

الأحكام المنظمة للعلامة التجارية في الاتفاقيات الدولية

أ. عافية صالح مسعود علي

باحثة في مجال القانون

afytalnqratalnqra@gmail.com

Provisions regulating trademarks in international agreements

Afia Saleh Masoud Ali

Researcher in the field of law

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الملخص

مما لا شك فيه أن العلامات التجارية تحظى في وقتنا الحاضر بالاهتمام وتوفير الحماية في كل بلدان العالم تقريباً ، وتلجأ كل دولة إلى تنظيم اجراءات تسجيل العلامات التجارية وتحفظ كل دولة بمكتب تسجيل وطني أو إقليمي تسجل فيه العلامات التجارية يشتمل على معلومات كاملة عن جميع الطلبات والتسجيلات والتجديدات التي تساهم في تبسيط اجراءات الفحص والبحث والاعتراض إن وجد ، ومن المعلوم أن آثار تسجيل العلامات التجارية يقتصر داخل البلد الذي سجلت فيه أو البلدان المعنية في حال التسجيل على المستوى الإقليمي تبعاً لمبدأ إقليمية القوانين ولذلك بقيت الدول حرة في وضع التشريعات التي تراها مناسبة لحماية العلامات التجارية داخل حدودها الإقليمية .

الكلمات الدالة: المنظمات الدولية ، العلامة التجارية ، اتفاقية باريس ، اتفاقية التريس ، اتفاقية مدريد .

Abstract

There is no doubt that, nowadays, trademarks receive attention and protection in almost all countries of the world. Each country resorts to organizing trademark registration procedures. Each country maintains a national or regional registration office in which trademarks are registered, which includes complete information about all applications, registrations, and renewals. Which contributes to simplifying examination, search and objection procedures, if any It is known that the effects of trademark registration are limited within the country in which they are registered or the countries concerned in the event of registration at the regional level, in accordance with the principle of territoriality of laws. Therefore, countries remain free to establish the legislation they deem appropriate to protect trademarks within their regional borders.

Keywords: International organizations, trademark, Paris Agreement, TRIPS Agreement, Madrid Agreement.

Introduction:

As a result of the tremendous and rapid industrial and commercial development witnessed by the world today, and the impact of the proliferation of various means of communication, which facilitate the rapid transfer of technology, goods, and services from one country to another, major investors and business owners felt that there was a disparity between legislation from one country to another, and that such legislation, whether national or regional, was incapable of providing protection for trademarks in the event of an attack outside the regional scope. The search began for more serious means of providing protection for trademarks at the international level, that is, outside the regional scope as well as within it. From here, the need arose to conclude international agreements regulating such protection between different countries. There was also an equal need to establish an international framework that would regulate and supervise specialized regional and international agreements.

Trademark laws are relatively recent, dating back to the early 19th century, when the first actual legal recognition of a trademark occurred. France enacted the first trademark legislation in 1857, Germany in 1875, Britain passed the Trademark Registration Act in 1875, the Ottoman Empire (Turkey) passed a trademark protection law in 1879, Spain in 1929, and Pakistan in 1940. The United States of America delayed recognizing the trademark until just before the second half of the 19th century, when it enacted the Trademark Act in 1946. Countries around the world also began enacting their own laws in the field of trademarks.¹

At the international level, a number of treaties and agreements have been signed that laid the foundations for individuals to acquire their trademark rights, despite the devastation caused to global trade by World Wars I and II. Among the most important of these agreements are:

1. The Paris Convention for the Protection of Industrial Property of 1883, upon which most trademark laws are based.
2. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1994.
3. The Madrid Agreement Concerning the International Registration of Trademarks of 1891. This agreement aims to ensure the protection of citizens of a member state with respect to their trademarks for goods and services registered in the country of origin by registering those marks with the International Bureau in the country of origin. This agreement was revised in Brussels in 1900, Washington in 1911, The Hague in 1925, London in 1943, Nice in 1957, and Stockholm in 1970.

At the Arab level, countries have enacted laws regarding trademarks. Tunisia enacted the Trademark Law of 1963, Morocco enacted the Industrial Property Protection Law of 1916, Egypt enacted the Trademarks, Designs, and Industrial Models Law No. 57 of 1939, which was repealed and replaced by Intellectual Property Law No. 82 of 2002, and Libya enacted the Trademark Law No. 40 of 1956, which was repealed and replaced by Law No. 23 of 2010, among other Arab countries. This research will examine trademarks in the Paris Convention, the TRIPS Agreement, the Madrid Agreement and its Protocol, and in the most prominent international organizations.

¹ -Dr. Samiha Al-Qalyubi: "A Brief Introduction to Industrial Legislation," Arab Union Printing House, Cairo, p. 280.

Research Plan:

Section One: Trademarks in the Paris Convention

Section Two: Trademarks in the TRIPS Agreement

Section Three: The Madrid Agreement, its Protocol, and the Most Prominent International Organizations in the Field of Trademark Protection

Section One: Trademarks in the Paris Convention

The desire of developed countries to establish an international organization that would achieve effective protection for industrial property at the international level, rather than the traditional methods that were prevalent, such as bilateral agreements or the principle of reciprocity, was the primary reason behind the establishment of this convention at a time when there was significant technological and industrial development that led to the spread of industry and the expansion of international trade.¹

The Paris Convention is a unique model for the first international agreement in the field of industrial property protection, including trademarks, as it extended this protection at the international level for the first time, after it had been limited to the protection provided by the domestic legislation of countries, and did not go beyond that except in exceptional cases.

The agreement entered into force on July 7, 1883. It initially consisted of (19) articles. It was then amended in Brussels on December 14, 1900, Washington on June 2, 1911, The Hague on November 6, 1925, London on June 2, 1934, Lisbon on October 31, 1958, Stockholm on July 14, 1967, and revised in October 1979². The Paris Convention resulted in the establishment of an international system for the protection of industrial property, which is considered a constitution that is above the laws of the member states of the Paris Union, such that the laws of the member states may not conflict with the provisions of the Paris Convention. The international system applies in each union alongside the laws of each country individually, meaning that the trademark, as one of the branches of industrial property, enjoys international protection outside the borders of its homeland, in addition to its national protection. Once countries ratify the Paris Convention, the provisions of the Convention become part of the national law in those countries, and there is no need for the country to issue a law that includes the rules contained in the Convention. This means that the provisions of the Convention are self-executing, unlike the situation with regard to the TRIPS Agreement.³

However, the Paris Convention was not intended to oblige member states to establish specific standards for the protection of industrial property rights in their national legislation. Rather, the aim of the Convention was to protect the nationals of each member state of the Paris Union in all other member countries of the Union through the principles established by the Convention, the most important of which are two principles: national

¹ -Dr. Abdullah Hamid Suleiman Al-Ghuwairi: "The Well-Known Trademark and Its Protection under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) - and the Jordanian Trademark Law," PhD thesis in Law, Cairo University, 2006, p. 25.

² - Dr. Muhammad Abdul Rahman Al-Shammari: "Trademark Protection in Light of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)," PhD thesis in Law, Cairo University, 2004, p. 36.

³ - Dr. Hussam Al-Din Abdul Ghani Al-Saghir: "New Developments in Trademarks in Light of the New Intellectual Property Rights Protection Law and the TRIPS Agreement," Dar Al-Fikr Al-Jami'i, Alexandria, 2005, p. 15.

treatment and priority. In addition to these two principles, the Convention also includes some provisions specific to the protection of the various forms of industrial property it addresses, and requires member states to respect them. These provisions include substantive rules for providing protection for patents, utility models, industrial designs, trademarks, trade names, indications of source, or appellations of origin, as well as for the suppression of unfair competition.¹

In this section, we will review the provisions of trademarks in the Paris Convention in four sections, as follows:

First Requirement: Purposes of the Convention and Nature of Obligations

There is no doubt that the Paris Convention for the Protection of Industrial Property is the main pillar upon which the international system of protection of industrial property rights is based.

According to Article 1 of the Convention, a union was established comprising all the States Parties to the Convention, called the Paris Union. Article 1, Paragraph (2) of the Convention stipulates that the protection provided for industrial property in the Convention includes patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or designations of origin, as well as the repression of unfair competition.

