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The Worker's Right to Invention between Labor Law and Patent Law An Analytical Comparative Study

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Abstract : Iraq's labor law lacks protection for workers' invention rights, hindering innovation. The government should reform labor laws that create a conducive environment for individual development. Legal frameworks such as intellectual property protect inventors' rights, promoting innovation and balancing the interests of inventors, consumers, and society. The WTO's accession has prompted countries to revise and amend their intellectual property laws, including patent laws, to comply with the TRIPS Agreement. Labor and patent laws balance workers' rights to inventions and employers' interests, with some jurisdictions considering employee-created inventions as employer property. Balancing the interests of employers and workers in the workplace is crucial. Legislators and policymakers aim to protect workers' rights to inventions while respecting employers' legitimate interests. Legal frameworks may be established to address this issue, including disclosure, ownership, compensation, and dispute resolution mechanisms. Protection of workers' invention rights is crucial for workplace fairness, innovation, and creativity, as it incentivizes active engagement, benefiting employers and society as a whole. The issue of workers' rights to inventions involves navigating the complexities of labor law and patent law to ensure a fair and equitable balance between the interests of workers and employers. By incorporating

provisions into legislation that protect workers' rights while also respecting the legitimate interests of employers, policymakers can create a legal framework that promotes innovation, productivity, and harmonious workplace relations. Intellectual property rights are often transferred to employers, but moral rights remain with the inventor, and understanding legal effects is crucial for fairness and preventing misuse. The classification of patent rights disputes between workers and employers depends on factors like the invention's nature, employment contract terms, and the legal framework. Labor Law governs employer-employee relationships, while Patent Law deals with intellectual property rights enforcement. The research uses an analytical approach to analyze legislative texts, compare them with other jurisdictions, and consider legal precedents. It aims to identify inconsistencies, gaps, or improvements in existing laws and propose solutions for inventor-workers' rights. Dispute resolution depends on contract, intellectual property, and labor laws. Resolving disputes between workers and employers regarding patent rights requires a thorough understanding of the legal framework governing intellectual property rights, employment contracts, and the specific circumstances of each case. By conducting comprehensive research and analysis, lawmakers can identify opportunities to clarify and strengthen laws to support inventor workers and promote innovation.

حق العامل في الاختراع بين قانون العمل وقانون براءات الاختراع

دراسة تحليلية مقارنة

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الخلاصة: يفتقر قانون العمل العراقي إلى حماية حقوق الاختراع للعمال، مما يعيق الابتكار. وينبغي للحكومة إصلاح قوانين العمل التي تخلق بيئة مواتية للتنمية الفردية. تحمي الأطر القانونية، مثل الملكية الفكرية، حقوق المخترعين، وتشجع الابتكار، وتحقق التوازن بين مصالح المخترعين والمستهلكين والمجتمع. وقد دفع الانضمام إلى منظمة التجارة العالمية البلدان إلى مراجعة وتعديل قوانين الملكية الفكرية لديها، بما في ذلك قوانين براءات الاختراع، لتتوافق مع اتفاقية تريبس. تعمل قوانين العمل وبراءات الاختراع على الموازنة بين حقوق العمال في الاختراعات ومصالح أصحاب العمل، حيث تعتبر بعض الولايات القضائية الاختراعات التي ينشئها الموظفون بمثابة ملكية لصاحب العمل. إن تحقيق التوازن بين مصالح أصحاب العمل والعمال في مكان العمل أمر بالغ الأهمية. ويهدف المشرعون وصانعو السياسات إلى حماية حقوق العمال في الاختراعات مع احترام المصالح المشروعة لأصحاب العمل. ويمكن إنشاء أطر قانونية لمعالجة هذه المشكلة، بما في ذلك آليات الإفصاح والملكية والتعويض وحل النزاعات. إن حماية حقوق الاختراع للعمال أمر بالغ الأهمية لتحقيق العدالة والابتكار والإبداع في مكان العمل، لأنها تحفز المشاركة النشطة، مما يفيد أصحاب العمل والمجتمع ككل. تتضمن مسألة حقوق العمال في الاختراعات التعامل مع تعقيدات قانون العمل وقانون براءات الاختراع لضمان التوازن العادل والمنصف بين مصالح العمال وأصحاب العمل. ومن خلال دمج الأحكام في التشريعات التي تحمي حقوق العمال مع احترام المصالح المشروعة لأصحاب العمل في الوقت نفسه، يستطيع صناع السياسات إنشاء إطار قانوني يعزز الإبداع والإنتاجية والعلاقات المتناغمة في مكان العمل. غالبًا ما يتم نقل حقوق الملكية الفكرية إلى أصحاب العمل، لكن الحقوق الأخلاقية تظل مع المخترع، كما أن فهم الآثار القانونية أمر بالغ الأهمية لتحقيق العدالة ومنع سوء الاستخدام. يعتمد تصنيف نزاعات حقوق براءات الاختراع بين العمال وأصحاب العمل على عوامل مثل طبيعة الاختراع، وشروط عقد العمل، والإطار القانوني. يحكم قانون العمل العلاقات بين صاحب العمل والموظف، بينما يتعامل قانون براءات الاختراع مع إنفاذ حقوق الملكية الفكرية. يستخدم البحث المنهج التحليلي لتحليل النصوص التشريعية ومقارنتها مع الولايات القضائية الأخرى والنظر في السوابق القانونية. ويهدف إلى تحديد التناقضات أو الثغرات أو التحسينات في القوانين الحالية واقتراح حلول لحقوق العمال

المخترعين. يعتمد حل النزاعات على قوانين العقود والملكية الفكرية والعمل. يتطلب حل النزاعات بين العمال وأصحاب العمل فيما يتعلق بحقوق براءات الاختراع فهمًا شاملاً للإطار القانوني الذي يحكم حقوق الملكية الفكرية، وعقود العمل، والظروف المحددة لكل حالة. ومن خلال إجراء بحث وتحليل شامل، يمكن للمشرعين تحديد الفرص لتوضيح وتعزيز القوانين لدعم العاملين المخترعين وتشجيع الابتكار.

