6 Trademark Law*

Article 15 paragraph (1) of the TRIPS Agreement sets the subject matter that WTO members must protect: 'any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs – in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs – shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make available for registration depending on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.'

On 22 September, 1999, Jordan amended trademark law No.33 of 1952 to meet the international standards of the TRIPS Agreement<sup>57</sup>. The most substantial provision that was added to the amending law concerns service marks. Since the previous Trademark Law did not contain any specific rules applicable to the registration and protection of service marks, banking institutions, restaurants, hotels, and other service establishments did not possess any effective means of preventing others from infringing their service marks. By contrast, the new trademark law granted protection for service marks, essentially for the Jordanian tourist industry, considered to be the country's second largest source of income. Protection of service marks will send a signal to foreign investors interested in investing in the hospitality industry that their service marks are protected by law.

The 1999 amendment to the trademark law allows for the assignment of marks without business, which was not possible under the previous law. The law under Article 19.1 allows transferring, mortgaging or assigning a mark without requiring the business to implement action. The procedures for the transfer of ownership of a trademark, its hypothecation, attachment and any other legal acts related thereto, are to be determined in instructions issued by the Minister of Industry and Trade for this purpose, which will be published in the Official Gazette<sup>58</sup>.

All trademark licensing or assignment arrangements must be registered with the Registry of Trademarks. The period of registration under Article 20 of the amendment law has been increased from seven to ten years. Registrations which took place before the amendment are renewable for additional ten-year periods. Registration of a trademark will be cancelled automatically if a renewal application is not filed within six months from the due date. The assignment provisions have been simplified, and trademarks may now be assigned with or without goodwill; the period of non-use that could be used as a basis for cancellation has been increased from two years to three years following registration. The penalties for infringement have also been increased.

Essentially, the law confers exclusive rights for registered patents and correspondingly invokes both civil and criminal sanctions in the event of infringements. A trademark registration is effectively *prima facie* evidence of the validity of the rights of the trademark and all subsequent assignments. Amongst other things, the new amendments introduce protection for well-known trademarks, geographical indication, and streamlining of the registration procedure.

Certainly, the protection of well-known marks has been a major concern in international economy. If they were left legally unprotected it could lead to substantial economic losses for business people. Before the reform of the intellectual property laws, the protection of well-known marks was an area of concern in Jordan. This was due to the lack of explicit provisions preventing the registration of well-known marks. Local Jordanian companies filed applications to register well-known marks under their own names.<sup>59</sup>

<sup>56</sup> World Trade Organization, *Report of the Working Party on the Accession of the Hashemite Kingdom of Jordan to the World Trade Organization* (World Trade Organization, WT/ACC/JOR/33, WT/MIN(99)/ 9, 1999), paragraph 220, p57.

<sup>57</sup> The first Trademark Law in Jordan was approved by the Jordanian Parliament in June 1952. This Law was amended by Law No. 25 of 1957, Law No. 34 of 1999, Law No. 29 of 2007 and Law No. 15 of 2008

<sup>58</sup> Article 19.5 of the Trademarks Law No. 33 of 1952

<sup>59</sup> B. H. Malkawi, "The Intellectual Property Provisions of the United States-Jordan Free Trade Agreement: Template or Not Template," *The Journal of World Intellectual Property* 9, no. 2 (2006).

The amended trademark law recognises the concept of 'well-known' marks. Article 8.12 prohibits the registration of a trademark identical or similar to, or constituting a translation of, a well-known trademark, for use on similar or identical goods to those for which the original is well-known, and whose use would cause confusion with the well-known mark, or for use on different goods in such a way as to prejudice the interests of the owner of the well-known mark and lead to a belief that there was a connection between its owner and those goods. In the same way, marks similar or identical to the honorary badges, flags, and other insignia as well as the names and abbreviations relating to international or regional organisations, or those that offend traditional Arab and Islamic values may not be registered. However, the law requires that well-known marks should be well known to the public consumer in connection with the sector relevant to the well-known marks in Jordan. The law requires the above as a condition of granting protection to well-known trademarks. It would not be wrong to say that in the context of trademark licensing and assignment transactions there must be some degree of state intervention to protect the original owner's rights.