Article 1, Paragraph (3) also stipulates that industrial property be understood in its broadest sense, not limited to industry and commerce in their literal sense, but also applies to agricultural and extractive industries and to all natural or manufactured products.²

The main purpose of concluding the Paris Convention is that every person who is a citizen or resident of one of the countries party to the Convention, and has a commercial establishment therein, has the right to protect his invention, industrial designs, models, trademark, or other forms of industrial property mentioned in Article 1 of the Convention in every country of the Paris Union, by treating him with regard to the protection of those rights on an equal footing with the citizens of every country member of the Union, and in accordance with its national law. Once the countries ratify the Paris Convention, the provisions of the Convention become part of the national law in that country without the need for the country to issue a law that includes the rules contained in the Convention. This means that foreigners derive rights directly from the Convention, and they may adhere to its provisions before the national judiciary in all countries member of the Paris Union, regardless of national legislation.³

The second requirement: The principle of national treatment and the principle of priority.

We will explain the concept of the principle of national treatment, followed by the principle of priority.

First: The Principle of National Treatment

¹ -Dr. Wael Mohamed Refaat: "International Trademark Registration and Its Impact on Egyptian Legislation," PhD thesis in Law, Cairo University, p. 110.

² - Dr. Hossam El-Din Abdel-Ghani El-Saghir: "New Trademarks in Light of the New Intellectual Property Rights Protection Law and the TRIPS Agreement," op. cit., p. 14.

³ -Wael Mohamed Refaat: "International Trademark Registration and Its Impact on Egyptian Legislation," op. cit., p. 109. See also: Dr. Hossam El-Din Abdel-Ghani El-Saghir: "The International Framework for Trademark Protection," WIPO Subregional Seminar on Trademarks and the Madrid System, World Intellectual Property Organization (WIPO) and the National Institute of Industrial Property (France), in cooperation with the Moroccan Office of Industrial and Commercial Property, under the auspices of the Ministry of Industry, Trade, and Transport, Casablanca, December 7-8, 2004, p. 4.

Article 2 stipulates this principle, stating: "Nationals of each country of the Union shall enjoy in all other countries of the Union, with respect to the protection of industrial property, the advantages which the laws of those countries now grant or may in the future grant to their nationals, without prejudice to the rights specifically provided for in this Agreement. They shall therefore have the same protection as nationals and the same legal means of recourse against any infringement of their rights, provided that the conditions and procedures imposed on nationals are followed. In accordance with the principle of national treatment, a foreigner who is a citizen of a country of the Paris Union may acquire the rights relating to the various forms of industrial property referred to in Article 1 of the Agreement in all countries of the Paris Union and shall be treated in the same manner as their nationals. The protection granted to nationals of the Paris Union countries is not limited to their own nationals only, but nationals of countries not members of the Paris Union shall be treated in the same manner as nationals of countries of the Union, provided that they reside in the territory of one of the countries of the Union or have real and effective industrial or commercial establishments therein."¹

Accordingly, the benefits that a Union citizen can enjoy under the principle of national treatment include acquiring the right to a trademark, benefiting from the advantages provided by this right, bearing the obligations arising from it, and the possibility of protecting it through lawsuits and legal means necessary to defend the right to trademark ownership. He also benefits from the criminal penalties and civil compensation provided by national law for trademark protection. Based on this principle, citizens of the Union countries are equal to citizens of any member state, and they may have the same rights and benefits enjoyed by citizens if the latter follow the conditions and procedures imposed on citizens². In order for a person to benefit from the principle of national treatment, one of two things must be met:

The first: that he be a member of one of the member states of the agreement. The second: that he be a resident of one of the member states of the union, even if he is not a member state of the union "the agreement." Therefore, if one of the two previous conditions is not met, foreigners will not benefit from the benefits stipulated by the Paris Agreement.³

Second: The Principle of Priority

This principle is stipulated in Article 4 of the Agreement. According to the principle of priority, anyone who has filed a legal application in one of the Union countries for a patent, or for the registration of a utility model, industrial design, or trademark, or industrial design, or industrial design, or industrial design, shall, with respect to the filing of similar applications in other countries, enjoy a right of priority if they file within the deadlines specified in the Agreement, namely, twelve months from the filing date of the first application for patents and utility models, and six months for industrial designs and models, and industrial design and industrial design, or industrial design, or industrial design. For example, anyone who has filed an application for the registration of a

¹ - Wael Mohamed Refaat: "International Trademark Registration and Its Impact on Egyptian Legislation," op. cit., pp. 110–111.

² - Dr. Muhammad Abdul Rahman Al-Shammari: "Trademark Protection in Light of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)," previous reference, p. 38.

³ -Dr. Muhammad bin Barak Al-Fawzan: "The Legal System of Trade Names and Trademarks in Arab Laws - A Comparative Study," Publications of the Library of Law and Economics, Riyadh, 1st ed., 2012, p. 202.

trademark in France (a member state of the Paris Union) shall have a right of priority in registering a similar mark in Egypt if they file an application for a similar mark in Egypt within six months of the filing date of the first application in France. Consequently, any application filed in Egypt by any other person for the same mark during the period between the filing date of the first application in France and the second application in Egypt shall not have priority in Egypt.¹

To benefit from the right of priority, the following conditions must be met:

1) The interested party must apply for registration in the country in whose territory he wishes to establish his right of priority within six months. This period runs from the date of filing the registration application in his country of origin.

The filing date is not included in the calculation of the period.

2) The interested party must submit a declaration indicating the filing date and the country in which it was filed. Each country determines the maximum period within which this declaration must be submitted, in addition to requesting the documents that must be attached to the application.²

The Egyptian Administrative Court ruled that: "A trademark registered with the International Bureau shall enjoy protection in each of the contracting countries concerned as if it had been filed directly there, starting from the date of its registration with the International Bureau. It also enjoys the right of priority stipulated in the Paris Convention".³

The Egyptian Administrative Court ruled, saying: "Registration does not in itself create a right to ownership of the trademark, but rather this right is the result of the use of the trademark, and registration only constitutes evidence of this right, which may be refuted by the person claiming to be the first to use the trademark".⁴

The third issue: Substantive provisions for trademark protection in the Paris Convention

The Paris Convention sets forth several substantive rules for providing special protection for trademarks, in addition to the principle of national treatment and the principle of priority. We will explain them below:

First: The principle of independence and applicable law

This is stipulated in paragraph (3) of Article 6 of the Convention: "A mark registered according to the law in one country of the Union shall be considered independent of marks registered in the other countries of the Union, including the country of origin. This does not mean that the mark loses protection or that its registration is invalidated in the other countries." This is known as the principle of independence of protection of the mark in each country. The conditions for filing and registering a trademark are subject to the national legislation of each country of the Union. The national law of the country in which the mark is to be registered determines the conditions for filing and registration procedures.

¹ - Dr. Hussam Al-Din Abdul-Ghani Al-Saghir: "New Developments in Trademarks in Light of the New Intellectual Property Rights Protection Law and the TRIPS Agreement," op. cit., p. 18.

² - Dr. Abdullah Hamid Suleiman Al-Ghuwairi: "The Well-Known Trademark and Its Protection under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) - and the Jordanian Trademark Law," op. cit., p. 28.

³ - Egyptian Administrative Court, Appeal No. 30015 of 59 Q, dated March 21, 2009, Economic and Investment Disputes Department, Seventh Circuit, Egyptian Electronic Judgments System, 2018.

⁴ - Egyptian Administrative Court, Appeal No. 28871 of 67 Q, dated 3/22/2016 AD, unpublished ruling, Egyptian Electronic Judgments System, 2018 AD.

However, no Union country may refuse to register a mark filed in any Union country by a national of a Union country, or invalidate its registration on the basis that the mark has not been filed, registered or renewed in the country of origin. For example, if a French company files an application to register a trademark in Italy, and then submits a subsequent application to register the same trademark in Egypt, the application to register the mark in Egypt may not be refused on the basis that the French company did not file an application to register the mark or did not register it in France ¹, and that both Egypt and France are parties to the Paris Convention on Industrial Property.