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Introduction:

The Iraqi Labor Law fails to adequately address worker's right to inventions, a crucial aspect for promoting innovation and progress. The Iraqi Civil Code only briefly mentions this right, leading to reliance on legislation from Arab and foreign countries for a solution. The state must provide ample opportunities for new inventions and innovations.

Intellectual property rights play a crucial role in inventions and economic development, directly affecting social, scientific, political, and legal conditions of countries. Workers with intellectual property often create new innovations. Patents, copyrights, and other intellectual property rights are essential indicators of a country's scientific progress. Today, the wealth of a country is measured by its stock in intellectual property rights, including copyrights and patents. Therefore, intellectual property rights are essential for a country's prosperity. Inventions play a crucial role in the progress and development of modern societies, helping to overcome human difficulties in various fields through the new inventions they provide to us.

The mental and physical effort of inventors in creating inventions contributes to the productivity of the national industry and the national economy through optimal exploitation. These inventions reflect and contribute to raise the level of income, reflecting the efforts made by inventors to achieve their final form. The role of inventions in human civilization has significantly changed since the first inventions on Earth. Today, the world is open and small, with the modern era characterized by speed, information, and the advancement of technology. The world is indebted to every thinker, creator, and inventor, as the machine is governed by technology. Researchers suggest that legislators should establish a legal system in every society to safeguard inventions, protect owners' rights from infringement, and safeguard public and private interests.

Many countries joined the World Trade Organization, necessitating amendments to Tripartite Agreements (TRIPS) and agreements on intellectual property, including patent laws, based on eligibility for accession. Iraqi legislator has cited Civil Law No. (40) of 1951, which regulates workers right to patents and their corresponding rights.

The researchers highlighted the significant issue of worker's right to invention at national and international levels. They found that Laboure Law and Patent Law contest this right, aiming to create a balance between the worker and the employer. Laboure Law provisions protect the worker, while Patent Law aims to protect the employer. Since the

worker is the weak party in an employment contract with a powerful employer, the legislature took care to incorporate inventions made by workers in the Laboure legislation in order to provide him the best protection possible.

The ownership of an inventor's invention varies depending on the situation and the nature of the innovation. Unintentional and service inventions are demonstrated to employers, while free inventions are proven to employees. the resulting rights for the invention, which are transferred to the employer are financial rights only, while moral rights remain in the interest of the inventor worker as they are rights closely related to the personality and may not be waived with or without compensation. Legislation has decided to transfer ownership to employers when necessary to ensure justice, as it is unfair for the invention to be used as a weapon against the employer if it falls into the hands of a competitor.

This research focuses on defining worker and employer rights, clarifying invention types during employment contracts, distinguishing labor law from other laws, explaining laws regulating worker invention protection, and their consequences. It also discusses the legal effects before and after invention, and the rights and obligations of each party. The research also explains the consequences of each law, the legal effects before and after invention, and the rights and obligations of each party.

The question is whether disputes between workers and employers regarding patent rights are considered under Labor Law or Patent Law. It is unclear whether patents are the right of the worker or invention owner. The goal of the research is to make lawmakers aware of the holder's clear right to invention, to encourage them to take notice of worker inventions and enact new laws, and to establish and arrange the legal framework that supports inventor-workers. The research also seeks to resolve inconsistencies between the law texts by analyzing the legal framework governing workers' material rights to innovation. In addition, it establishes which laws apply more than others in the case that the two parties disagree.

This research employs an analytical approach that is based on the interpretation and analysis of pertinent legislative texts in Iraqi legislation in comparison to legislation in Arab and other countries, as well as the discussion and analysis of those texts, a review of all study topics, and the citation of legal texts and jurisprudential opinions to support the findings.

1. The Legal Relationship Arising from Employees' Inventions and their Classification

A dispute may arise between an employer and a worker regarding an invention the worker created during their work. The dispute may revolve around whether the invention is a service invention or a free invention, and whether the work is assigned to the employer as an innovative or normal activity. The employer may argue that the invention is part of the establishment's activity or was made possible by the employer's available opportunities.¹

The Iraqi Federal Labor Law No. (37) of 2015, article 15, define labor disputes as disputes between workers, groups, or organizations with employers, employers, or organizations. These disputes can arise regarding existing rights, mechanisms for implementing or interpreting employment contracts, collective labor agreements, arbitration decisions, or disputes over future interests. The law also addresses issues related to individual

Imad Hamad Mahmoud Al-Ibrahim, Civil Protection for Patents and Trade Secrets, Riyadh Law Library, ¹ Kingdom of Saudi Arabia, 1st edition, 2016, p. 27.

employment contracts, collective labor agreements, and arbitration decisions.¹ The Jordanian Labor Law No. (8) of 1996 and its amendments, applies to all workers and employers without specifying the nature of work or employer circumstances.²

A jurisprudence perspective identifies two types of work,³ dependent work, based on employer dependency, and independent work, without dependency. All labor laws apply to all workers and employers, regardless of work type. Subordinate work pertains to the worker's work and wages, aiming to prevent exploitation and ensure fair treatment.⁴ The article of the same law also defines work as "and it appears that invention is defined as "every intellectual or physical effort exerted by a worker in exchange for wages, whether it is permanent, occasional, temporary, or seasonal." Therefore, it is not possible to limit the work that may fall within the scope of the labor law, as it may be Mental work, such as inventions and discoveries, or physical work, such as construction."⁵

