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TITLE:

The LegalChallenges which should be Considered by GCC Countries, when Joining International Conventions and Treaties on Intellectual Property

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Abstract

This paper has as its main objective to identify and to critically analyze the potential legal challenges which may be encountered by the GCC countries in the course of accession to international treaties and conventions on intellectual property. With the advent of globalisation, intellectual property has assumed an increasingly important role in global and regional trade. Knowledge-based intangible IP products (patents, trademarks, copyright, designs and related products) now constitute an important part of globalized trade transactions. Global IP transactions, which transcend jurisdictional borders, continue to grow and evolve at a very rapid pace in line with innovations in modern technology. Increasingly considered to an important factor in mainstream national economic strategy and development planning, intellectual property has also emerged as a key element in trade diplomacy (bilateral, regional and multilateral treaty relations). The discussion in this paper is set within the context of the main conference theme of: '*The significant role of intellectual property in the economic development of GCC countries*'. The author's main aim is to critically evaluate the substantive and procedural issues and legal challenges which GCC countries could reasonably be expected to encounter within the framework of international IP agreements.

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1. Introduction

The modern era with its process of globalization has witnessed a rapid expansion in the production (and corresponding trade) in intangible knowledge-based informational resources. Increasingly at the forefront of this global phenomenon is the production of (and trade in)intellectual property (IP) products such as patents, copyright, trademarks, registered designs, trade secrets and related products. Inherent in the intangible nature of IP products is the ease of accessibility and unauthorised transmission by third parties - hence the need to put in place legal, regulatory and enforcement regimes both nationally and internationally with a view to combating abuses such as unauthorised copying and counterfeiting. The advent of the internet in the modern age,coupled with the increasing internationalization of trade in IP products, has further compounded the problem of infringements both nationally and internationally. From a legal perspective, the need to put in place effective enforcement mechanisms as part of national, regional or global IP regimes has become an important policy imperative. International efforts aimed at protecting inventors, creativity and creativeness(as well as ownership rights in IP products generally)go as far back as 1883 with the signing of the *Paris Convention for the Protection of Industrial Property*.¹Since then there have been a number of other multilateral initiatives aimed at promoting a global IP regulatory regime, ranging from the Berne Convention of 1886 to the current TRIPS Agreement. With the advent of the World Intellectual Property Organization (WIPO) in 1967 came the establishment of an international institutional framework for the global IP regime.

At the regional level, the GCC Patent Regulation of 1992 (as amended) represents an important example of regional efforts aimed at coordinating and harmonizing the national policies of Member States with the objective of achieving consistency and uniformity in the formulation, implementation, monitoring and enforcement of IP policies and legislation. Having achieved its policy aspirations regarding the establishment of a regional IP regulatory framework, the GCC is now rightly turning its attention towards the forging of global IP alliances through trade diplomacy leading to the conclusion of bilateral agreements and accession to multilateral conventions.It is evident from this new shift in emphasis towards the internationalization of the GCC's IP focus that the governments of Member States clearly take the view that IP has an important and significant

¹The Paris Convention extended international protection in member states to patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, as well as the repression of unfair competition.

future role to play in the economic development of GCC countries.² It could even be argued that this new focus in turn signifies a slight shift from resource-based to knowledge-based development - i.e., an economic diversification strategy involving a shift from natural resources (oil and gas) to the production of and trade in knowledge-based IP products, this reducing the region's over-reliance on petroleum resources.

The new focus aimed at the internationalization of the GCC's IP regime is entirely in line with global trends based on the increasing internationalization of the legal, regulatory and institutional framework for IP as evidenced by the advent of WTO/ TRIPs and WIPO. For the GCC countries international accession to bilateral and multilateral IP agreements will entail significant legal implications for the GCC IP regime both of in terms of the substantive norms and rules governing IP protection and the procedural processes applying to the acquisition and enforcement of ownership rights in IP products. It is for this reason that this paper sets out to identify and to critically analysis and evaluate the legal challenges that lie ahead for the GCC's internationalization strategy on IP with a view to promoting an awareness of such challenges amongst GCC IP policy makers and also to positing recommendations and suggestions as to how best to approach the challenges ahead. One of the key questions for which the author will seek an answer is what lessons can the GCC countries learn from previous internationalization efforts based on bilateral treaties and multilateral conventions?