Second: The famous mark: Article 6 (second) of the Agreement addresses the famous mark and sets special provisions for it, requiring member states to stipulate in their domestic legislation the refusal or cancellation of the registration and prohibition of the use of any mark that constitutes a copy, imitation, or translation that would create confusion with a mark that the country in which it is registered or used considers to be famous and used on identical or similar products. The famous mark is given this protection based on its reputation and fame in the country where it is sought to be protected, regardless of whether it is registered or not. The Paris Agreement does not set any benchmarks or determine whether a mark is famous or not, leaving the competent national legislation in each Paris Union country to assess this. It is worth noting that the Paris Agreement includes the protection of famous marks with regard to their registration or use on similar goods similar to the goods distinguished by the famous mark, and does not extend to their use on non-identical or dissimilar goods, as the TRIPS Agreement stipulates. ²

The Paris Convention did not establish any criteria for measuring the fame of a trademark, leaving this to the discretion of the administrative bodies or competent administrative authorities in each member state of the Paris Union. The Egyptian Administrative Court ruled that: "For a well-known trademark to be recognized, it is not sufficient for it to be internationally famous. Rather, it must also be famous in the country seeking protection. This was emphasized by the Egyptian legislator, who explicitly stipulated in Article (62) of the Intellectual Property Protection Law, that the trademark must be internationally famous and famous in the Arab Republic of Egypt. Therefore, establishing evidence of the fame of a trademark outside the country's territorial scope is not sufficient to recognize its fame within the country" . ³

Member states of the Paris Union are obligated to provide protection for a well-known mark in accordance with Article 6 of the Agreement by having the competent administrative authorities, on their own initiative or upon request from interested parties, take the following measures ⁴:

1. Rejecting an application to register a mark identical or similar to the well-known mark if the application is submitted by a person other than the owner of the mark.

¹ -Dr. Hossam El-Din Abdel-Ghani Al-Sagheer: "News in Trademarks in Light of the New Intellectual Property Rights Protection Law and the TRIPS Agreement," previous reference, p. 20.

² -Dr. Abdullah Hamid Al-Ghuwairi: "The Famous Trademark and Its Protection," op. cit., p. 30.

³ - Egyptian Administrative Court, Appeal No. 10599 of 67 Q, dated February 16, 2016, unpublished ruling, Egyptian Electronic Judgments System, 2018.

⁴ - Dr. Hossam El-Din Abdel-Ghani El-Saghir: "Protecting Well-Known Trademarks," WIPO National Training Workshop on Intellectual Property for Diplomats, Sultanate of Oman, 2005, p. 3.

The Egyptian Administrative Court ruled in this regard that: "The Commercial Registration Authority shall reject, on its own initiative, any application to register a mark identical to a well-known mark that includes the use of the mark to distinguish products similar to those for which the well-known mark is used".¹

2. Cancellation of the registration of a registered trademark that is identical or similar to a well-known mark.

The state must grant interested parties a grace period of no less than five years from the date of registration to request cancellation within this period, unless the mark was registered in bad faith. In this latter case, cancellation of the registration of the mark may be requested without any period.

3. Prohibiting the use of the well-known mark by third parties. The state is free to determine the period within which a request to prohibit the use of the well-known mark must be submitted. However, a request to prohibit the use of the well-known mark may be submitted without any period if the use of the well-known mark was in bad faith.²

Third: Assignment of the Mark

Many comparative legislations stipulate that a trademark may not be assigned separately from the enterprise whose products the trademark is used to distinguish. Article 5 (fourth) of the Paris Convention sets forth provisions addressing these legislations, stating that if the assignment of a trademark is not considered valid under the legislation of a Union country if it is coupled with the transfer of ownership of the enterprise or business to which the trademark belongs, it is sufficient for the validity of this assignment to be valid if the ownership of a portion of the enterprise or business located in that country is transferred to the assignee, granting them the exclusive right to manufacture or sell products bearing the assigned mark in that country.³

The Convention also stipulates the right of the trademark owner to assign the trademark, leaving the transfer of the business with the trademark to the domestic legislation of each member state, as to whether the business must be transferred with the trademark or not.⁴

It is sufficient for the validity of the assignment of the mark to be coupled with the assignment of ownership of the part of the project or the branch of the company located in the country or countries in which the mark is to be assigned, without the need to assign ownership of parts of the project or branches of the company located in other countries. However, the countries of the Paris Union are not obligated to apply this ruling if the use of the mark by the assignee is likely to mislead the public, especially with regard to the source of the products bearing the mark or their nature or essential characteristics (Article 6, Fourth, Paragraph 2). This means that the member countries of the Paris Union may stipulate for the validity of the assignment of the mark that the assignment be coupled with the transfer of ownership of the project that uses the mark to distinguish its products with all its branches to the assignee.⁵

¹ - Egyptian Administrative Court, First Circuit, Appeal No. 4353 of 67 Q., dated February 16, 2016, Egyptian Electronic Judgments System, 2018.

² -Dr. Hossam El-Din Abdel-Ghani El-Sagheer: "New in Trademarks," previous reference, pp. 22-23.

³ - Dr. Wael Mohamed Refaat: "International Registration of Trademarks," op. cit., p. 116.

⁴ - Dr. Abdullah Hamid Al-Ghuwairi: "The Well-Known Mark and Its Protection," op. cit., p. 31.

⁵ -- Dr. Wael Mohamed Refaat: "International Registration of Trademarks," op. cit., p. 117.

Fourth: Service Marks:

It is well known that service marks are used to distinguish the services provided by a business. Examples of service marks include the distinctive marks of airlines, hotels, restaurants, travel agencies, car rental agencies, advertising companies, and laundries and dry cleaners. Therefore, service marks perform the same function as product marks, with the only difference being that product marks are used to distinguish goods, while service marks are used to distinguish services.¹

It is worth noting that the protection provided for in the Paris Trademark Convention did not include service marks, but was limited to product marks. At the Lisbon Conference held in October 1958 to amend the Convention, a proposal was discussed to expand the protection provided for trademarks in the Convention to include service marks in all respects. However, the conference did not approve this proposal, and the amendment contained in Article 6 (sixth), which was added to the Convention, was limited to obligating the countries of the Union to protect the service mark without requiring them to register that mark. Article 6 (sixth) stipulates this by stating: "The countries of the Union undertake to protect service marks."²

Fourth Requirement: Dispute Settlement System

Article 28 of the Paris Convention establishes a system for settling disputes that may arise between members of the Paris Union concerning the interpretation or application of the Convention. If the dispute is not settled through negotiation, it may be submitted to the International Court of Justice.

Article 28 of the Convention states:

1. Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention which is not settled through negotiation may be brought before the International Court of Justice by any of the countries concerned by an application in accordance with the Statute of the Court, unless the countries concerned agree on another method of settlement. The country submitting the dispute to the Court shall notify the International Bureau, which shall inform the other countries of the Union.
2. Any country may, at the time of signing the present Act or depositing its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). The provisions of paragraph (1) shall not apply to any dispute between that country and any other country of the Union.
3. Any country that has made a declaration in accordance with paragraph (2) may withdraw its declaration at any time by notification addressed to the Director-General³. The dispute settlement system between member states of the Paris Union has been established in practice, in accordance with the provisions of Article 28 of the Convention. No country has yet resorted to the International Court of Justice to settle disputes related to the modification or application of the Paris Convention for the Protection of Industrial Property. This situation differs from the situation existing under the TRIPS Agreement, which established a dispute settlement system

¹ - Dr. Hossam El-Din El-Saghir: "WIPO Subregional Seminar on Trademarks and the Madrid System," op. cit., p. 9.

² -Dr. Wael Mohamed Refaat: "International Registration of Trademarks," op. cit., pp. 119-120.

³ -Dr. Wael Mohamed Refaat: "News in Trademarks," op. cit., pp. 28-29.

between member states in accordance with the rules contained in the Memorandum of Understanding on the Rules and Procedures Governing Dispute Settlement and obligated all member states of the World Trade Organization to adhere to the rules contained in the Memorandum of Understanding. The Arab Republic of Egypt has entered into a reservation regarding the text of the first paragraph of Article (28) of the Agreement.

Section Two: Trademarks in the TRIPS Agreement

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), also known as the TRIPS Agreement, is one of the three agreements resulting from the Uruguay Round. These agreements include the Agreement on Trade in Goods, the Agreement on Trade in Services, and the TRIPS Agreement on Intellectual Property. The TRIPS Agreement is one of the most important international agreements resulting from the Uruguay Round negotiations of the GATT multilateral trade negotiations. The agreement entered into force on January 1, 1995, ushering in a new era for the protection of intellectual property rights. The World Trade Organization (WTO) was entrusted with overseeing the implementation of the Uruguay Round agreements. The Uruguay Round agreements now govern international trade. In this section, I will discuss the content of the agreement and the most important principles and provisions relating to trademarks contained in the agreement .