Furthermore, Article (1) of the International Labor Organization Convention specifies that states parties have an obligation to "provide job opportunities for all those in need of work and those seeking it" with reference to Employment Policy No. (122) of 1964.⁶ According to the Qur'an and Sunnah, Islam holds that each person must do their share of the job required of them by the society in which they live. It is the Islamic State's responsibility to offer everyone who is able to work opportunities that are acceptable. Fair pay and good working conditions are rights of workers.⁷

1.1. The Worker and The Employer

2.1.1 The Worker

The Iraqi Labor Law, specifically Article (6) of Law No. (37) of 2015, defines a worker as any natural person, male or female, working under the direction and supervision of an employer, whether under a written or verbal contract, explicit or implicit, or through training or testing, in exchange for wages of any kind.⁸

The Jordanian Labor Law No. (8) of 1996 and its amendments, and Article (2) thereof, defines the worker "every person, male or female, who performs work in exchange for a wage and is subordinate to the employer and under his command. This includes juveniles and those who are on probation or under his command."⁹ In addition to that, the Jordanian Labor Law excludes domestic servants, gardeners, and cooks due to their specific work and direct connection with their employers. This allows them to know most of their

Iraqi Federal Labor Law No. (37) of (2015) Article (15) the Iraqi Gazette, Issue No. (4386), Date: 11-09-2015, ¹ p. 1.

Published on page No. (1173) of the Official Gazette No. (4113) issued on April 16, 1996. The source is the ² Adalah website (www.adaleh.com), April 2009 edition.

Hamdan Hussein Abdel Latif, Labor Law, A Comparative Study, Dar Al-Hal Bay Law School, Beirut, 1st ³ edition, 2003, pp. 22-32. ⁴ ibid

Article Five No. (37) of 2015, Labor Law, Resolution No. 40, Sabri Hamad Khater, Individualizing TRIPS ⁵ Rules in Intellectual Property Laws, A Comparative Study, Legal Book House, Egypt, 2012, p. 74

Jamil Odeh Ibrahim, Humanities of Rights, State Obligations Regarding the Right to Work, 2015. Available at: ⁶ <<https://annabaa.org/arabic/rights/4086>> Last Accessed (Oct 21 2023)

Dr. Hussein Hamid Hassan, The Right to Work. Available at: <<http://iefpedia.com/arab/wp-content/uploads/2009/10/bn4.pdf>> Last Accessed (Oct 21 2023). ⁷

Labor Law No. (37) of 2015, Iraqi Gazette, Issue No.: 4386, Issue Date: 9-11-2015, p. 1. ⁸ Jordanian Labor Law (1996), Article 2⁹

secrets and private family affairs, and the trust between them and their employers. The law is based on the specific nature of their work and the employer's relationship.¹

Therefore, the researcher believes that to protect the worker's right to inventions, the state should issue labor laws to protect workers' right to inventions and restore balance in the individual relationship between them and employers. These laws should be realistic and specific, regulating each case based on working conditions, work nature, and employer ability. The aim is to achieve social peace and protect workers from the employer's control, ensuring a fair and equal working environment. This approach will help to achieve social peace and promote a more equitable work environment.²

The rules of the Labor Law are coercive and binding in that they set the legal foundations for any agreement concluded between the worker and the employer.³ In fact, the labor law aims to protect the worker as the weak party in the work relationship from exploitation by employers. Therefore, part of jurisprudence believes that if there is a state of doubt and ambiguity in the texts of the labor law, this doubt must be interpreted in the interest of the worker, based on the fact that the system the labor law was created primarily to protect the worker and not to protect the employer.⁴

2.1.2. The employer

The employer is the main party in the dispute with the worker as Article (8), No. (37) of (2015) Federal Iraqi Labor Law, the employer is a natural or legal person who employs one or more workers in exchange for wages.⁵ Furthermore, the Jordanian legislator defined the employer in Article (2) No. (8) of 1996, saying every natural or legal person who employs in any capacity one or more people in exchange for a wage.⁶ In addition, the researcher notes that the Labor Law does not provide specific conditions for individuals to be considered employers, allowing any company, regardless of its type, to be considered an employer in the intended sense.⁷ Employers are required to establish a commercial or industrial facility for their work, employing one or more people and having the authority to control, supervise, and manage them in exchange for a wage.⁸

2.2. Classification of Employees' Inventions

Here, the researcher shed light on the importance of accurate classification of workers' inventions during employment contracts, as it has significant legal implications. It

Muhammad Ibrahim Abu Al-Haija, Sakhr Ahmed Al-Khasawneh, Legal regulation of the work of domestic workers and their equivalents in the Jordanian and Emirati legislation, Studies of Sharia and Law Sciences, Volume 43, Issue 2, 2016, pp. 838-839.

Dr. Muhammad Ali Abd, Labor Law (Comparative Study), Beirut, Lebanon, Zain Law Publications, 1st edition, 2007, p. 9.

Sayyed Mahmoud Ramadan, Al-Waseet fi Sharh Labor Law, 1st edition, Dar Al-Thaqafa Publishing and Distribution Library, Amman, 2004, p. 44.

Abdel Aziz Jumaa, Provisions for Wages in the Lebanese Labor Law. Available at: <http://alliedlegals.com/assets/files/alajer.pdf> > Last Accessed (Jan 5 2024).

Federal Iraq Labor Law No. (37) of (2015) Article (8) The Iraqi Gazette, Issue No.: 4386, Issue Date: 11-09-2015.