In its quest to make a contribution to the intellectual scholarship on the GCC's global IP strategy the organizational structure of the paper will incorporate the following key areas in its contents: Sections 2 and3 of the paper will examine the key legal issues and challenges which GCC Member States are likely to encounter as part of the negotiation and accession process to bilateral treaties or multilateral conventions on IP protection. As part of this discussion these sections will highlight some of the substantive norms and procedural aspects of the global IP regime which GCC countries need to be mindful of. Section 2 will also include an overview of some of the key economic, social, cultural and policy considerations and interests which could inform the negotiation of international IP agreements and the challenges which may be encountered in attempting to embed such interests into an international legal framework for IP regulation.

One of the key challenges for GCC countries will obviously be to ensure that GCC accession to international agreements is achieved on the basis of a stakeholder having a significant

²It is now widely acknowledged that IP has a very important role to play in the economic development of any nation. The UK government, for example, has stated that "intellectual property is a critical component of our present and future success in the global economy": cited in Dutfield, G. and Suthersanen, U. (2008), Global Intellectual Property Law, p.5 (*Edward Elgar Publications*).

interest in the production, export and protection of IP products rather than just being consumer of such products along with accompanying compliance obligations. A successful economic diversification strategy will entail a shift from resource-based development to knowledge-based development involving production and trade in intangible knowledge-based products such as IP as well as services. GCC policy makers will thus need to approach the negotiation of international IP agreements with a strategy which has this policy imperative in mind. The legal architecture of the documents which emerge from such negotiations in the form of international agreements on IP will also have to reflect this policy imperative thereby enhancing stakeholder value for GCC countries. Discussed in Section 3 of this paper is the key legal challenge of ensuring that ensuing international agreements are not in conflict with the core norms of the GCC IP regime as enshrined in the GCC Patent Regulation of 1992 (as amended) and its implementing byelaws.

Section 4 of the paper progresses the discussion by examining the legal challenges of implementation and enforcement which GCC countries are likely to encounter following negotiation and accession to international IP agreements. It highlights legal problems and challenges which may arise from inconsistencies between the provisions of international IP agreements (to which GCC countries have become signatories) and the substantive and procedural norms of the GCC IP framework - i.e. problems arising from a conflict of laws perspective involving inconsistencies between the international IP regime and the GCC IP regime. These conflict of laws questions may range from substantive norms such as inconsistencies in the novelty standard required for registration of a work (i.e. absolute universal novelty vs. local novelty), to procedural requirements for patent registration such as differences in the priority period or in the validity period; alternatively, the conflict between the international IP agreement and the GCC IP regime could relate to the latter's requirement for Shariya compliant patent registration.³

It will become evident as part of the discussion in this section that a conflict of laws situation is in itself symptomatic of a clash of cultures, traditions, values and belief systems as well as economic, social and policy priorities (the law being an embodiment of all of these interests). It is thus important that negotiators are mindful of this at the start of the negotiations with a view to adopting strategies which can subsequently minimise such a conflict during the implementation stage. Included in the discussion will be challenges relating to the monitoring mechanism for IP compliance and enforcement, the conflicts of laws and of jurisdictions, and challenges associated

³See, for example, Article 2/1 of the 1999 amendment to GCC Patent Regulation of 1992 which provides: "*To qualify for a patent according to the provisions of this Regulation and its Bylaws, an invention shall be new, involves an inventive step, and industrially applicable. It shall not conflict with the laws of Islamic Shariya, or public rules of conduct observed in the Cooperation Council States,...*" (emphasis added).

with the international recognition and enforcement of foreign IP judgements and arbitral awards. The discussion will also examine challenges associated with the establishment and functioning of an effective institutional framework, including capacity building (legal expertise in international IP enforcement).

