

The Iranian patenting system: An introduction

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Abstract

The history of the Iranian patent law and its up coming changes are described. A short description of the official structure of the Iranian patent office and the procedures for getting an Iranian patent are also described. The status of patenting in Iran is discussed using some recent statistics on the number of filed and granted Iranian patents to resident and non-resident applicants. The accessibility of Iranian patent information and the status of the patent professions are reviewed. Finally, the changes that are currently taking place, and which are expected to change the overall picture of intellectual property rights (IPRs), in Iran, are outlined. IP-considerations in Iran's Development Plans have been presented in this respect, to show the orientation of the Iranian officials in IPRs policy making. © 2007 Elsevier Ltd. All rights reserved.

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1. Introduction

Patenting has a rather long history in Iran. The first Iranian “*patent and trademark*” laws date back to 1924 and 1931. The government approved the by-law concerning its enforcement in the same year (1931) and it was modified in 1958. The law, in its time, was a modern one but it has not been updated yet. Regarding the rapid developments in the field of patenting law and practices, the present law is facing serious deficiencies coping with the complications of this new era. Recently, modification of the old law is being considered [1].

The Iranian patent and trademark office is known as “The Administration for The Registration of Industrial Properties” (ARIP) in the country. This administration is a part of “The Registration Office for Companies and Industrial Property” affiliated to “The Registration Organization for Deeds and Properties of Iran (RODP)”. The whole system is under the supervision of the Iranian Judiciary System (see Scheme 1) [2].

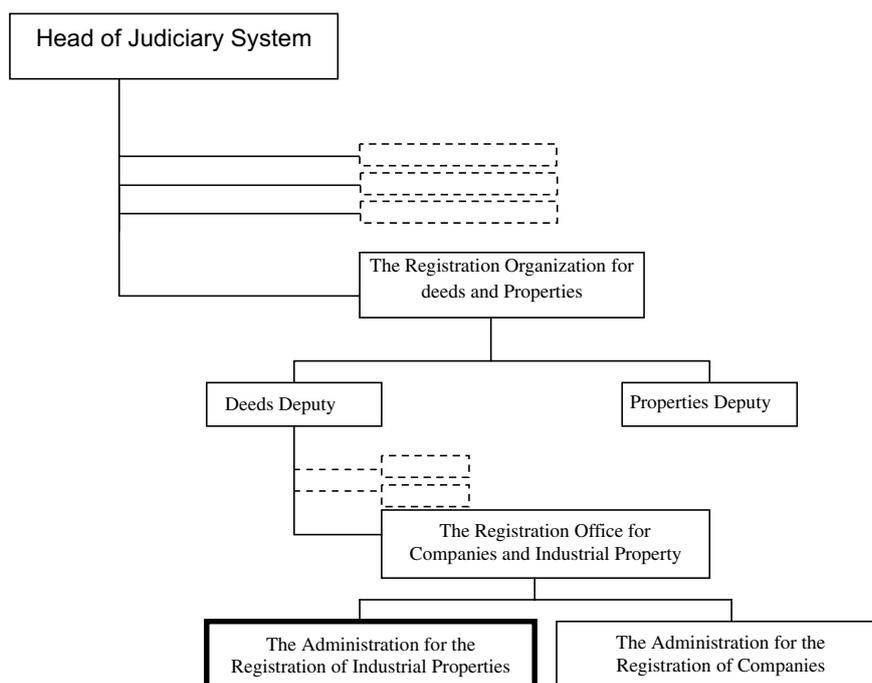
2. Patenting law and procedures

The general procedure for obtaining an Iranian patent is shown in Scheme 2. According to the current law, the patenting system in Iran is declaration based and the first person, who applies for the registration of an invention, shall be considered the inventor for that particular invention, unless proved otherwise.

Although the system is declaration based, the subject matter is first searched in a database, which can exclusively be accessed by ARIP and is confined to Iranian patent information. As a next step the inventor will have to defend the “scientific validity” of his invention in an oral proceedings session, in which experts from the ARIP and Iranian Research Organization of Science and Technology (IROST) participate. In this session, which is held for all applications, the scientists and experts present, decide on whether or not the subject matter of the invention is new, only based on their scientific background (and not based on a prior art search).

It is noteworthy that, although the Iranian patenting system does not include a full substantive examination, statistics show a 50% chance for an application to be granted.

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Scheme 1. The structure of the Iranian administration for the registration of industrial properties.

Fig. 1 shows the number of applications (White bars) versus the granted patents (Black bars) in the period between 1998–2005 [3]. This figure shows the high fatality rate of applications due to the formality checks and oral proceedings.