Jordanian Law No. (8) of 1996 AD and its amendments Work Article (2).⁶ Labour Law and its Amendments No. 8 of the Year 1996. Available at: ⁷

http://www.ahtnc.org.jo/sites/default/files/labor_law.pdf > Last Accessed (Dec 15 2023).
Anwar Al-Sayyid Ahmed, Rights of the Parties to the Patent Employment Contract, Beirut, Lebanon, Zain ⁸

Legal Publications, 1st edition, 2010, p. 81.

highlights the need for a comprehensive understanding of the differences in provisions and the application of related legal rules for each type of invention.¹

There are three categories of innovations: service invention, accidental invention, and free invention. These categories determine the moral right of the inventor and are distinct from free inventions. Free inventions are those that a worker is not obligated to achieve and do not fall within the scope of their work. This means that the invention is disconnected from the implementation of the employment contract between the worker and employer. The worker developed their invention during their free time and personal tools, outside the project and scope of work.² Jurisprudence suggests that it is illegal to make an explicit agreement between the worker and the employer in the contract that the employer has the right to all free inventions created by the worker, as this would be considered a violation of the worker's freedom without legal justification.³

The Iraqi Civil Code, as outlined in Article (912), distinguishes between three types of inventions:

1- Free inventions

Free inventions by workers are not committed to realizing and do not fall within their employer's scope, implying that they are disconnected from the employment contract implementation if they were created during their free time and personal efforts.⁴

Jurisprudence argues that it is not permissible for a worker and employer to explicitly agree on the employer's right to free inventions found during the contract that violate the worker's freedom without legal justification.⁵

The worker has the right to their free invention, with complete freedom to manage it, announce or keep it secret, and issue a patent to protect it in any country. The employer has the right to prove the invention isn't an invention, but the worker's invention is connected to the employment contract, making it a service invention, giving them rights over it.⁶

2- Incidental inventions

Incidental inventions are inventions that a worker makes during their employment contract, such as in an electrician or accountant job, without being obligated to create them, as they were not within their scope of work.⁷

The invention has two aspects: the intellectual element, where the worker dedicates mental effort, and the general principle that workers have the right to exploit these inventions

Ahmed Aziz Hassan and Arez Mohammed Sediq Othman, Labourer's Intellectual Property Rights in the Iraqi Laws: An Analytical Comparative Study, International Journal of Social Sciences & Educational Studies ISSN 2520-0968 (Online), ISSN 2409-1294 (Print), December 2018, Vol.5, No.2, Doi: 10.23918/ijsses.v5i2p268. Available at:

<<file:///C:/Users/dell/Downloads/LabourersIntellectualPropertyRightsintheIraqiLawsAnAnalyticalComparativeStudy.pdf>> Last Accessed (Feb 23 2023).

WIPO. Available at: <https://www.wipo.int/ip-outreach/en/ipday/2017/innovation_and_intellectual_property.html> Last Accessed (Feb 23 2023).

Maan Odeh Al-Sakarna, Muhannad Azmi Abu Mughli, The legal nature of the employer's right to own the invention that the worker comes up with during the implementation of the employment contract, Studies, Sharia and Law Sciences, Volume 41, Supplement 2, 2014. Available at: <<file:///C:/Users/IT/Downloads/5075-20928-1-PB.pdf>> Last Accessed (Dec 26 2023).

Dr. Muhammad Labib Shanab, Explanation of Labor Law, Dar Al Nahda Al Arabiya, Cairo, 1996, p. 166.⁴ Anwar Al-Amrousi, the comprehensive encyclopedia in explaining civil law with doctrines of jurisprudence and modern judicial rulings, 5th edition, 2015, p. 114, Civil Labor Law 688/2.

Dr. Khaled Al-Sayyid Muhammad Abdel Majeed Musa, Provisions of a Remote Work Contract, Comparative Study, Library of Law and Economics, 1st edition, 2014, p.629.⁶ The Iraqi Civil Code No. 40 of 1951, Article 912/1⁷

unless there is an explicit condition in the employment contract granting this right to the employer when this condition exists the employer the right to exploit the invention.¹

3- Inventions during the implementation of the employment contract (service invention)

Service inventions are inventions achieved by workers due to their obligations under an employment contract or their performance of work that naturally leads to the realization of inventions. That is, the nature of the employment contract requires the worker to research, work, and innovate to reach new inventions.²

The employer has the right to request a patent when its legal conditions are met in contracts, as the relationship between the worker and employer is a contractual relationship, and the contract includes assigning the worker to disclose the invention to the employer in exchange for an agreed upon wage or compensation.³ The researcher believes service inventions are contracts made with workers to work on a project that the employer entrusts them to create inventions or discoveries. the type of contract is common where workers are obligated to come up with these inventions explicitly or implicitly.

Invention assignment agreements, also known as intellectual property agreements, are contracts where employees agree to assign any inventions or discoveries they make during their employment to their employer. These agreements outline the definition of inventions, the employee's responsibilities, the ownership of intellectual property, compensation and recognition, confidentiality, and termination of employment. Key elements of these agreements include defining inventions, outlining employee responsibilities, stating that any inventions or discoveries made during employment are the employer's property, addressing compensation and recognition, ensuring confidentiality of work and inventions, and clarifying the status of ongoing projects and ownership of inventions in case of termination or resignation. Understanding and agreeing upon these terms are crucial for both employers and employees to avoid potential conflicts in the future.⁴

3. protecting worker inventions and their legal implications

3.1. Protection of worker inventions:

The researcher contends that the legislation guarantees the protection of worker inventions in a contract, and both parties to the employment contract have complete freedom to agree on the method of inventions. The Iraqi Civil Code gives the worker the right to any inventions or discoveries he makes while working for the employer. The employer may be entitled to an invention in certain situations, such as when the worker's job involves research and deduction, the contract clearly states that the employer owns all rights to the inventions or discoveries the worker makes, and if the worker is not primarily charged with invention and innovation achieves an invention that the civil law does not take into account if the invention has great economic importance.