The concluding section rounds up the discussion by charting the way forward through a set of recommendations aimed at addressing some of the challenges that lie ahead in the GCC's quest for the internationalization of its IP regime.

2. Negotiation and Accession by GCC Countries to Bilateral Treaties and Multilateral Conventions on Intellectual Property: Key Legal Challenges.

As indicated in the introductory section of this paper, knowledge-based intangible products are now seen to be the key factor for promoting development as national economies move away from natural resource-based development models through diversification strategies based on trade in services. As a result of this policy re-orientation the fraction of total economic output which is accounted for by intangible or conceptual goods as opposed to physical production has grown exponentially. This new trend has been very aptly summarized as follows:

"... in another era, a nation's most valuable assets were its natural resources ... in the information economy of the 21st century, the most priceless resource is often an idea, along with the right to profit from it."⁴

IP products have been at the forefront of this shift in emphasis from the production of physical goods and materials to knowledge-based value creation founded on ideas and technological innovations. In the internationalized markets of the modern era successful new products are valued and cherished by a global customer-base not such much on the grounds of physical attributes but because such products (e.g. iPad; iPhone, Facebook, social communication networks, etc) represent an embodiment of ideas and ground breaking technological innovations. The inventiveness, originality and novelty of a new idea or technology, and the right to profit from it, will of course need legal protection from infringements through the establishment of an appropriate and effective legal and regulatory framework. Hence the globalization of the market for IP products has in turn led to the internationalization of the legal and regulatory framework governing the IP regime.

The internationalization of IP regimes through bilateral and multilateral agreements aimed at the harmonization of national rules, as well as IP registration and enforcement processes, offers the

⁴Kanter, J., "A New Battlefield: Ownership of Ideas", *International Herald Tribune*, 3 October 2005.
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prospect of many potential benefits to all countries involved in the process. The internationalization process ensures that IP products can be traded globally hence contributing to the economic development of countries with a well-managed and well-regulated IP regime, while offering in the process global protection to the creative owners of IP products. While the potential advantages and benefits stemming from the internationalization of trade in IP products are admittedly self-evident, there are also many challenges and potential pitfalls which organizations such as the GCC ought to be mindful of when embarking on the internationalization process. In this section we identify and critically examine some of the important legal challenges which GCC countries are likely to encounter at the negotiation and accession stages as the organization seeks to establish bilateral and multilateral IP trading partnerships in the years ahead.

We believe that one of the main advantages which the GCC has when seeking international IP partnerships lies in its well-articulated regional IP regime which has been embedded into GCC Patent Regulation of 1992 (as amended) with a great deal of clarity, foresightedness and prudence. It is evident from a reading of the regulation what the key policy aspirations of the GCC countries are regarding the regional IP regime. These can be summarized in terms of setting a very high standard for patent registration (absolute universal novelty as opposed to local novelty⁵), a high standard of protection (validity period of 20 years from application filing date⁶) coupled with the promotion/ protection of a cultural and religious interest (compliance with *Islamic Shariya*⁷). It could thus be argued that these provisions taken together ensure a robust and rigorous patent regime while seeking to protect vital cultural and religious interests.

The key advantage which the GCC has in approaching international partners for the negotiation and conclusion of IP agreements (or accession to such agreements) is that all Member States of the GCC already have a common position which is embodied in the GCC Patent regulation. The key legal challenge for the GCC will be to ensure that the international IP agreement which ensues from bilateral or multilateral negotiations is in line with the main aspirations of the GCC Patent regulation - i.e. that the legal provisions and terms of the bilateral treaty or multilateral convention on IP are not in conflict with the key benchmarks of the GCC IP regime. The guiding principle in formulating an effective and sustainable international IP agreement should be a community of interests - i.e., all stakeholders should have common aspirations and values which require international legal protection.