Iranian patents are granted for 10, 15, or a maximum period of 20 years. The inventor, based on the official charges born for each period, decides the length of the period. However, because the difference in the charges is not very much, almost everyone chooses the longest protection period namely 20 years. The owner of the patent shall have the exclusive rights of production, sale and utilization of the subject of patent.

According to the same law any person can apply for a patent for: (1) a new industrial product; (2) a new means or method based on existing ones to solve an existing problem. The invention as stated by the law, should be absolutely novel, which means that it should not have been published or utilized in Iran or abroad before the date of application for the patent.

A patent may not be applied for, in the following cases: (1) financial schemes; (2) a new invention or the development of an existing invention harmful to public law and order, or public health or morality; and (3) pharmaceutical formulae or compounds.

The application for registering a patent must have a detailed description of the invention, and drawings if necessary for comprehension of the invention. The application for registration of a patent must be made in Persian. However, if it is not practicable for the applicant to prepare it in Persian, he may prepare the complete specification in either French or English, and annex its summary in Persian [1].

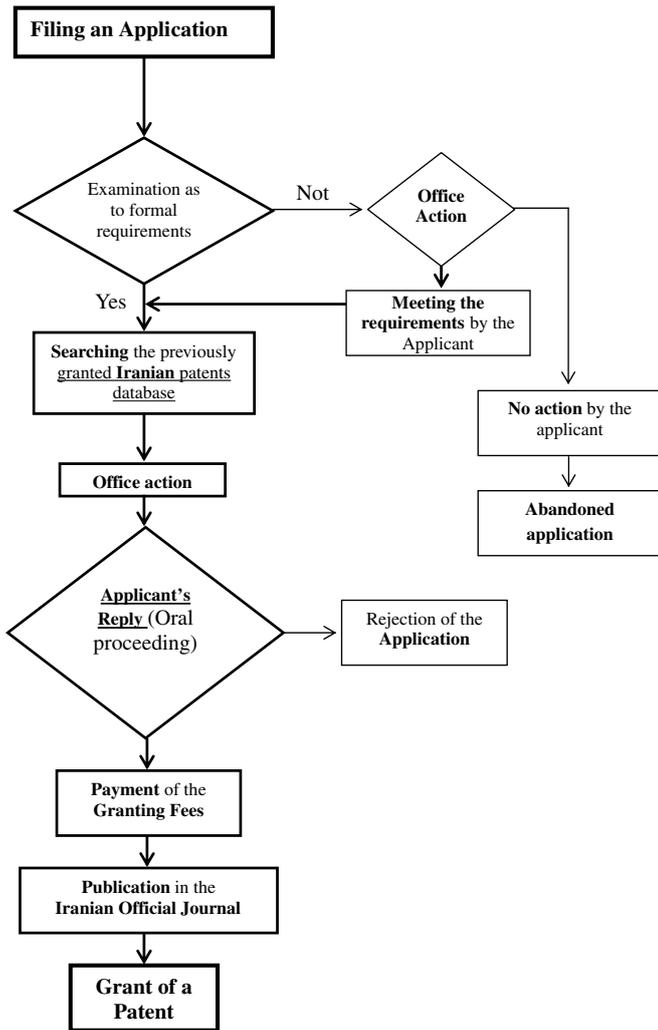
After filing and convincing the experts in the oral proceeding, the administration will ask the applicant to publish an advertisement in the “Iranian Official Journal” comprising the following points: Title of the invention, Registration number of the patent, validity period of the patent, name and complete address of the applicant. The “Iranian Official Journal” is published in Farsi. After this stage the patent is granted to the applicant. Fig. 2, shows a granted Iranian patent (note that the patent is in Farsi). Scheme 2, also shows the general procedure for getting an Iranian patent [1].

3. Appeal, opposition and enforcement

3.1. Appeal

If the patent application is rejected during the grant process, the reasons must be clearly stated by the administration. In such a case, the applicant may file a petition before the “First Instance Court of Tehran” within ten days from the date of rejection of his application. The court’s verdict is also subject to appeal to a higher (supreme) court.

The day of session will be fixed by the court, and will notify the applicant, as well as the officer in charge of the ARIP, so that they present themselves on the specified day. The applicant may apply for an extension of time not exceeding 6 months. On the day of the session, the Court will hear the oral arguments of both parties, and will render the appropriate verdict. The non-attendance of either party will not hinder the issuance of the verdict. In this case, the verdict against the absent party will be deemed as pronounced in his presence [1].



Scheme 2. The general procedure for getting an Iranian patent.