Steven Cherenksy, A Penny for Their Thoughts: Employee-Inventors, Pre-Invention Assignment Agreements, Property, and Personhood, California Law Review, Inc., Vol. 81, No. 2 (Mar., 1993), pp. 595-669. Available at: <https://www.jstor.org/stable/3480758> Last Accessed (Des 12 2023).

Article 912/2 of the Civil Code.²

Dr. Ahmed bin Muhammad bin Abdul Karim Al-Lahib, Renewing Religion in the Contemporary Islamic Rational Trend, Al-Bayan Magazine, Riyadh, 2011, p. 61.

Steven Cherenksy, A Penny for Their Thoughts: Employee-Inventors, Reinvention Assignment Agreements, Property, and Personhood, California Law Review, Inc., Vol. 81, No. 2 (Mar., 1993), pp. 595-669.

There are legal provisions regarding worker inventions, the exception allows workers full invention rights, with intellectual property rights determined by written agreements between employers and workers. If rights are not specified, they will be the worker's share by law. They can prove their rights if they use the employer's expertise, information, tools, and materials to achieve their invention.¹ The ruling on contract and agreement is the principle governing the agreement between parties in an employment contract, which differs from the rule of law, which establishes worker rights. A written agreement is required, otherwise, the worker's rights will be absolute.²

Likewise, in Jordan, the Patents and Designs Law No. (22) of 1953 (Article 1) is considered "the law regulating the right of invention in Jordan, according to which all previous legislation related to the registration of patents and drawings that were in effect before that date were repealed."³ The most prominent amendments by the Jordanian legislator to the patent law are Patent Law No. (32) of the year (1999). Article (5) of the law regulates "the right to patent inventions, including inventions that workers come up with during the implementation of the employment contract by saying."⁴ The law has been amended to allow employers to claim an invention resulting from an employment contract requiring a worker to perform a specific innovation activity, unless otherwise specified. If the invention exceeds expectations, the inventor-worker is entitled to fair compensation. If disagreements arise, the amount of compensation will be determined by a competent court. The inventor-worker must inform their employer of their invention immediately, as it is considered their right from the invention date, and they deserve fair compensation considering the invention's importance and economic value. Therefore, the legislator grants the employer the right to a worker's invention in two cases: if the invention results from an employment contract and the worker is assigned a specific innovative task, and if the worker creates an invention without being assigned the task, the employer has the right to the invention, with the choice being solely for the employer.

The text outlines the rights of an inventor worker in the event of a new invention, which can be represented in two cases: if the invention was made under an employment contract, and if the worker is not primarily responsible for the invention under the contract.

In order not to achieve an imbalance between the two parties and to fill the legislative vacuum, it needs to give benefit from comparative laws, including Jordanian laws, which addressed this issue in three texts, and in different laws, and contrast to the original patent Laws, in the text of Article (820) of the Law Civil,⁵ the text of Article (20) of the Labor Law, and the text of Article (5) of the Law (1999).⁶

The researcher noticed from these previous texts that the rights of the holder of the right to apply vary from one occasion to another. For example, the rights are established for the employer, as it was previously shown in the case of service inventions and accidental inventions, and they are established for the worker as in free inventions. The right was also

Amended Jordanian Patent Law No. (71) of (2001) from Article (5).¹
 Julia Tomassetti, Power in the employment relationship, why contract law should not govern at-will employment, November 19, 2020. Available at: <<https://www.epi.org/unequalpower/publications/the-legal-understanding-and-treatment-of-an-employment-relationship-versus-a-contract/>> Last Accessed (Oct 14 2023).

Jordan Law No. (22) of (1953), (Article 1)³

Patent Law No. (32) of (1999) Article (5) regulates⁴

Article (820) of the Jordanian Civil Law No. (43) of (1976) and its amendments.⁵

Article (5) of the Jordanian Law of 1999 stipulates:⁶

given to the worker during work, provided that the employer has priority. In cases where an inventor is assigned to a work and a worker benefits from the necessary tools, methods, and devices, the worker has the right to share 50% of the patent rights with the employer. However, the legislator backed down on favoring the worker versus the employer after amending the Labor Law.

The amendment granted employers the right to use workers' inventions, regardless of their appropriateness, while removing the worker's right to share rights and compensation unless otherwise agreed upon. Critics argue this does not encourage innovation and would have been better to maintain rights before the amendment and limit the subject of workers' inventions to labor law, as it is the best application.¹ Before this amendment, the subject of workers' inventions was restricted to the Labor Law, as it is the best in the application. Moreover, Egyptian legislation has addressed this issue in the text of Article (688) of the Civil Code and Article (7) of the Intellectual Property Law of 2002.²

Regarding the rights resulting from the employer's provision vary from one occasion to another.³ For example, rights are granted to the employer in inventions outside the service that are incidental and not related to the type of work assigned. According to article (688/1) of the Egyptian Civil Code, the invention was in the course of work and related to the activity of the establishment or was made thanks to special techniques, data, or means.⁴

The law grants employers the right to exploit inventions or purchase patents in exchange for fair compensation, considering the employer's facilities and tools provided to workers. They can also waive this right for the worker's benefit in return for payment, with the choice made within three months of patent notification. Otherwise, ownership of the patent devolves to the worker, without any obligation to sell and exploit.