The Jordanian judiciary has applied these principles for protection of well-known products in case No. 43/97, in which the High Court of Justice emphasised that the Jordanian Trademarks law grants protection to well known trademarks, even though the trademark is neither registered nor used in Jordan.<sup>60</sup> This case was brought by American company PEPSICO, Inc, to the High Court when the Trademark Registrar had registered a trademark (Mountain Dew) in respect of goods in class 32 to a Jordanian company. The High Court of Justice iterated that the decision of the Trademark Registrar was against the provisions of the law, since it appeared that the American company had used the trademark (Mountain Dew) in many countries and, therefore, this trademark became known to consumers. In supporting its decision, the High Court of Justices found out that the trademark (Mountain Dew) is identical to the American company's trademark, whether in letters, wording, hearing, listening, spelling or purposes, and, all of these elements could make the Jordanian customer confused by believing that the two trademarks have the same reference and source. Likewise, the fame of the trademark gives it protection even if it is neither used nor registered. The protection is not only for the trademark but also for the public who must neither be deceived nor misled into thinking that the goods are produced or belong to the defendant. Therefore, the reasons for the appeal apply to the Registrar's decision and the decision is contrary to the provisions of the Law, thereby, it must be quashed. The High Court of Justice decided to quash the decision.

The geographical indication (GI) section in the TRIPS Agreement consists of Articles 22, 23 and 24. Article 22 sets out the definition of geographical indication and the general standards of protection which must be available for every geographical indication. Articles 23 and 24 deal with additional protection and the need for future negotiations aimed at increasing protection for wines and spirits. Until the end of 1999, geographical indication signs, used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin, such as champagne (the wine comes from the Champagne region of France) were not covered by specific legislation under Jordanian law, which covered the geographical name only under trademark law<sup>61</sup>. Perhaps not including geographical indications in Jordanian Trademarks Law has a religious or cultural origin, as 75% of the Jordanian population are Muslims, whose religion prohibits alcohol.

Jordan has amended Articles 2, 25, and 37 of the Jordanian Trademark Law No. 33 of 1952 by Law No. 15 of 2008. The amended Article 2 has added the following to the definition of a well-known trademark, "taking into consideration the regulations issued by the competent minister in this respect and in accordance with the international agreements related to well-known trademarks to which Jordan is a member." Paragraphs 2 and 3 of Article 25 have been cancelled and replaced with the following, "the trademark owner may grant a license, as per a written contract, to one or more persons to use the trademark for some of all of the products or services for which the trademark has been registered. Also, the trademark owner shall have the right to use it unless otherwise is agreed upon. The licensing period must not exceed the protection period of the registered mark." In addition, the new amendment relates to Paragraph 1 of Article 37, has increased the maximum fine on trademark violators from JD 3000 to JD 6000. In addition, Article 38/2 states that anyone who sells, offers for sale or possesses for the purpose of selling goods bearing a trademark which violates IP rights shall be penalized with a fine of no less than JD 50 and no more than JD 500.

#### **4. Protection and Enforcement of Intellectual Property Rights**

The responsibility for adopting the system that protects foreign investor's property lies of course in the first instance with the legislators and those politically responsible. A huge responsibility lies, however, with the Courts.

<sup>60</sup> The High Court of Justice decision No. 2, case No. 43/97 issued on 2/7/1997.

<sup>61</sup> To protect geographical indication and to comply with TRIPS, Jordan established a Geographical Indications Law No. 8 of 2000, published in Official Gazette No. 4423 dated 2.4.2000; See also World Trade Organization, *Report of the Working Party on the Accession of the Hashemite Kingdom of Jordan to the World Trade Organization* (World Trade Organization, WT/ACC/JOR/33, WT/MIN(99)/9, 1999), p54.

In a way, they are the last and most important link in the enforcement chain. The role of the judiciary in the context of intellectual property would be to guarantee the existence and the scope of the rights in the protected subject matter. It can also ensure that the rights can be properly enforced and infringements punished.