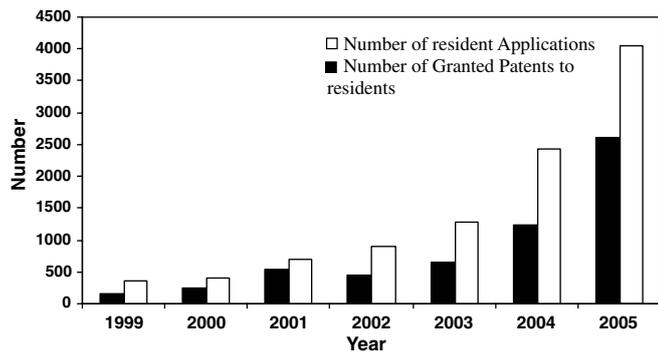


Fig. 1. The number of resident applications and granted Iranian patents in the period of 1999–2005.

3.2. Opposition

Objections relative to inventions not yet granted, must be submitted to the ARIP. If the opposition is based on an overlap with a previously granted patent, within 10 days after receipt of the letter of opposition, the ARIP shall

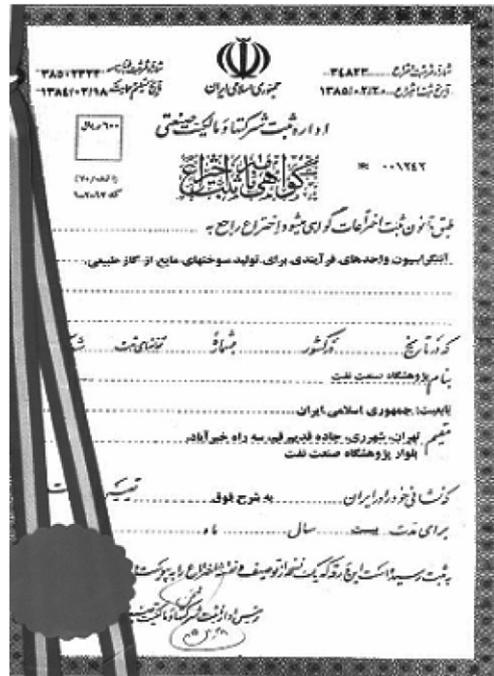


Fig. 2. Iranian patent number 34833 entitled “Integrated process for converting natural gas to liquid fuels” granted to the Research Institute of Petroleum Industry on May 10, 2006.

notify the applicant of registration. In the notice, explicit warning must be made that if he surrenders to the opposition of the objector, he must withdraw his application.

If the applicant surrenders in writing to the opposition, this will be notified in writing to the objector. If the applicant decides not to withdraw his application, the objector must refer to the Court of First Instance in Tehran within 60 days from the date when his opposition was notified to the applicant.

After the grant of a patent, interested parties may apply to the “First Instance Court of Tehran” and petition to cancel a patent (1) when the invention is not a new one, (2) when the patent has been obtained contrary to the law, (3) when the invention is purely scientific and theoretical in nature and has no practical use, (4) when no practical use has been made of the invention five years after a patent has been obtained.

The “First Instance Court of Tehran” has no branches in other cities or towns and all of the cases should be referred to the same branch in Tehran [1].

3.3. Enforcement

According to the Iranian patent law civil or penal proceedings, concerning patent infringement throughout the country shall be heard only by the “First Instance Court of Tehran”. If, during a criminal trial the accused raises questions of ownership of the patent, in his defense, the court will examine the question of ownership also.

The Ministry of Justice is entitled by the law, to regulate the procedures for the collection of evidence, the seizure of

goods produced by infringing a patent; and the period allowed to the accuser to file a petition after the seizure of goods, after which if the accuser fails to file a petition, the goods will be released. Damages demanded in civil or criminal cases concerning patent rights shall include inflicted losses and loss of earnings or profits.

It is noteworthy that although the law refers to both patent and trademark infringement cases, and on the contrary to the fact that the regulations are enforceable in trademark related cases, there are still some deficiencies in the enforcement of the law for patents, which are expected to be overcome by the ratification and implementation of the new law [1].

4. Accessibility of the Iranian patent information

According to the Iranian patent law of 1931 all patents are open to public inspection after the issuance of the patent. Unfortunately there are no open-to-public searchable databases and published gazettes (neither electronic nor manual) for Iranian patents. It should be noted that ARIP has, for its internal use, a computerized database which is however not open to public. The database also suffers from deficiencies as to the information that should be entered into it and also to the retrieving of the existing information. For instance the applications are not classified according to International Patent Classification (IPC) or any other similar classifications when their information is being entered to the database. ARIP does not have an official website and hence no information or statistics about the status of the patenting in Iran can be obtained online. Only some news and some limited instructions in Farsi is available on the RODP website.