The researcher asserts that the inventor deserves fair compensation considering the invention's significance and economic value to the employer,⁵ even if the parties disagree on the compensation amount. The worker should have the right to sell or exploit the invention, while the employer should recover it in exchange for paying its price. If the employer assists, the employer should have the right of preference. Regard to article (688/3) of the Egyptian Civil Code allows workers to demand fair compensation for inventions of special economic importance, and employers are entitled to assistance in establishing these inventions.⁶

Nevertheless, service inventions involve workers performing work for a wage, leading to a specific invention or as stipulated in the contract. The application is submitted to the employer, not the worker. The worker is entitled to fair compensation for the cost of

Khaled Muhammad Ayyash, The Legal System for Employees' Inventions, p. 31, available on the website: ¹ www.osamabahar.com. Date of visit, 11/1/209, p. 31

Article (688) of the Egyptian Civil Law No. (131) of (1984) published in the Egyptian Official Gazette in Issue ²

No. (108) bis (A) dated (7/29/1948) stipulates.

Inclusive Labour Markets, Labour Relations³ and Working Conditions Branch, International Labour Organization 2015 Available at: https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_357390.pdf > Last Accessed (Oct 27 2023).

Article (688/1) of the Egyptian Civil Code < <https://sadanykhalifa.com/uploads/Laws/1576751803.pdf> > Last ⁴ Accessed (Feb 10 2024).

Paris Agreement of 1883. Muhammad Hussein Ismail, Assignment in lieu of Patents, Mu'tah Journal for ⁵ Research and Studies, Volume 2, Issue 1, (1987), pp. 112-113.

Nouri Hamad Khater, Explanation of Intellectual Property Rules - A Comparative Study between Jordanian, ⁶ Emirati, and French Law, 1st edition, Dar Wael for Publishing and Distribution, Amman, 2005, pp. 72-73.

discovering the invention, if there is no agreed-upon financial compensation.¹ Workers who create inventions without any connection to the institution's activity, task, employer's tools, or assistance, and without any connection between the invention and the establishment's activity, are considered free inventions or personal inventions. They can request these inventions for their benefit and can use them without any connection to the subject of the invention.² Here the employer cannot adhere to priority.³ As for preventing fraud that may occur on the part of the worker, as he uses his work period to hide some of the inventions he has come up with during the work, until the completion of his work, the Egyptian legislator has addressed this issue, as Article (8) of the Egyptian Law of (2002) stipulated:⁴ "The application submitted by the inventor to obtain a patent for an invention within one year from the date of his leaving the private or public establishment shall be considered as if it had been submitted during the implementation of the contract or the establishment of a business or employment relationship, and both the inventor and the employer shall have all the rights stipulated in the previous article accordingly. The period increases to a several of years if the worker establishes or joins a competing facility, and the invention is a direct result of his activity and previous experience in the facility in which he worked." It is noted here that Egyptian law was more successful when it regulated this issue, to limit cases of fraud that may occur by the worker upon leaving work. The legislator deemed applying during this period as evidence of submitting the application during contract implementation, granting the employer the same rights as during their service.⁵ This protection for the employer suggests that the Egyptian legislator is better at protecting inventions related to workers and employees than the Jordanian legislator.

It could be said that the moral right in all previous cases belongs to the worker, so the name of the inventor must be mentioned in the invention because this right is closely linked to the personality of the inventor.⁶ Therefore, the Palestinian legislator must take benefit as much as possible from previous laws in order to achieve the highest balance between the parties to the employment contract,⁷ and the rights of both parties are not wasted or one party prevails over another. It must be noted that any agreement between the two parties must be in writing, under penalty of invalidation of this agreement, as it may the employment contract explicitly states that all rights to inventions belong to the employee or the employer. The researcher notes that the patent law and procedures for patent registration in Iraq are similar to the laws and procedures for registration in other countries.

There is also the fact that patents are not affected by the exploitation of the invention in land, sea and air means of transportation belonging to countries that are members of the Paris Agreement for the Protection of Industrial Property or the World Trade Organization or that treat Iraq similarly, during their emergency or temporary presence in Iraq. The patent

Egyptian Court of Cassation from Law No. (132) of (1949) regarding patents, p. 45.¹

Dr. Samia Al-Qalioubi, Industrial Property, Dar Al-Nahda Al-Arabiya, Cairo, 10th edition, 2016, pp. 63-72.²
Dr. Ojjah Al-Jilali, The Patent, Its Characteristics and Protection, Zein Law Publications, Beirut, 1st edition, 2015, p. 217.³

Article (8) of the Egyptian Law of 2002.⁴

Decision of the Egyptian Court of Cassation Text in Article (76), Public Sector Employees Regulations⁵ promulgated by Law No. (61) of (1971) and Article (2/3/688), of the Civil Code, Appeal No. (9907) dated (1/18/1998) .

INAPI-INPI-USPTO Anonymous, Legal Protection of Patents, pp. 29-31⁶
Article (3-7/611) L of French law.⁷

owner cannot object to these parties exploiting it, meaning that there is no limitation or any of the fines mentioned above on their exploitation of it.¹

In the event of a patent violation, the owner of intellectual property rights can file a lawsuit before the competent court in Iraq. The Civil Procedure Law No. (83) of 1969 stipulates taking effective measures against violations of intellectual property rights and also stipulates application procedures. Article (45) of the Copyright Law and Articles (35) and (36) bis of the Trademark and Geographical Indications Law stipulate criminal procedures and penalties related to trademark counterfeiting and copyright piracy. Moreover, the Civil Procedure Law No. 83 of 1969 provides for the appeal of any administrative decisions. As for the decisions of the lower court, they are subject to appeal before the Court of Appeal. All relevant laws and regulations are published in the Iraqi Gazette, and the decisions issued by the courts are available to any of the parties concerned, while the decisions of the higher courts are published regularly.