In cases of a known infringement of trademark, copyright, or related rights, the rights holder affected by such an infringement has the right to institute court proceedings to order compensation from the offender. However, there are some inadequacies in the compensation mechanism under Jordan's Copyright Law, which need to be amended in order to clarify such issues. The Copyright Law uses the term 'fair compensation' without setting out what kind of mechanism should be used to calculate such compensation. In addition, the law states that 'the adjudicated compensation... [shall be] considered a privileged debt with respect to the net price of the sale of the objects which were used to infringe his rights and the sum of money seized in the lawsuit.'<sup>62</sup> That is, the Copyright Law calculates damages on the basis of the infringer's profits plus amounts seized from the infringer. Such a calculation may not be adequate to compensate the right's holder.<sup>63</sup>

The TRIPS Agreement provides minimum standards for the enforcement of intellectual property rights. The enforcement measures must include civil and administrative remedies, border (customs) measures and criminal remedies. Section 1 of Part III sets out the general obligations of WTO Members.

According to Article 41.1, members are required to ensure that enforcement procedures are available under their domestic law 'so as to permit effective action against any act of infringement of intellectual property rights covered by [the TRIPS] Agreement'. These enforcement procedures must include 'expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.' Also, these procedures must be 'applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse'. These procedures provide for an internationally agreed minimum standard which Members are bound to implement in their domestic legislation. Therefore, if the provisions in the legislation are adequate but the enforcement mechanisms fail, there is a risk that the country will be in breach of the obligations under the Agreement and could ultimately be subject to trade sanctions.

The new intellectual property laws that have been implemented have faced some difficulties in the early stages of enforcement. These difficulties are due to three issues. The first of these issues is the lack of expertise among the Judiciary in dealing with the new intellectual property regime. The second is an increase in the number of cases seen by the courts, with a limited availability of juries. This has led to dockets being full and different courts of jurisdiction depending on the IPRs involved or the claim that is raised. Therefore, the increased workload and lack of expertise shows the need for a creation of specialised intellectual property courts<sup>64</sup>.

## **5. Conclusion**

The government of Jordan competes fiercely to attract FDI, in order to bring new technologies, jobs, management skills and marketing know-how. The system established by Jordan since the mid-1990s for the protection of IPRs has been able to provide local and foreign nationals with a certain degree of protection. It also offers new challenges to the Jordanian legal system. Jordan's willingness to change its legal system and provide a legally favourable investment base is demonstrated by the multinational corporations who are increasingly attracted to invest. Especially, those foreign investors from leading international IT firms like Intel, Microsoft and Yahoo! who invest in Jordan's IT industry. By 2007 Jordan had also attracted \$109,665,208 in FDI into its IT sector, almost a 16 percent (\$79,600,000) increase over 2003.<sup>65</sup>

The author suggests that Jordan needs to have a method to consistently review and amend its IPRs legislation and a sound legal and administrative framework for protection of IPRs. To further encourage FDIs, the country requires a means to ensure their enforcement through effective, transparent, and accountable institution with adequate financial and technical resources.

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<sup>62</sup> Article 49 of Copyright Law No. 22 of 1992, amended by the Law No. 9 of 2005.

<sup>63</sup> B. H. Malkawi, "The Intellectual Property Provisions of the United States-Jordan Free Trade Agreement: Template or Not Template," *The Journal of World Intellectual Property* 9, no. 2 (2006).

<sup>64</sup> The basis for the establishment of specialised courts is available under Articles (99 and 110) of the Jordanian Constitution. See N. Kayyali, "Jordanian Experience in the Protection of Intellectual Property Rights and the Need for Specialized Intellectual Property Courts," in *International Conference on Judicial Capacity Regarding Intellectual Property Rights - Enforcement and Dispute Settlement* (Washington, D.C.: International Intellectual Property Institute, 2002).

<sup>65</sup> Information Technology Association of Jordan, *Jordanian IT Industry Statistics 2007* (Information Technology Association of Jordan, 2009), p.3.