1

First Requirement: Content of the Agreement

The TRIPS Agreement includes seventy-three articles divided into seven parts ². Part One addresses general provisions and basic principles. Part Two addresses standards related to the provision of intellectual property rights and the scope of their use. Part Three addresses the obligation to enforce intellectual property rights. Part Four addresses the acquisition and maintenance of intellectual property rights and related procedures between the parties. Part Five addresses the prevention and settlement of disputes. Part Six addresses transitional arrangements. Part Seven, the final part, addresses institutional arrangements and final provisions.

The majority of legal scholars believe that the agreement was established to serve the interests of developed countries. Other scholars believe that it achieves a degree of balance between protecting the interests of developed and developing countries ³.

A compromise formula was reached between conflicting interests and views, which resulted in the signing of the TRIPS Agreement. We will discuss the definition of a trademark in the TRIPS Agreement.

Definition of a trademark in the TRIPS Agreement ⁴. Article (15/1) of the Agreement states: "Any sign or combination of signs that distinguishes the goods and services produced by one undertaking from those produced by other undertakings shall be considered a trademark." Such signs, in particular, words including

¹ -Dr. Abdullah Hamid Al-Ghuwairi: "The Famous Trademark and Its Protection," op. cit., pp. 14-15.

² - Dr. Samiha Al-Qalyubi: "Industrial Property," Dar Al-Nahda, 5th ed., 2005, pp. 32-33

³ - Dr. Muhammad Abdul Rahman Al-Shammari: "Trademark Protection in Light of the Agreement on Trade-Related Aspects of Trademarks," op. cit., p. 13.

⁴ - Dr. Muhammad bin Barak Al-Fawzan: "The Legal System of Trade Names and Trademarks in Arab Laws: A Comparative Study," op. cit., p. 167.

personal names, letters, numerals, figures, color combinations, and any combination of these signs, are eligible for registration as trademarks. Where such signs do not distinguish the related goods and services, Member States may condition the validity of registration on distinctiveness acquired through use. They may also require that the marks to be registered be visually perceptible as a condition for registration. Some jurisprudence¹ believes that the Agreement leaves Member States free to set certain conditions, such as visual perceptibility. However, countries may still register marks that can be perceived by other senses, such as touch, smell, or hearing. Some jurisprudence also asserts that three-dimensional marks, even if not mentioned in the previous definition, are still subject to protection.

The second requirement: General provisions and basic principles of the TRIPS Agreement:

The first part of the TRIPS Agreement addresses the basic principles upon which it is based, including the following:

First: The nature and scope of obligations: The question arises regarding the nature of the mark: is it considered an auditory or visual perceptible object, or is it dependent on the sense of smell? The TRIPS Agreement allows for the requirement that marks be visually perceptible. This means that it implicitly recognizes all forms of marks, whether they are based on the sense of hearing, smell, etc., and therefore does not prevent member states from protecting such types of marks². In this context, it appears that the TRIPS Agreement has expanded the concept of trademarks, as it explicitly included the service mark within the definition of trademarks. It also added usage and precedence to include things that cannot be perceived by sight, such as sound and smell.³

Article 1 of the Agreement defines the nature and scope of member states' obligations. The first paragraph obligates member countries to review their laws, regulations, and all internal rules governing intellectual property rights to ensure their compatibility with the provisions of the Agreement⁴. However, the Agreement does not impose uniform substantive or procedural rules on member states regarding intellectual property rights. Rather, it obliges them to provide a minimum level of intellectual property rights and protection standards. This means that levels of protection vary among member countries due to differences in their policies and philosophies in addressing intellectual property issues.⁵

The TRIPS Agreement only addresses the member states of the World Trade Organization and is not binding on others. The provisions of the Agreement are not self-executing. Therefore, the nationals of the member states do not acquire direct rights in the provisions of the Agreement, and they may not adhere to its provisions and exclude the provisions of national laws. The TRIPS Agreement differs in this regard from the Paris Convention for the Protection of Industrial Property 1883 and its amendments, as the Paris Convention includes

¹ - Dr. Samiha Al-Qalyoubi: "Industrial Property - Trademarks and Industrial Trademarks," op. cit., p. 99.

² -Dr. Jalal Wafaa Mohamedin: "Legal Protection of Industrial Property Under the TRIPS Agreement," Dar Al-Jamia Al-Jadida, Alexandria, 2004, p. 106.

³ -Dr. Walaa El-Din Mohamed Ahmed: "Legal Protection of Trademarks in Private International Law," PhD dissertation, Faculty of Law, Ain Shams University, 2006, p. 282

⁴ - Dr. Muhammad Abd al-Rahman al-Shammari: "Trademark Protection in Light of the Trade-Related Aspects Agreement," op. cit., p. 23.

⁵ - Dr. Hossam El-Din Abdel-Ghani: "News in Trademarks," op. cit., p. 33.

self-executing provisions, and its provisions are considered part of the domestic law once they are ratified and published if the domestic law of the state requires this in the manner stipulated therein. Every person who is a national of the member states of the Paris Union may adhere to its provisions in various other member states, regardless of the provisions of national laws.¹

The third paragraph of Article 1 requires member states to apply the treatment stipulated in the agreement to citizens of other member countries and those in a similar position. This provision guarantees that all citizens of member countries of the World Trade Organization and those in a similar position enjoy the minimum levels of protection estimated by the TRIPS Agreement.

The TRIPS Agreement represents a shift in the history of intellectual property, as it linked it to the principles of international trade. It does not represent a unified law, but rather includes the minimum standards of protection for traditional and modern branches of intellectual property, and leaves countries free to follow the appropriate method for incorporating it into their national laws. It does not oblige countries to apply unified rules for the protection of intellectual property rights, as we have seen. It is unlike most international agreements in the field of intellectual property, and includes objective legal rules and enforcement rules that clarify how to apply those objective rules. It is also distinguished, on the other hand, by the presence of a mechanism for settling disputes that may arise between countries regarding those rules that it has included or regarding their enforcement by following a multilateral system.²

Second: National Treatment and Special Treatment of Most-Favoured Nation Right: Article 4 of the TRIPS Agreement includes the principle of special treatment of most-favoured nation right, according to which member states in the World Trade Area are obligated not to discriminate in treatment between nationals of other member states and those in a similar situation. Therefore, member states must treat all nationals of member states equally in rights and obligations. This principle is being applied for the first time in the field of intellectual property, as no international agreement in the field of intellectual property has previously adopted it. Articles (3 and 4) allow member states to benefit from the exceptions mentioned above from the obligation to apply the principles of national treatment and special treatment of most-favoured nation right. Article (5) also excludes the two principles from application to multilateral agreements concluded under the auspices of WIPO and related to procedural aspects of the acquisition or continuation of intellectual property rights.³

Third: Exhaustion of Intellectual Property Rights

It is well known that intellectual property rights entitle their owner to prevent third parties from importing the protected product from the market of any country. However, the application of this principle in its entirety means that the owner of the trademark or the owner of any intellectual property right has the right to prevent

¹ - () Dr. Wael Mohamed Refaat: "International Registration of Trademarks and Its Impact on Egyptian Legislation," previous reference, p. 124.

² -Dr. Hossam Badrawi: "The Intellectual Orientation of the Egyptian Draft Law on Intellectual Property Rights and the Legislative Vision," a paper presented at the Intellectual Property Symposium: Sharia and Legal Protection, Saleh Kamel Center for Islamic Economics, Al-Azhar University, Cairo, 2002.

³ - Dr. Wael Mohamed Refaat: "International Trademark Registration," op. cit., pp. 126-127.

third parties from importing all protected products, including products offered for sale abroad by the trademark owner, whether personally or with his consent. This allows intellectual property right owners to segment markets and offer products at varying prices.¹

Preventing third parties from importing protected products once they place those products on the market of any country, whether by themselves, through one of their affiliates, or with their consent.

The TRIPS Agreement does not take any positive position on the issue of exhaustion of intellectual property rights. Therefore, the adoption of the principle of international exhaustion by WTO member states' legislation does not violate the TRIPS Agreement. It is in the interest of developing countries to adopt the principle of international exhaustion in their national legislation to provide protected products in the local market at the lowest global prices, most notably pharmaceutical products.