The researcher identifies a significant gap between legal provisions and workers' rights to inventions. The legislator granted the worker and employer the right to decide on the appropriate interpretation of rights resulting from their invention, based on the principle of will authority. Moreover, the legislator deemed any agreement that grants workers less rights than the Labor Law's stipulated rights invalid, as stated in Article (4/B), regardless of whether the agreement was concluded before or after the law was waived.

The Saudi Patent Law and Omani Patent Law both state that patent ownership belongs to the employer when the invention results from a contract or obligation requiring effort to "Innovation," as stipulated in Article 12.² The Jordanian Labor Law and Jordanian Patent Law seem to have a definitive limit on worker rights to free invention, as they do not explicitly state this right, as it naturally demonstrates ownership. The two parties agree in writing, contradicting the Labor Law Article 20/A, which grants workers the right to free inventions.

It can be concluded from the above that among the provisions stipulated in both the Labor Law and the Patent Law are the following. We note that the Jordanian legislator has spoken about the second two cases: accidental inventions and free inventions only, despite their differences in provisions, meaning that the legislator did not regulate the original case of service inventions and regulated Provisions for exceptional cases, and he decided that the written agreement with the employer is what determines the rights in accidental inventions, and he permitted the agreement contrary to the ruling establishing the right to a free invention, and he did not talk about the first type, which is one of the most significant types of inventions and their original form. Article (6) of Lebanese law states that its provisions only apply if there is no written agreement providing better worker rights, and the legal rules only apply if there is no alternative agreement that is more beneficial.

Jordanian law distinguishes between two cases, employer's right is absolute, without significant obligations, even with small compensation, and worker's right, with absolute freedom to dispose of invention, with the law imposing minimal obligations on employers and allowing workers to dispose of inventions freely.

Industrial Investor Guide in Iraq, General Directorate of Industrial Development USAID-Tijara, 2012, p. 14.¹
Saudi law stipulates in Article 12.²

Legal guarantees for workers' patents can be extracted from both Labor Law and Patent Law provisions. These guarantees include judicial fees, jurisdiction from the Labor Law Jurisdiction in labor cases, speed of adjudication of cases, and a civil penalty resulting from violating the provisions of the law. Judicial fees are essential for workers to obtain their rights in the simplest and quickest way possible. The Magistrate Court has jurisdiction to consider lawsuits arising from individual labor disputes. The speed of adjudication also requires the judiciary to adjudicate cases expeditiously. The Labor Law extends beyond invalidation as a penalty for violating its provisions to impose a criminal penalty for any violation. Typically, these crimes result in financial penalties. However, the legislator restricted criminal protection in patent law to specific acts, which cannot be expanded upon or compared to.¹

The researcher concluded that patent law lacks guarantees for workers and employers, with the real guarantees being found in labor law, which specifically protects worker-inventors, rather than inventions themselves, and does not provide guarantees for either party.

Patent law and other laws should not regulate work-related issues unless workers receive better rights. Legal foundations can differ if there is a contradiction or conflict between different laws, making it impossible to combine them due to their clear meanings. This ensures that workers have better rights.²

Labor law aims to protect workers from employers' exploitation of their intellectual and material efforts. It is the first law to be applied, as other laws provide fewer rights for workers. Labor law texts are considered the first to be applied, as they provide the strongest party in the legal relationship between the employer and worker, ensuring their protection and fair treatment.

3.2. Legal effects on employee inventions

The legal effects of workers' inventions include rights and obligations arising from their realization, with the order of these effects being determined by the invention's outcome.³ The legal effects of a worker's right to inventions include the employer's right, which is the ownership right proven to the person who created the invention, provided they conform to the conditions set by patent law, such as the invention's existence and the presence of novelty and innovation.⁴ As for the position of jurisprudence on the legal nature of workers' inventions, there is a trend in jurisprudence that sees some laws stipulating what is called the right of pre-emption for the employer over the patents obtained by the worker and which enter into the core of the work activity he performs, including the Italian law and the Egyptian law, which is stipulated in Article (8) of the Patent Law as stated.

The researcher suggests that the legal nature of an invention right is represented by the prior waiver of the material right, as the law grants the absolute right to the two parties to agree on this agreement. The French legal system generally recognizes jurisprudence for

Lebanese law stipulates in Article (6) and d. Salah Zain al-Din, Explanation of Industrial and Commercial ¹ Legislation, House of Culture, Amman, 1st edition, 2015, p. 72.

Jordanian Labor Law No. 8 of 1996 and its amendments.²

Nouri Hamad Khater, Explanation of the Rules of Intellectual Property and Industrial Property, a comparative ³ study between Jordanian, Emirati and French law, Wael Publishing House, 1st edition, 2005, pp. 198-199.

Nouri Hamad Khater, same source, p. 247.⁴

those who conclude a contract to realize an invention, and the rights arising from this invention are based on the principle of the agreement between the contracting parties.

The legal issue of determining the owner of a worker's invention involves identifying the person who invented the worker, as the person who created the invention initially worked for someone else. This determination has significant implications, as it reveals the resulting rights belong to the worker. The ownership of the invention also involves obligations for the worker and employer, with the worker having specific rights.

The employer has the right to the invention that is made by the worker if they explicitly assign the worker to realize it in the employment contract. The worker's right to the invention they achieve is granted if they commit to realizing the invention, developing it on their own, and using the employer's expertise and information, tools, machines, or raw materials to achieve the innovation. This right is granted if the invention falls within the employer's activity.