Whilst this is undoubtedly a laudable objective in principle, it can be quite difficult to achieve in practice due to the varied and sometimes conflicting interest of the signatories to

⁵See Procedures of the GCC Patent Office.

⁶Article 15 of GCC Patent Regulation 1992 (as amended).

⁷Article 2/1 of GCC Patent Regulation 1992 (as amended).

international agreements. Overcoming such conflict of interests in the negotiation, formulation and drafting of the terms and conditions of any international IP agreement is a legal challenge which GCC policy makers will need to confront and overcome at every stage of the trade diplomacy process. A possible outcome of an international IP agreement which emanates from trade diplomacy in which conflicts of interest have not been well managed is that its terms and provisions could suffer from in-built tensions. Such in-built tensions could arise, for instance, from an overzealous desire by both parties for compromise without carefully thinking through the long term implications and consequences of such compromises. The end result would be confusion, legal uncertainty and inconsistency in the application of international treaty provisions. A far more serious threat when dealing with strong trading partners is that the GCC IP context could be completely ignored with the result that GCC IP rules, norms and procedures are ultimately disregarded in the formulation of the final legal instruments which emerge from international commercial negotiations and trade diplomacy.

The rapid growth in communications technology, including internet publications and file-sharing, has exacerbated international trade conflicts or clashes of interests and conferred on such conflicts an increasingly cross-cultural dimension. For example, a multinational corporation may seek to register a design or symbol as a purely economic right in pursuance of international protection available under a bilateral or multilateral treaty instrument. However, the granting of such protection may ignore the fact that a group of people already have a legitimate unregistered claim to the design or symbol on historic, cultural or religious grounds, or on the basis of customary law. GCC policymakers, negotiators and legal counsels will need to inculcate and to promote a culture of vigilance and constant awareness in order to ensure that international legal instruments (bilateral treaties and multilateral conventions) to which the GCC accedes do not undermine existing or legitimate local claims to protection of historic IP products such as cultural symbols and designs.

One of the legal implications of global trade diplomacy through the conclusion and accession to international IP agreements of which the GCC countries need to be mindful is the concept of "*localized globalism*". This refers to a situation where local conditions will need to be changed and adapted to international influences through implementation of the terms and conditions of bilateral treaties or multinational conventions – e.g., through domestic implementation of the WTO's TRIPS Agreement.⁸ In other words, *localized globalism* entails the localisation or domestication of international norms and rules on IP protection. This in turn could imply significant changes to local IP laws of GCC countries or to the GCC patent regime. The question which GCC

⁸Dutfield, G. and Suthersanen, U. (2008), p.3.

policy makers and negotiators of international IP partnership agreements will thus need to constantly ask themselves whether there is any necessity on their part to sign up higher and more stringent standards of IP protection which may entail making such legislative changes. Will the higher international standards, for instance, hinder technical innovation or technological adaptation by users of technology in GCC countries? Or will the adoption of high standards of IP protection through accession to bilateral and multilateral treaties lead to the imposition of international obligations on GCC countries which could ultimately restrict access to life saving medication or educational materials?

A meticulous consideration of these and similar questions counsels the need for a more cautious approach on the part of GCC countries towards acceding to international IP commitments. The GCC's key requirements from international IP agreements will need to be prioritized in line with its main interests and concerns. Such a strategy may, for instance, dictate the need to negotiate possible derogations and exceptions to very high standards of international IP protection in sectors such as education and healthcare. A less cautious and meticulous approach to adopting international standards will pose a real threat to GCC's IP interests in that GCC countries could end up being worse off by adopting very stringent international standards of protection which restrict or stifle local initiative through industrial adaptation, variations of prior work or incremental innovations of new technologies. It is worth noting in this respect that a review of the current academic literature contains frequent references to the anti-development biases of the current global IP regime which some authors perceive to be heavily tilted in favour of the technologically advanced countries while being unduly restrictive of industrial adaptations or incremental innovations of new technologies by other countries. An illustrative example is the case of *Apple Inc. v Samsung Electronics Co. Ltd et al.*⁹

3. Some Matters relating to the Substantive Rules, Procedures and Processes of International IP Regimes which GCC Countries Should be Aware Of.