Fourth: Objectives of the Agreement: The TRIPS Agreement aims to encourage technological innovation and the transfer and dissemination of technology to achieve the mutual benefit of producers and users of technological knowledge, in a manner that achieves social and economic welfare and a balance between rights and obligations.

The TRIPS Agreement addresses states, not individuals, and does not accept acts per se in any WTO Member State unless the national law of the country concerned so provides. The provisions of the Agreement are not self-executing, and they do not create direct rights and obligations for nationals of member states, both natural and legal persons. Rather, they oblige WTO Member States to adjust their legal status to conform to the provisions of the Agreement. Therefore, nationals of member states do not acquire direct rights from the provisions of the Agreement, nor may they invoke its provisions and exclude national laws.²

The Agreement authorizes member states, when enacting or amending their laws and regulations, to take the necessary measures to protect public health and nutrition and to serve the public interest in sectors of vital importance to economic and technological development, provided that these measures are consistent with the provisions of the Agreement.

Fifth: The Relationship of the TRIPS Agreement to Treaties Concluded on Intellectual Property

The TRIPS Agreement obligates all member states of the World Trade Organization to implement the provisions of the international agreements referred to it, without discrimination between states that have acceded to these international agreements and states that have not.

The TRIPS Agreement consolidates the provisions of the main international agreements in the field of intellectual property into a single document, thus achieving coherence between them. These provisions had previously been scattered and dispersed throughout various international agreements. It obliges all member

¹ - Dr. Hossam El-Din El-Sagheer: "New in Trademarks," previous reference, p. 39.

² -Dr. Muhammad Abdul Rahman Al-Shammari: "Trademark Protection in Light of the Trade-Related Aspects Agreement," op. cit., p. 28

states of the World Trade Organization to implement its provisions, regardless of whether they have acceded to these international agreements.

The TRIPS Agreement does not stop at referring to the provisions of international agreements concluded on intellectual property; rather, it considers the provisions of this agreement to be the starting point from which it proceeds towards strengthening and consolidating intellectual property rights and establishing them at the international level.

It goes without saying that among the international agreements referred to by TRIPS, there is no agreement addressing trademarks other than the Paris Convention.¹

Sixth: Membership in the TRIPS Agreement:

Article (12) of the Marrakesh Declaration, by which the World Trade Organization was established, stipulates that any country or separate customs territory enjoying complete independence in facilitating its foreign trade relations and other matters stipulated in the Agreement and in multilateral trade agreements has the right to join this Agreement based on the conditions to be agreed upon between it and the World Trade Organization.²

The TRIPS Council is one of the specialized councils of the World Trade Organization (WTO), primarily concerned with overseeing the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Council's membership comprises representatives of all WTO members. The Council establishes its own procedural rules, subject to the approval of the General Council. The Council may establish sub-councils whenever necessary to perform functions or any tasks assigned to it³. Given the World Intellectual Property Organization's extensive technical expertise in the field of intellectual property, it is represented at Council meetings as an observer without participating in the decision-making process.⁴

Third Requirement: Trademark Protection Standards in the TRIPS Agreement

The TRIPS Agreement addresses the standards related to the protection of rights arising from trademarks as follows⁵:

1 - Protectable Materials:

A trademark is any sign capable of distinguishing the goods and services produced by one establishment from those produced by another. Trademarks include words that include names, letters, shapes, color combinations, or any combination thereof, all of which are eligible for registration as trademarks. The TRIPS Agreement has amended and developed the provisions of the Paris Convention on Industrial Property (Stockholm Amendment 1967) regarding trademarks in several respects:

¹ -Dr. Muhammad Abdul Rahman Al-Shammari: "Trademark Protection in Light of the Trade-Related Aspects Agreement," op. cit., p. 28.

² -Dr. Muhammad Abdul Rahman Al-Shammari: "Trademark Protection in Light of the Trade-Related Aspects Agreement," op. cit., p. 29.

³ - Dr. Walaa El-Din Mohamed Ibrahim: "Legal Protection of Trademarks in Private International Law," op. cit., p. 287

⁴ - Dr. Munir Zahra: "Resolution of Intellectual Property Disputes," Law Journal, Issue 1, 2001, p. 557.

⁵ -Dr. Hossam El-Din El-Sagheer: "New Trademarks," op. cit., p. 42

A. The TRIPS Agreement did not limit trademarks to product marks, but rather added service marks to the concept of trademarks. All provisions dealing with product marks apply to service marks.

B. The TRIPS Agreement highlighted the trademark's ability to distinguish goods and services and adopted this distinctive feature as the basis upon which trademarks are based.

As for marks that are not suitable in themselves for distinguishing goods and services, the TRIPS Agreement has permitted member countries of the World Trade Organization to stipulate that, in order to register these marks, they must acquire the characteristic of distinction through use. It has also permitted countries to stipulate that, in order to register a mark, it must be visually perceptible. Therefore, member countries may exclude the smell mark and the sound mark.¹

The TRIPS Agreement is distinguished from other international agreements concluded in various fields of intellectual property by its great interest in enforcing intellectual property rights. The agreement was not concerned with establishing objective rules to provide a minimum level of protection for intellectual property rights in various member states, but was also concerned with establishing strict procedural rules to ensure the implementation of the protection standards it stipulated in member states. These procedural rules are unparalleled in international agreements concluded previously in the field of intellectual property.²

2. Rights Granted:

The owner of a trademark registered under the TRIPS Agreement has the absolute right to prevent third parties from using his trademark or any similar mark in connection with goods and services distinguished by the mark or similar goods where the use of the mark is likely to cause confusion. This guarantees the trademark owner a minimum level of rights. The Paris Convention does not specify the content of the trademark owner's rights.³

Regarding well-known marks, the Paris Convention refers to well-known marks in connection with product marks, not service marks, and does not establish any criteria to define what is meant by a well-known mark. The TRIPS Agreement, however, addresses the well-known mark in Article (16) and develops its provisions. The well-known mark in the TRIPS Agreement is no longer limited to goods marks, but rather includes service marks. The TRIPS Agreement has established a general criterion that WTO member states can use as a guide in defining the concept of a well-known mark.

Whereas it decided that: ".....in determining whether a trademark is well-known, member countries shall take into account the extent of the trademark's familiarity within the relevant public sector, including its familiarity in the member country concerned as a result of the trademark's promotion" .⁴

The TRIPS Agreement expanded the scope of protection provided for a well-known trademark, prohibiting the use of a well-known trademark if it is registered on goods or services that are not similar to those for which the

¹ - Article 15 of the TRIPS Agreement.

² -Dr. Barak Nasser Al-Noon: "Trademark Imitation, Its Harms, and Ways to Protect It," a paper submitted to the Arab Federation for Intellectual Property Rights, p. 15.

³ -Dr. Hussam Al-Din Al-Sagheer: "New Trademarks," op. cit., p. 45.

⁴ - Dr. Muhammad bin Barak Al-Fawzan: "The Legal System of Trademarks and Trademarks in Arab Laws," op. cit., p. 209

mark is used, provided that two conditions are met: first, that the use of the well-known mark on the non-similar goods or services leads to the belief that there is a connection between those non-similar goods or services and the owner of the registered well-known mark; and second, that the use of the mark on non-similar goods would prejudice the owner's interests and expose him to harm .¹

3. Exceptions:

The TRIPS Agreement allows member countries to grant limited exceptions to the rights granted to the trademark owner, provided that the legitimate interests of the trademark owner and third parties are taken into account. Examples of these exceptions include the fair use of descriptive terms for the product or service by third parties. These descriptive terms may include the definition of the product, its specifications, and its degree of quality, as well as the use of personal names and geographical names in good faith. The condition for granting these exceptions is that they be limited and take into account the legitimate interests of the trademark owner.²

4. Requirement to Use the Mark:

According to Article 19/1 of the TRIPS Agreement, if the use of a trademark is a necessary condition for its continued registration, the trademark registration may only be cancelled after three consecutive years without its use, unless the trademark owner proves the existence of valid justifications based on the existence of obstacles preventing its use, such as restrictions imposed by the government on the import of raw materials used in the manufacture of the product for which the trademark is used to distinguish it, or restrictions placed on its use. The use of a trademark by another person with the consent of its owner, as is the case in licensing contracts, is considered use of the trademark for the purposes of its registration.³

5. Restricting the Use of a Trademark:

The TRIPS Agreement prohibits WTO member states from restricting the use of a trademark under specific conditions. For example, it addresses restricting the use of a trademark by requiring it to be used alongside another trademark, such as requiring the use of a foreign trademark alongside a local product's trademark, with a link between the two. Therefore, Arab countries' legislation has refused to require, when dealing with trademark provisions, that the trademark be referred to the Arabic language or that the Arabic language be

¹ - Dr. Hussam Al-Din Al-Saghir: "Protecting Well-Known Trademarks," WIPO National Training Seminar on Intellectual Property for Diplomats, op. cit., p. 4.