The patent is a legal document issued by the official authority responsible for issuing it, providing legal protection for all inventions. It grants the owner the right to invest in the invention or grant a license for others to exploit it through optional licensing, whether the patent is for the employer or the worker. This protection allows the owner to invest in the invention.

Patent expiration cases involve the expiry of a specified protection period, a final judicial ruling invalidating the patent, or failure to pay annual fees and additional amounts after six months from their due date.¹

Jordanian law grants employers' significant rights and obligations when a worker discovers an invention. One of the most significant rights is the right to attribute the invention to the worker, allowing them to financially exploit it. This ensures the worker's ownership and responsibility.

Employers have a crucial obligation to provide work to their workers and enable them to perform it by providing the necessary capabilities for them to do so, which is a fundamental aspect of implementing an employment contract.²

The worker's rights and obligations related to the invention they seek are derived from their invention without the employer's expertise, information, or tools, and if it is not related to their work or otherwise agreed upon. The worker's right to be mentioned in a patent is crucial, as it acknowledges their role in the invention, regardless of their employer's capabilities.³

Jordanian law permits the Minister to grant a license to exploit an invention without the patent owner's approval in certain circumstances, such as national security or emergencies, failure to exploit the invention before the patent expires three years from the grant date or four years from the registration application, or if the patent owner is exercising their rights in a way that prevents legitimate competition.⁴

Article (17, 22) of the Jordanian Patent Law No. 32 of 1999. Available at: <<https://www.sabaip.com/wp-content/uploads/2018/04/Jordan-Patent-Law.pdf>> Last Accessed (Jan 2 2024).

Dr. Abdullah Hussein Al-Khashrum, *Al-Wajeez fi Industrial and Commercial Property Rights*, Darwael, ² Amman, Jordan, 1st edition, 2005, p. 86.

Dr. Salah Zain al-Din, *Explanation of Industrial and Commercial Legislation*, House of Culture, Amman, 1st ³ edition, 2002, pp. 69-72.

Article (22) of the Jordanian Patent Law No. 32 of 1999.⁴

2. Conclusion:

In conclusion, we achieved the following results:

- 1- The TRIPS Agreement necessitated the amendment and creation of intellectual property laws, including patent laws, to safeguard inventors and inventions from infringement.
 - 2- The invention rights that can be transferred to the employer are financial rights only, while moral rights remain in the employee's interest.
 - 3- It is fair that the invention invented by the worker during his work, which is mainly related to the activity of the establishment, should not be used as a weapon against the employer if it falls into the hands of one of his competitors.
 - 4- The texts related to employee inventions in the Labor Law and the Patent Law are absolute, as they do not differentiate between free inventions, which are inventions that the worker arrives at by his own means without benefiting from the employer's tools and expertise, and service inventions.
 - 5- We reached an important result, whether in the labor law or patents, which is that the Iraqi legislator came with a ruling that differs from what was stated in the Saudi, Omani, Egyptian, and Algerian patent law.
 - 6- Employee inventions do not come in one form, so the owner of the right to them differs depending on the occasion of their arrival. Some of them are proven to the employer, as in-service inventions and accidental inventions, and some of them are proven to be the right to the worker, which are free inventions.
 - 7- The legislator's goal of the provisions of the Labor Law is to establish a balance between the two parties to the employment contract by providing protection to the weak party in it, which is the worker, by providing a minimum level of protection for the worker's rights, as it is not permissible to agree to violate the provisions of this law.
- The latest amendments are considered a serious step back and diminution of the rights granted to workers in the event of inventions.
- 8- In some laws, work that aimed to protect the weak worker vis-à-vis the employer no longer provides the minimum level of protection intended for it in relation to the rights established for workers. In a developing country in particular, the Iraqi state does not and will not encourage workers to invent because there is no appreciation for the efforts, they make in achieving inventions. The law stripped the worker of every right to share the rights of the invention with the employer, and of any right to compensation or reward to the worker for his invention.

Recommendations:

- 1- The Iraqi legislator should reconsider the legal system for workers' inventions, increase protection for inventors, provide rights and privileges, and incentivize invention and research. This will contribute to the state's scientific and technological progress, which in turn will impact planning and economic development.
- 2- The Iraqi legislator should ensure fair compensation for workers who contribute to inventions, as stipulated in the Civil Code and Labor Law. The worker's rights related to invention should not exceed 50% of their work, considering the amount of scientific and material effort and employer-provided resources. An arbitration committee should be formed to estimate the reward value, consisting of three members, with the president's vote as the casting vote in case of a tie. This would ensure fair compensation for workers who dedicate

their efforts to inventions. The amendment to the Labor Law would further strengthen this protection.

3- A legal text must be put in place that gives the worker the right to apply for a patent in the name of the employer in the event that he refrains from obtaining it, if concealing it would harm the worker's interest.

4- The necessity of stipulating that if the worker applies for a patent within two years from the date of expiration of the employment contract with the employer, then this invention is considered as if it was made during service, as the Saudi legislator states, in order to preserve the rights of employers, taking into account this presumption - that the invention occurred during service - is a simple legal presumption whose opposite may be proven, that the invention was made after the expiration of the employment contract, in order to preserve the rights of the workers. On the other hand, the general rules stipulate that if the worker came to the invention after the expiration of the employment contract, then the employer is not proven to have any a right to this invention, but the worker may resort to fraudulent methods to negate the rights of the employer, so he hides the invention until after the end of the employment contract between them, and then applies for a patent.

5- An estimate of the financial aspect provided by the employer in order for the worker to achieve accidental inventions of raw materials, devices, expertise, information, tools...etc.

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