One of the potential challenges and threats arising from the internationalization of the IP regime which we identified in Section 2 (above) was that of *localized globalism* (i.e. the phenomenon whereby less industrialized countries (in particular the emerging economies and markets of Asia, the Middle East and Latin America) are required to sign up to higher standards of protection for IP products and innovations originating from the developed countries. This issue requires examining in more detail here. When considering or negotiating bilateral and multilateral IP agreements the GCC countries ought to be aware of the fact that such agreements can be used by

⁹C 11-1846 & C 12-0630 USDC.

developed countries as a platform for promoting *localized globalism* – i.e. the localization of domestication of global (higher) standards of international protection for IP products. It could be argued that *localised globalism* is a way of ensuring that less developed and emerging countries remain consumers of IP products rather than producers. In other words, *localized globalism* stifles incremental innovation and industrial adaptation in these countries. Viewed from another perspective, developed countries through trade diplomacy practise the opposite of *localized globalism* by pursing *globalized localism* – i.e. by embedding their national standards of protection into bilateral treaties and multilateral conventions on IP. What this projection of national laws on to the international legal plane and into the global arena entails is a transformation of local laws and local standards into global norms and global rules. This in effect amounts to the extension, externalization or internationalization of national standards and their subsequent imposition on signatory nations following accession by the latter to bilateral or multilateral trade agreements.

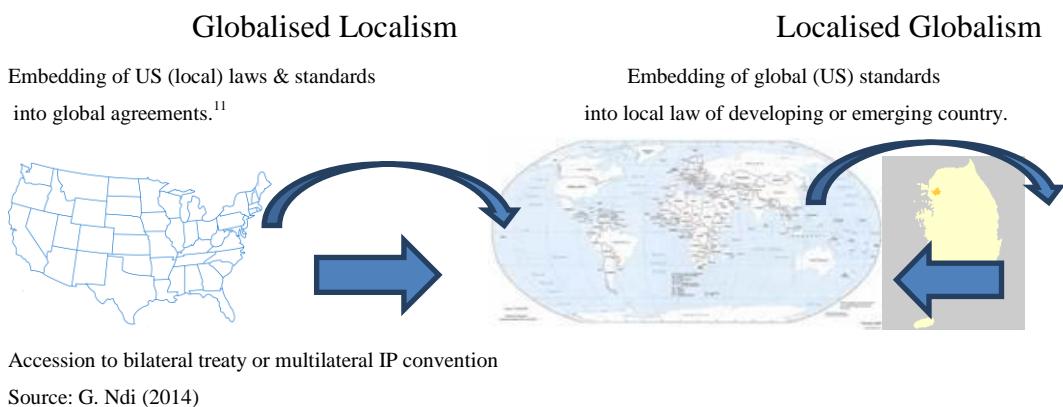
GCC policy makers need to be wary of what standards are included in the terms of international agreements as this could have far reaching implications not just for industrial uses of new technology but even for consumers of IP products in GCC countries. A pertinent example is the domestic US law which makes it illegal (i.e., copyright infringement) for a person to copy their own CD collection on to their own iPod. This means that only music bought and downloaded from the Apple store can legally be played back on iPods.¹⁰ This is a domestic US law which some US legislators are now arguing should be embedded into bilateral treaties and multilateral conventions on IP. If this attempt at externalization of the US standard is ultimately successful it would represent an example of *globalized localism* which would have serious implications for consumers worldwide. Other areas where *globalized localism* could cause serious concerns are health and education where the effect of international agreements could be to restrict access or to impose undue restraints on the local reproduction or distribution of medical equipment or educational materials.