² -Dr. Wael Mohamed Refaat: "International Trademark Registration and Its Impact on Egyptian Legislation," op. cit., p. 132.

³ -Dr. Hussam Al-Din Al-Saghir: "News in Trademarks," op. cit., p. 47.

required for trademark registration. It has also restricted the use of a trademark by requiring a specific form of use, such as the necessity of using the product's specific name alongside the trademark.¹

6. Term of Protection:

The term of trademark protection under the TRIPS Agreement is 7 years, and the trademark owner has the right to renew it indefinitely². After discussing the general provisions of trademarks in both the Paris Convention and the TRIPS Agreement, we will discuss the Madrid Agreement and its Protocol Concerning the International Registration of Trademarks, as well as the most prominent international organizations in the field of trademark protection.

Section Three: The Madrid Agreement, its Protocol, and the Most Prominent International Organizations In the Field of Trademark Protection:

The Madrid Agreement allows any citizen of one of the contracting states to guarantee the protection of their trademark registered in their country of origin in all other states party to the agreement. According to the Madrid Agreement System for the International Registration of Marks, trademarks and service marks may be registered with effect in multiple countries after following a single procedure for initiating international registration under the supervision of the World Intellectual Property Organization (WIPO). Any person may apply to register their trademark with the competent registration authorities in their country of origin. After their application for trademark registration is accepted, they may submit an application to the International Bureau of the World Intellectual Property Organization to register their trademark in the countries where they wish to protect their mark.³

As a procedural step, the Madrid Agreement made the International Bureau a single entity for international registration, through which the international registration of a mark is carried out, instead of multiple registration applications in different countries. The Bureau notifies those countries of the international registration, and a specific period is left for the countries to respond, whether by approval or rejection. It also gives the holder of the international registration the ability to add or delete other countries from the international register as desired⁴. The Madrid Agreement also established the principle of national treatment stipulated in the Paris Convention, which stipulates that "nationals of countries which have not acceded to this Agreement and who meet the conditions laid down in the Paris Convention shall be treated in the same way as

¹ - Dr. Muhammad bin Barak Al-Fawzan: "The Legal System of Trade Names and Trademarks in Arab Laws," op. cit., p. 210.

² -Dr. Abdullah Hamid Al-Ghuwairi: "The Well-Known Trademark and Its Protection under the Agreement on Trade-Related Aspects of Trade, previous reference," p. 24

³ -Dr. Abdullah Hamid Suleiman Al-Ghuwairi: "The Well-Known Mark and Its Protection under the Agreement on Trade-Related Aspects of Trade," op. cit., p. 32.

⁴ - Dr. Walaa El-Din Mohamed Ibrahim: "Legal Protection of Trademarks in Private International Law," op. cit., p. 268

nationals of contracting countries" ¹. In the first section, we will discuss the advantages and principles of the Madrid Agreement.

First Requirement: Advantages and Principles of International Trademark Registration

From the perspective of the trademark owner, we find that the international registration system achieves numerous advantages and objectives, the most important of which are:

First Section: Advantages and Objectives of International Trademark Registration:

The objective of the Madrid Agreement is to eliminate the difficulties of multiple individual registrations, on the one hand, and to save fees, expenses, and costs, avoiding unnecessary time wasting, as well as providing maximum protection for the trademark, on the other hand. It is well known that a merchant or manufacturer who wishes to protect his trademark in a number of countries must usually undergo numerous formal procedures followed by national trademark registration offices in each country separately, such as the need to submit the application in multiple languages, the existence of varying protection periods resulting from different renewal dates, and the need to appoint a local agent in some cases. Furthermore, submitting local applications in each country entails very high costs for the applicant, such as local fees, local agent fees, and translation costs in each country.

Thus, the agreement facilitates the registration of trademarks in all member countries of the International Union for the Protection of Industrial Property Rights (IUPID). ²

Among the advantages of international trademark registration are the simplification of filing procedures and the reduction of registration costs. The trademark owner submits only one application for registration and does not wait for the decision of each individual office. There is a time period during which the country declares its refusal to register the trademark, which is considered acceptance of the trademark's registration and protection in the contracting states. The registration system in member states reduces the burden on international registration offices in examining the extent of compliance with the established formalities. In return, offices in member states receive a financial reward from the distribution of international fees collected by the International Bureau. Despite these advantages, the United States, the United Kingdom, and some other countries have held some drawbacks to the Madrid Agreement, including:

1. The Madrid Agreement only allows for the international registration of national marks registered in the country of origin, and does not accept applications for trademark registration. This is further compounded by the fact that some countries have lengthy national registration procedures, which may represent a major obstacle to the international registration of a mark.
2. The short period granted to countries (one year), which serves as a grace period for countries to express their acceptance or rejection of the application of legal protection ³ The Madrid Protocol of 1989 addressed this.

¹ - Dr. Wael Mohamed Refaat: "International Trademark Registration and Its Impact on Egyptian Legislation," op. cit., p. 138.

² - Dr. Wael Mohamed Refaat: "Previous Reference," pp. 138-139

³ -Dr. Walaa El-Din Mohamed Ibrahim: "Legal Protection of Trademarks in Private International Law," op. cit., p. 270.

Section Two: Principles of the Madrid Agreement:

First: National Treatment:

This is evident in the fact that citizens of member countries enjoy protection for their trademarks in all other contracting countries, provided that the trademark is filed in the International Register at the International Bureau, through the administrations of the country of origin, to their nationals. The term "country of origin" refers to a country that is a member of the Madrid Agreement and in which the applicant has either a real and effective industrial or commercial establishment, or is domiciled there, or is of nationality .¹

The mechanism of the international trademark registration system is based on a person filing an international application with the WIPO International Bureau in Geneva, specifying in this application the contracting countries in which they wish to protect their trademark. The WIPO International Bureau then registers the trademark in the International Register, and then notifies the registration to the country concerned, which may refuse protection. Each country designated in the registration application has the right to refuse protection of the trademark if it does not meet the conditions required by its national laws. In other words, each country designated in the application can verify that the mark is distinctive and not deceptive and that it does not conflict with other existing marks.

Second: Continuity of Protection:

A trademark can actually be protected indefinitely, but in the international system and in national systems as well, the international registration must be renewed by paying fees every ten years. Therefore, one of the benefits of the Madrid System is that it enables trademark users to protect their trademarks simultaneously in a large number of countries. Given that the decision to grant or refuse protection to a trademark for a particular country rests with that country, if protection is not refused by that country, it can be renewed indefinitely. The Madrid Agreement stipulates that the term of protection for an international trademark is twenty years, renewable for a similar period starting from the expiration date of the previous term, upon payment of the required fees.²

Third: Substitution of an international registration for previous international registrations:

This means that if a mark has previously been filed in one or more of the contracting countries and subsequently registered internationally with the International Bureau, the international registration replaces all previous national registrations, without prejudice to the acquired rights of third parties.³

¹ - Dr. Walaa El-Din Mohamed Ibrahim, previous reference, p. 272.

² - Dr. Abdullah Hamid Suleiman Al-Ghuwairi: "The famous trademark and its protection under the Agreement on Trade-Related Aspects, previous reference," p. 33.

³ -Dr. Walaa El-Din Mohamed Ibrahim: "Legal Protection of Trademarks in Private International Law," op. cit., p. 273.

It should be noted that, under the Madrid System, it is necessary for the applicant to register the trademark in his or her home country before filing an international application. This procedure is considered a basic requirement of the international registration system.