So the only way to get the patent information is to go to the office in person upon noticing the advertisement in the Iranian Official Journal, or learning about the invention in any other way. At the ARIP, any person, upon payment of a fee, and providing the patent number, may obtain a hard copy of the documents related to an invention [1].

5. Patent professions

Patent professional are called patent agents or patent attorneys in different countries. In many national or regional patent offices (e.g. EPO) any legal actions in relation to

patents should be taken through registered patent attorneys.

In Iran, however; there is no such profession as being a patent attorney and hence, Iranian regulations do not impose such restrictions and the inventors themselves can act without any representatives before ARIP. Although there are some law firms throughout the country and especially in the capital, which claim to provide patent services besides their normal legal services, these services are mainly limited to the administrative aspects of filing applications. Because these firms take actions through lawyers with no special technical backgrounds (which is globally required for acting as a patent attorney) who have not been professionally trained in this field of expertise, their services cannot be expected to be as effective as those of a patent attorney. At the moment, there are no programs designed for training patent attorneys.

The only action in this regard, is cooperation between the ARIP, law faculty of Tehran University, and WIPO to offer a post-graduate program on IPRs at Tehran University. This program is offered only to the graduates of law.

Very recently, a few patent and trademark law firms have been established (e.g. Newway[®]), in which patent attorneys, trained abroad, provide professional services in the field of IPRs [4].

6. Signals of change

Iran's Economic, Social and Cultural Development Plans usually define the macro-directions of the country for 5-year periods. Table 1 shows the degree to which policy-makers are concerned about IP in compiling each of the 5-year development plans.

As it is clear from this table the Iranian policy-makers have recently paid more attention to Intellectual Property Rights (IPRs) and IP system.

Based on this attitude a new draft of the Iranian Patents and Trademarks law in accordance with the WIPO model has been prepared. The outlines of the draft entitled "Patent, Industrial Designs, and Trademarks and Trade names Act", is being considered now and it is expected to be ratified in the near future in the Parliament.

Iran has also acceded to the Paris convention (December 16, 1959), WIPO convention (March 14, 2002), Madrid agreement and Madrid protocol relating to the international

Table 1
IP consideration in Iran's development plans (1990–2009)

	The degree of considering IPR in the documents of the plan	Clarity of special policies and strategies for improving IPR system in the documents of the plan
First plan (1990–1994)	None	Lack of a specific policy or strategy
Second plan (1995–1999)	None	Lack of a specific policy or strategy
Third plan (2000–2004)	Reference to the defects in Iran's IPR regime and the necessity of solving the problems	Lack of a specific policy or strategy
Fourth plan (2005–2009)	Clear reference to the existence of many defects in Iran's IPR regime and the necessity of removing them during the execution years	Obliging the government to plan and implement a comprehensive IPR system

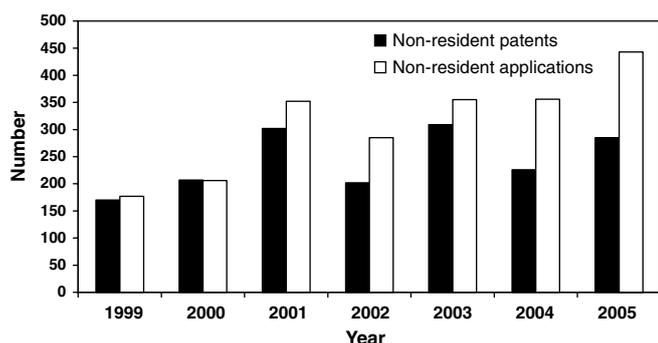


Fig. 3. The number of non-resident applications and granted Iranian patents in the period of 1999–2005.

registration of Marks (December 25, 2003), Madrid agreement for repression of false or deceptive indications of source on goods (June 18, 2004) and Lisbon agreement for protection of appellations of origin and their international registration (March 9, 2006) and is also considering the accession to the Patent Cooperation Treaty (PCT). All in all, this shows the will of the Iranian government to upgrade the present IP system to a modern and world class one.

Since Iran's joining of WIPO, several conferences and seminars on different related issues like IP, patenting, using patent information, trademark protection etc, have been held with the support of WIPO. This has had a great role in increasing the public awareness on IPRs in Iran [5].

On the other side, the tendency of the inventors to protect their inventions in Iran through patenting has increased dramatically (Figs. 1 and 3) in recent years, which seems to have catalyzed the reforms. These figures depict the total number of resident and non-resident applications and granted patents in the period between 1998 and 2005 [3].

The increase in the number of patents that are granted to foreign applicants can also be regarded as a sign of the changes that are happening in Iran's patenting system and the fact that these changes are realized by foreign companies too.

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