The international harmonization of national and regional laws on IP protection thus have its benefits aswell as its disadvantages. It is important to point out that when viewed from another perspective (i.e. the perspective of the producers and exporters of IP products) *globalized localism* actually represents a positive aspect of strategic global positioning in international trade diplomacy. It is indeed a strategy from which important lessons can be drawn by the GCC countries. From the perspective of the GCC a global positioning strategy which seeks to externalize the key aspects of the GCC patent regime through embedding such aspects into international agreements concluded with other countries would represent a positive advantage. The practice of *globalized localism* is

¹⁰Dutfield, G. and Suthersanen U., (2008), p.9.

thus one which the GCC may wish to pursue in its trade diplomacy. But to be able to reap economic benefits from such a practice the GCC countries also need to position themselves as producers and exporters of IP products and not just consumers.

Figure 1



The substantive rules, commitments and obligations which make up the contents of bilateral treaties and multilateral conventions on IP to which the GCC countries accede is also a key area for consideration. Relevant treaty or conventional criteria for concepts such as novelty, originality, distinctiveness, etc. need to be scrutinized and considered very carefully before accession with a view to ensuring that they do not militate against the interests of GCC countries. The best possible outcome of trade diplomacy for the GCC countries would be if the international criteria adopted in bilateral treaties and multilateral conventions amount to a reflection of the GCC IP regime, including relevant provisions of the national laws of GCC countries. The precise character of IP infringements which may be the subject of enforcement action leading to remedies will also need to be spelt out clearly. Counterfeiting, clones or ‘knockoffs’, the copying or imitations of designs, and illegal duplication of original works are clear examples of IP infringements. But what about creative adaptations of existing IP products, industrial adaptations of prior work and incremental innovations? How should concepts such as “inventive step” be defined? Interpretations of what amounts to ‘novelty’ vary greatly around the world with different and sometimes conflicting standards and criteria. There is clearly a need to ensure consistency in this regard when engaging in international commercial partnerships.

And what about attempts in international agreements aimed at the commodification of cultural heritage, traditional knowledge, and even aspects of life itself (plants, stems cells, etc)? There is evidently a need to identify with a great degree of clarity what qualifies or does not qualify as creative and protectable work. From the perspective of the GCC countries it would indeed be considered good practice to negotiate a list of derogations or exceptions from protectable works as part of bilateral or multilateral agreements. These derogations or exceptions could be based on

¹¹It is worth noting that the IP standards stipulated in the TRIPS Agreement are mostly modelled on the laws of the USA and European countries: see further Dutfield, G. and Suthersanen, U. ((2008), p.35.

grounds of cultural or religious heritage, historical traditional knowledge, overriding national interest or grounds of public policy (e.g., social, health or educational policy).

Procedural matters such as the processes and procedures for the registration and assignment of protectable rights in conceptual works and other IP products also constitutes a key area of awareness for GCC countries when acceding to international IP agreements. Key issues for attention in this regard will include the priority period, period of grace, validity period, etc. Once again the overriding priority will be to ensure consistency between the GCC IP regime and the provisions of international IP agreements entered into by the GCC countries. For instance, such international agreements will obviously need to include clauses to the effect that any registered works which are not Shariya compliant in accordance with the provisions of the GCC patent regulation will not be considered valid in GCC countries.

Among some of the key principles which GCC countries will be expected to sign up to as part of bilateral and multilateral commitments on international IP protection are the principles of ‘national treatment’ (i.e., non-discrimination or equal treatment between nationals and citizens or enterprises of other signatory states in all matters relating to IP). The concept of the ‘most favoured nation’ also requires that any favourable treatment or advantages given to one of the signatories is extended to all signatory nations. It could be argued that these two principles constitute the twin pillars of the international IP regime.

4. Matters Relating to the Implementation and Enforcement of International IP Agreements which GCC Countries Need to be Aware Of.