If the Madrid System is used to request an international registration after the international application has been filed and the national application is subsequently rejected, this will of course have a similar effect on the international registration, as there is a subordination between national protection and international protection for a period of five years, which leads to the cancellation of the international registration. However, if the rejection is only partial at the national level, this applies to the international registration, and the cancellation of the registration will also be partial. If a trademark is registered in the applicant's home country and the applicant obtains an international registration with effects extending to a number of other countries, and then, one year after filing the international application, the applicant's home country cancels the trademark registration, does the trademark continue to enjoy protection under the Madrid System? The answer is that it does not enjoy protection. However, after the five-year period has elapsed, the international registration becomes independent of the registration in the country of origin, and protection continues to be effective even if it is cancelled in the country of origin.¹

In short, the Madrid Agreement outlines the procedures for the international registration of trademarks with the International Bureau of WIPO in Geneva. Registrations made under this Agreement are referred to as international registrations because each registration is valid in all contracting states. After the completion of the international registration, the International Bureau is responsible for publishing and communicating it to the contracting states, provided that the applicant requests protection of the trademark in their territory within one year, specifying the reasons for the request. If this notification is not made within one year, the international registration will have the same effect as a national or regional registration.

The second requirement: The Madrid Protocol Concerning the International Registration of Marks, 1989:

The Madrid Protocol Concerning the International Registration of Marks is an international treaty that provides citizens of member states with a procedure enabling them to protect their marks for goods and services in export markets. The Madrid Protocol was adopted in 1989 and entered into force on December 1, 1995. The Protocol was amended on October 3, 2006. The Madrid Protocol is an independent treaty from the Madrid Agreement Concerning the International Registration of Marks, which was adopted in 1891. Membership in the Madrid Protocol is not conditional on membership in the Madrid Agreement. This Protocol complements the Madrid Agreement Concerning the International Registration of Marks. It was adopted to resolve the difficulties faced in the international registration of marks under the Madrid Agreement, which included the difficulty of providing protection outside the member states of the Madrid Agreement and the necessity of registering the mark in the country of origin as a prerequisite for filing an international application. This resulted in the trademark owner losing priority due to the lengthy period required for the national registration

¹ -Article 3/6 of the Madrid Agreement Concerning the International Registration of Marks.

process¹. The Madrid Protocol addressed the shortcomings of the Madrid Agreement, allowing international registration to be obtained simply by filing a trademark application in the country of origin. The grace period was also extended to 18 months instead of 12 months as was the case in the Madrid Agreement. The protocol also introduced new provisions that were not present in the Madrid Agreement, namely:

- The application may be submitted in English.
- B. The possibility of converting an international registration, in the event of cancellation, into a national application for trademark registration.
- C. The country in which protection is sought may obtain a special fee called the individual fee when applying for international registration, instead of taking a share of the revenue generated by the fees, which the International Bureau collects and distributes to members.²

The absence of some key countries from the Madrid Agreement in the field of trademarks, such as the United States, the United Kingdom, and Japan, posed a real problem that the World Intellectual Property Organization (WIPO) sought to resolve. Several attempts were made to create a new system for the international registration of trademarks. This was accomplished on June 27, 1989, and is known as the Madrid Protocol Concerning the International Registration of Marks. This Protocol aims to introduce several new features into the international registration system for trademarks. The purpose of these changes and features is to remove the difficulties preventing some countries from joining the Madrid Agreement and to establish links with the trademark system applied by the European Community. Once the European Community becomes a party to the Protocol, an international registration application filed under the Protocol will be based on an application or registration with the European Community Office, and an international registration conducted under the Protocol will benefit from the effects of a European registration. Registration applications may be filed in English in addition to French.³

Any country party to the Paris Convention may join the Madrid Protocol without paying any additional financial contribution. The instrument of accession shall be signed by the head of state or government or the Minister of Foreign Affairs, in accordance with the country's legal system. The instrument shall be deposited with the Director General of WIPO. The Madrid Protocol shall enter into force for the acceding country three months after the date of deposit of the instrument of accession. The instrument of accession may contain some of the declarations stipulated in the Protocol. All contracting parties under the Madrid Protocol shall be considered members of the Madrid Union Assembly. One of the most important functions of the Assembly is the adoption of amendments to the common implementing regulations of the Agreement and the Protocol, which regulate the application of the provisions of the two texts. Joining the Madrid Protocol allows companies based in the joining country to obtain protection for their mark and to maintain that protection in a number that

¹ -Dr. Khaled Mohamed El-Mehairy: "Legal Protection of Industrial Property," PhD Thesis, Faculty of Law, Alexandria University, p. 136

² -Dr. Walaa El-Din Mohamed Ibrahim: "Legal Protection of Trademarks in Private International Law," op. cit., p. 271.

³ - Dr. Wael Mohamed Refaat: "International Registration of Trademarks and its Impact on Egyptian Legislation," previous reference, pp. 148-149.

may increase infinitely by means of a simple and low-cost procedure. It is sufficient to file one international application in one language, specifying the countries in which protection is sought, and to pay one set of fees in one currency, the Swiss franc, all of this with the national trademark office. Thus, there is no need to file detailed applications in each country in which protection is sought, nor is there a need to pay fees in different national currencies or renew different national registrations. Any subsequent change affecting the registration of the mark (such as a change in ownership or address) can be recorded in the international register by means of one simple procedure.¹

Countries such as the United States and the United Kingdom joined the Madrid Protocol without the Madrid Agreement, while other countries adhered to the Madrid Agreement only and did not join the Protocol, including Egypt and another group that joined both the Agreement and the Protocol together, such as Germany, Hungary and the Czech Republic.

Third Requirement: The Most Prominent International Organizations in the Field of Trademark Protection:

As a result of the global interest in intellectual property, the tremendous technological developments that resulted in the liberalization of trade worldwide and the removal of barriers to international trade, the need for the organization of regional and international agreements emerged. Voices rose calling for the necessity of establishing specialized international bodies to defend the interests of member states, combat fraud and anything that could mislead consumers, and assist member states in organizing and amending their legislation to keep pace with the tremendous commercial and industrial transformation, ensuring their compatibility with the rest of the world in the field of intellectual property laws. In this requirement, we will address the most prominent international organizations in the field of trademark protection.

Section One: The World Trade Organization:

The World Trade Organization is one of the most important organizations working in the field of protecting intellectual property rights. It is a product of the developments that emerged after World War II. After the war, the victorious countries attempted to establish an economic system that would protect them from violent shocks. They adopted a method of economic cooperation between countries through bilateral agreements in areas of economic activity. The United States was the country most willing to work towards this goal, in an attempt to liberalize trade, relying on the strength of its economy and its victorious exit from the war.

A conference on customs tariffs was held in 1947, and an agreement was reached on the allocation of customs tariffs. This agreement was signed in 1947 and deposited with the United Nations under the title of the General Agreement on Tariffs and Trade (GATT). It entered into force in 1948. It aims to liberalize international trade

¹ -Dr. Wael Mohamed Refaat, the previous reference, pp. 152-153.

¹. Any country seeking to join the World Trade Organization must implement its intellectual property laws, otherwise, that country will be barred from joining the WTO .²

Despite the existence of many international agreements, which many countries, both developed and developing, have joined, and which aim to protect intellectual property rights, major industrialized countries, led by the United States and Europe, have deemed these agreements insufficient to achieve higher rates of intellectual property rights protection for the following reasons:

1. These agreements do not include binding rules for member states that fail to comply with their provisions and the resulting consequences. They also lack effective provisions for resolving disputes between members, forcing states to resort to implementing their national legislation or taking unilateral measures to settle disputes, which hinders international trade.

2. The GATT must include rules on intellectual property rights to combat international trade in counterfeit goods and protect trade secrets as a branch of intellectual property.

The phenomenon of commercial fraud and trademark counterfeiting has spread, and this illegal counterfeiting of patents or trademarks has negatively impacted the original product due to the lower quality of these counterfeit goods when used by consumers.