Following accession to a bilateral treaty or multilateral convention on IP the main concern of GCC countries will be to ensure the smooth implementation of the international agreement. The need to avoid any legal conflicts between international agreements and GCC Patent Regulation 1992 (as amended) and its implementing byelawswill be of paramount importance in this regard. For example, where international agreements make reference to national laws as being applicable to matters regarding registration procedures and the criteria for registration, it is important to ensure that the national laws of other signatory states outside the GCC are not in conflict with GCC standards. An instance of this could be where the applicable GCC standard of absolute universal noveltyis in conflict with the criteria of local novelty which may be applicable elsewhere in a signatory state outside the GCC. The need for consistency, uniformity and standardization also dictates that registration formalities and requirements relative to thevalidity period, period of grace and priority period are all streamlined. Failure to do so could subsequently create a conflict of laws

situation in which there is a disparity between the laws of a signatory nation and those of GCC countries, or between the international IP regime and the GCC IP regime.

Allied to the issue of conflict of laws is the conflict of jurisdictions. GCC countries will need to take steps to ensure that international IP agreements to which they accede have clear dispute settlement mechanisms and clauses, including choice of law and choice of forum provisions for dispute settlement. Express choice of forum clauses have the advantage of providing clarity and certainty in the event of IP disputes and of avoiding the unmeritorious practice of forum shopping by litigants. It also ensures legal certainty by avoiding situation in which litigation takes place in two different countries over the same subject matter, leading to two inconsistent judgements as happened in the *Apple v. Samsung* case. Once the questions relating to applicable law and the forum for dispute settlement have been decided through the choice of law and choice of forum clauses in the international IP agreement, the next matter for consideration should be the recognition and enforcement of foreign IP judgements (i.e. judgements rendered by a court in one of the signatory states which may require official or judicial recognition and enforcement in the GCC, and *vice versa*). There will need to be clarity in the international IP agreement in relation to the processes and procedures for such recognition and enforcement.

From a functional point of view once the international IP agreement is in force in the form of a bilateral treaty or multilateral convention, the effectiveness of the monitoring mechanism (or the institutional framework) will be of critical importance. Within the GCC countries there will be a need to put in place effective procedures for monitoring and enforcement. There will also be a need for capacity building in terms of trained monitors and law firms with specialist teams of IP legal practitioners. What the GCC will require most of all is an effective and internationally focused IP management strategy with the GCC Patent Office at its forefront as the coordinating institution.

5. Conclusion

The commodification of ideas, conceptual goods and knowledge-based products in the form of ownership and marketing of IP products has become the hallmark and defining feature of the globalized economy of the 21st century. From a legal perspective the regulatory framework for international commerce in IP products now transcends the boundary between public law and private law, as well as between national law and international law. The step taken by the GCC countries in expanding their horizons through embarking on the transition from regional cooperation on IP matters towards international engagement with other countries and global IP regimes is thus highly commendable and praiseworthy.

It is very important that inventors and owners of conceptual products in GCC countries are accorded the international recognition and protection for their products that they fully deserve. This has not always been the case in the distant past as many inventions and innovations by Arabian scholars and pioneers have simply been appropriated by the rest of the world without giving the originators of these ideas the recognition which they so rightly deserved. We know, for instance, that the *Kitab alf laylah wa-laylah* has inspired and continues to inspire Western literature to this day. Cordoba at the time of the caliphate gave the world the water clock and the first human flight. From Baghdad came the first hospital, the first medical operations and the first medical textbook during the reign of the Caliph Haroun al-Rashid. In the Middle Ages Syrian glass became the inspiration behind what is considered today to be one of the best glassware in the world, Venetian glass. And is it conceivable to think of all the scientific advancements of the past century, let alone the digital age, without Arabic numerals? These are but a few examples of innovations from the wider Arab world.

If the Arab heritage of the past has not always received the required level of international recognition or standard of protection that it deserved, then it is the duty of the policy makers of today to ensure that the innovations of the future are given such recognition and protection internationally. Of all the challenges that the GCC countries will encounter when acceding to bilateral treaties and multilateral conventions on IP, the most important challenge will certainly be that of ensuring a proper status for the GCC countries within the global IP regime. In other words, the GCC countries should join the community of nations as genuine stakeholders and producers and exporters of IP products. From a legal perspective GCC countries should thus strive for the status of stakeholders and enforcers of international commitments stemming from international IP agreements - not just consumers of IP products whilst signing up to and complying with international legal obligations on IP. The attainment of a truly global IP regime can only be achieved through inputs from all stakeholders and not through the imposition of national standards by more powerful international players.

Nature of Legal Challenge	Perceived Threat	Possible Solution	Forum
1. Legal terminology; e.g. meaning of novelty, inventive step, etc	Legal uncertainty in subsequent registration procedures and processes if not clearly defined.	Clarity and precision required at negotiating and draft stage of international IP agreement	Trade diplomacy
2. Globalized localism (i.e. transposition of developed nations' laws into bilateral and multilateral IP agreements	Localized globalism (i.e. reception into local, national or regional law of international IP agreement containing standards prescribed by the laws of other (developed) nations.	Approach negotiation of international IP agreements as stakeholders ratherthan consumers of global IP products	Trade diplomacy
3. Conflict of laws: i.e. conflicting standards prescribed by difference national or regional legal systems, all of which are signatories to international IP agreement.	Uncertainty as to the applicable standard or law in the event of a dispute, leading to forum shopping by litigants looking for the best country or forum for obtaining a favourable judgement.	Choice of applicable law clause in international IP agreement stipulating the applicable law in the event of a disputes (e.g. the laws of the place of registration; or the laws of the place of infringement). Relevant rules from the Conflicts of Laws can also be used to determine the proper law of the dispute.	Bilateral or multilateral treaty provisions. Judicial construction in the course of arbitration or litigation.
4. Conflict of jurisdictions.	Conflicting judgements rendered in different jurisdictions on the same dispute (e.g. Apple v Samsung).	Choice of forum or jurisdiction clause in international IP agreement.	Same as above

5. Recognition and enforcement of foreign IP judgements.	Without a system for recognition and enforcement of foreign IP judgements the ends of justice may be frustrated.	Provisions for recognition and enforcement of judgements in international IP agreements.	Trade diplomacy together with relevant provisions in international IP agreements or other international agreements and conventions.
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Figure 2: Summary of Main Legal Challenges and Possible Solutions

Source: G. Ndi (2014)

Selected References

- Bradley, C.A., "Territorial Intellectual Property Rights in an Age of Globalism" *Va. J. Int'l L.* 37 (1997), 505.
- Cornish, W.R., "The International Relations of Intellectual Property", *Cambridge Law Journal*, 52(1) (1993), 46.
- Cornish, W.R., *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, 3rd Edition, (1996), Sweet & Maxwell, London.
- Dutfield, G. and Suthersanen, U., *Global Intellectual Property Law*, (2008), Edward Elgar Publications.
- Franzosi, M., "Patentable Inventions: Technical and Social Phases: Industrial Character and Utility", 5 *European Intellectual Property Review*, (1997), 251.
- Goldstein, P., & Hugenholtz, B., *International Copyright: Principles, Law, and Practice* (2013), Oxford University Press.
- Kanter, J., "A New Battlefield: Ownership of Ideas", *International Herald Tribune*, 3 October 2005.
- Ladas, S.P., *Patents, Trademarks, and Related Rights: National and International Protection* (Vol. 1) Cambridge, MA; Harvard University Press (1975).
- Nordemann, W., "The Principle of National Treatment and the Definition of Literary and Artistic Works", *Copyright* 25 (1989), 300.
- Sterling, J.A.L., *World Copyright Law* (2003), Sweet & Maxwell, London.
- Steup, E., "The Rule of National Treatment for Foreigners and Its Application to New Benefits for Authors", *Bull. Copyright Soc'y* 25 (1978), 279.
- Ulmer, E., *Intellectual Property Rights and the Conflict of Laws*, (1978) Deventer Kluwer, London.