3. Large companies, especially multinational companies in developed countries, particularly those operating in the field of advanced technology, are keen to protect intellectual property rights and preserve their industrial secrets in light of the fierce international competition among these companies. Therefore, these companies have begun to exert pressure on their governments to protect their products in the markets from the risks of infringement .³

The World Trade Organization (WTO) enjoys a constitutional character, as it includes the organization's basic provisions, its activities, and its relationship with international law entities and other international organizations. It has broad powers, such as oversight and inspection of all countries, and the imposition of sanctions and boycotts. The agreement granted the WTO the status of supreme law and obligated member states to amend their domestic legislation and align their laws and administrative procedures with the governing rules.⁴

The organization aims to supervise the implementation of agreements regulating trade relations between member states, organize negotiations between member states, achieve further trade liberalization, resolve disputes that may arise between member states related to the implementation of international trade agreements,

¹ - Dr. Abdullah Hamid Al-Ghuwairi: "The Famous Trademark and Its Protection under the Aspects Agreement," op. cit., pp. 35-36

² - Dr. Ihsan Samara: "The Concept of Intellectual Property Rights and Their Controls in Islam," Journal of Humanities, University of Mohamed Khider, Biskra, 2005, p. 9.

³ -Dr. Nabil Muhammad Subaih: "Protection of Trademarks and Industrial Marks in Egyptian Legislation and Under the GATT Agreement," Dar Al Nahda Al Arabiya, Cairo, 1999, pp. 22-23.

⁴ - Dr. Abdullah Hamid Suleiman Al-Ghuwairi: "The Well-Known Trademark and Its Protection under the Agreement on Trade-Related Aspects of Trade," op. cit., p. 38

and monitor the trade policies of member states in accordance with the mechanisms agreed upon in the organization.¹

Egypt acceded to the WTO Agreement by Presidential Decree No. 72/1995, published in the Official Gazette on June 15, 1995.²

Section Two: The World Intellectual Property Organization (WIPO):

The World Intellectual Property Organization (WIPO) is an international organization founded in 1970 and headquartered in Geneva, Switzerland. It is dedicated to helping ensure the protection of the rights of creators and property owners worldwide. This international protection plays a significant role in promoting and protecting the achievements of human thought, stimulating human creativity, and expanding the horizons of science and technology.

WIPO stands out within the United Nations as a field in which member states establish and coordinate rules and practices to protect intellectual property rights. WIPO works with its member states to demystify intellectual property for the general public, from the business sector to policymakers, thereby enhancing awareness, proper understanding, and utilization of its benefits.

In 1947, WIPO became one of the specialized agencies of the United Nations charged with managing intellectual property matters.

After concluding a cooperation agreement with the World Trade Organization in 1996, WIPO expanded its role and demonstrated the importance of intellectual property rights in managing trade in the era of globalization. The organization aims to make intellectual property registration systems more user-friendly by harmonizing and simplifying procedures and facilitating the procedures for obtaining patents and protecting trademarks in the countries party to the Trademark Law Treaty (TLT) of 1994 and the Patent Law Treaty of 2000. Egypt and Libya are among the member states of the World Intellectual Property Organization (WIPO).³

Third Branch: The Arab Society for Intellectual Property:

The Arab Society for Intellectual Property is a private, unofficial Arab professional association founded in Munich, Germany, on February 22, 1987, under the name of the Arab Society for the Protection of Industrial Property. Munich, Germany, was chosen as a center for the protection of industrial property and related research in Europe. The combined efforts of a number of professional figures and institutions led to the association receiving official Arab support from most Arab countries.⁴

The association has provided assistance to Arab countries in preparing draft intellectual property laws or regulations, as well as training technical personnel. These countries include Jordan, Tunisia, Yemen, Libya, the

¹ - Dr. Nabil Muhammad Subaih: "Protection of Trademarks and Industrial Marks in Egyptian Legislation," op. cit., p. 19.

² - Dr. Samiha Al-Qalyubi: "Industrial Property," op. cit., p. 241.

³ -Dr. Abdullah Hamid Sulaiman Al-Ghuwairi: "The Well-Known Trademark and Its Protection under the Trade-Related Aspects Agreement," op. cit., pp. 39-40.

⁴ - Dr. Talal Abu-Ghazaleh: "Dictionary of Intellectual Property," 2000, p. 15.

United Arab Emirates, Oman, and Palestine, based on the existing cooperative relationship between the association, the World Trade Organization, and the World Intellectual Property Organization. The Academy participates in disseminating information and following up on professional events and developments in the world, seeking to spread the culture of intellectual property in the Arab world to keep pace with developments in the world, which contributes to protecting both the consumer and the producer, and organizing and activating the intellectual property profession and raising its level and the level of those dealing with it in a way that serves the practice of the profession. The Academy held a number of advanced seminars, including the Intellectual Property and Technology Symposium in Amman.¹

The Arab Society for the Protection of Intellectual Property has observer status in the World Intellectual Property Organization and is a member of the list of non-governmental organizations with consultative status with the United Nations Economic and Social Council. It aims to improve and unify Arab legislation in the field of intellectual property by studying the various aspects of patents and trademarks and proposing basic guidelines for putting them in the form of laws, as well as enhancing awareness of the necessity of international protection of intellectual property in its various branches among those concerned in the Arab world.²

On the other hand, and based on strengthening Arab cooperation in the field of intellectual property protection, it was necessary to have a strong entity within the framework of the Arab federations that would help protect intellectual property, preserve Arab identity, and encourage inventions and innovations. Hence, the Arab Federation for the Protection of Intellectual Property Rights was established in 2005, among the specialized federations. Based in Cairo, it seeks to achieve the following objectives:

1. Raising awareness of the need to protect industrial property in the Arab world by encouraging the development of laws, such as trademark and industrial laws, patents, and intellectual property protection laws.
2. Raising awareness of the need for protection among stakeholders in the Arab world, unifying Arab legislation in this field, and standardizing conventions in line with the provisions of international agreements on intellectual property protection.
3. Raising awareness and education in the field of protection through specialized advertising, conferences, seminars, research, and studies, with the goal of protecting both producers and consumers.
4. Regulating and revitalizing this profession and raising its profile to serve its members and the local and international communities, in addition to training Arab cadres in the field of industrial and commercial property.³

Through what was covered in this research in terms of presenting the most important international agreements and the most prominent organizations in the field of intellectual property protection, we will present the most important results and recommendations in the conclusion of the research.

¹ - Dr. Abdullah Hamid Suleiman Al-Ghuwairi: "The Well-known Trademark and Its Protection under the Agreement on Trade-Related Aspects of Trade," previous reference, p. 44.

² -Dr. Muhammad Muhammad Al-Shalash: "Intellectual Property Rights between Jurisprudence and Law," An-Najah National University Journal, Palestine, 2000, p. 14.

³ - Dr. Salem bin Mohammed Al-Hamidi: A working paper submitted to the proceedings of the scientific symposium on legislation related to the protection and development of industry, the Arab Center for Legal and Judicial Research, Beirut, Lebanon, 2015, pp. 9-10.

Conclusion:**First, the results:**

1. A trademark is the sole means of identifying the goods and products we use in our daily lives. These marks express the characteristics of those products and merchandise, and they also influence the consumer's decision to purchase those products bearing that mark, as they are associated in the consumer's mind with the level of quality.
2. Egyptian and Libyan law are consistent with the Paris Convention in adopting the principle of reciprocity and priority.
3. The Madrid System for the International Registration of Trademarks, administered by WIPO, gives a trademark owner the opportunity to protect their mark in multiple countries by filing only one application with the International Bureau. This entails the same effects as a national application for registration of a mark filed in each country. Unless the national office of the given country refuses to grant protection within a specified period, the mark enjoys the same protection as if the mark were registered with that national office.

Second, recommendations:

1. We recommend the need to stipulate rules governing international registration procedures in Libya, similar to some legislation that includes such procedures in its national legislation, thus filling this legislative gap.
2. We recommend the need to support the Trademark Office with the necessary financial, human, and technological capabilities, as well as establishing branches for it. This would facilitate access and maximize the benefit of protection by encouraging producers to register their trademarks, as the centralized system does not allow this.

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2. Ruling of the Egyptian Administrative Court, Appeal No. 10599 of 67 Q, dated February 16, 2016, unpublished ruling, Eastern Law System.
3. Ruling of the Egyptian Administrative Court, Appeal No. 28871 of 67 Q, dated March 22, 2016, unpublished ruling, Eastern Law System.
4. Ruling of the Egyptian Administrative Court, Appeal No. 30015 of 59 Q, dated March 21, 2009, Economic and Investment Disputes Circuit, Seventh Circuit, Eastern Law System.