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Transfer of Patent Rights to Heirs in Algerian Law

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Abstract

This paper examines the question of the transfer of patent rights to heirs, by exploring the inventor's exclusive entitlement to ownership of the patent during their lifetime — an entitlement that becomes impossible to exercise personally upon death — and the consequent legal right of heirs to exercise the ownership rights of their deceased relative. The study further examines the extent to which heirs may exclusively appropriate this category of intellectual property, with the aim of ensuring the continuity of patent exploitation and achieving a twofold result: private benefit for the heirs and the broader public benefit of economic development, through the legal regulation of patents.

Keywords: *Heirs; Patent; Industrial Application; Industrial Property.*

1. Introduction

Intellectual property rights are among the categories of financial rights that have expanded enormously across the spheres of cultural, industrial, and commercial life. They have come to play an effective role in the progress and economic sovereignty of states, which have accordingly established comprehensive legal frameworks commensurate with the aspirations of their societies, thereby promoting cultural flourishing, industrial advancement, and commercial development.

The importance of patents stems from the effective role they play in the economic activity of most states, through the industrial foundations that those states adopt and pursue in order to keep pace with industrial developments and to achieve economic objectives for both the public and private sectors.

Algerian legislation, in common with other legal systems, has undertaken the legal regulation of patents since independence, so as to allow the exercise of the rights conferred by patents under Algerian law, which has ensured protection for patent holders during their lifetime, throughout the statutory period of monopoly, and even after their death on the one hand, and upon the expiry of the patent monopoly on the other.

Among the objectives that legal regulation has sought to achieve is the question of the transfer of patent rights to heirs and the continuity of exploitation of rights of this special nature — rights whose ownership differs from that of other assets by virtue of its dual character, combining a financial dimension and a moral dimension that relates to the personality of the deceased inventor.

The importance of the patent further lies in its public character, the benefits of which accrue specifically to the heirs and more broadly to the industrial economy. This consideration has driven the continuation of the exercise of these rights beyond the death of their holder.

The central research question is accordingly: to what extent may patent rights be transferred to heirs? The analytical method is applied throughout, drawing on the Law on Patents. In response to this question, the study is divided into two parts: (1) Inheritance as a means of transmitting a patent; and (2) The effects of the transfer of patent ownership to heirs.

2. Inheritance as a Means of Transmitting a Patent

The event of death is among the involuntary causes that transfer patent ownership from the inventor to their heirs. This is addressed both by the general rules of legal regulation and by

Islamic legislation. Patent ownership constitutes assets of a special nature, differing from other assets, as this category of ownership is characterized by a set of features that give rise to numerous questions concerning the manner in which these rights pass from the deceased to the heirs — questions this study seeks to address by examining the financial character of a patent and hence the possibility of its inclusion among the assets of an estate, and by examining the capacity of heirs to exclusively appropriate these rights after the death of their holder.

2.1 The Deceased's Ownership of the Patent

The dual nature of patent ownership — comprising a financial dimension pertaining to the patrimony and a moral dimension relating to the personality of the inventor — and the differing characteristics of each element, necessitates an examination of the concept of the estate (*tarka*) and of the extent to which patent rights may be transmitted through the estate left by the deceased.[1]

2.1.1 The Concept of the Estate

Linguistic Definition. The term estate (*tarka*) is derived from the verb *taraka* (to leave): "I left the thing" means I abandoned it; "I left the deceased" refers to what the deceased left as inheritance, the plural being *tarkaat*.

Technical Definitions in Islamic Jurisprudence. The Hanafi school defined the estate as that which the deceased leaves of clear assets, free of any third-party right attaching to specific assets.[2] The Maliki school defined it as a right that is capable of alienation and vests in its entitled holder after the death of its former possessor.[3] The Shafi'i school defined it as that which the deceased leaves of property or rights. The Hanbali school defined it as the right left behind by the deceased.[4]

Legal Definition. The Algerian Civil Code does not define the estate or its contents, but refers the provisions of inheritance to the Family Code (Article 774 of the Civil Code).[5] The Algerian Family Code similarly refrains from defining the estate, addressing only the rights

[1]Ibn Manzur, Jamal al-Din Muhammad ibn Makram, The Tongue of the Arabs, Dar Sadir, Beirut, entry under "to graze," Chapter K, Section T, vol. 10, p. 405.
[2]Muhammad Amin ibn Abidin, Annotation on the Response of the Confused to the Chosen Pearl: Commentary on the Enlightenment of Insights, Dar al-Fikr for Printing, Publishing and Distribution, Beirut, 2nd ed., 1399 AH/1997, vol. 6, p. 759.
[3]Ahmad ibn Muhammad ibn Ahmad al-Dardiri, The Brief Commentary on the Nearest Paths to the School of Imam Malik, with the marginal notes of Ahmad ibn Ahmad al-Sawi, Dar al-Ma'arif, Egypt, n.d., vol. 1, p. 478.
[4]Mansur ibn Yunus ibn Idris, The Revealer of the Mask from the Text of Conviction, Dar al-Fikr, Beirut, n.d., vol. 2, p. 540.
[5]See Article 774 of Order No. 75-58 (Algerian Civil Code): "The provisions of personal status law shall govern the determination of heirs, the allocation of their shares, and the transfer of estate assets."

connected to it in Article 180. The Moroccan Family Code, by contrast, defines the estate in Article 321 as: "all that which the deceased leaves of property or financial rights."[6]

Since the Family Code provides no clear definition of the estate, the provisions of Islamic Sharia must be applied pursuant to Article 222 of the Family Code.[7] The majority jurisprudential view holds that the estate comprises the property or right that passes from the deceased to their legal heirs. What is not characterized as property is not considered part of the estate and is not inherited. Property may be tangible, such as physical objects, or intangible, such as rights perceptible only through conceptualization.[8] The Supreme Court has confirmed that inheritance consists of the assets that the deceased accumulated and owned during their lifetime.[9]

Under the Algerian Civil Code, "property is the right of financial value, whether a real right, a personal right, or a right of literary, artistic, or industrial ownership." Article 682 of the Civil Code further provides that any thing not excluded from commerce by its nature or by operation of law may be the subject of financial rights.[10] It follows that the estate comprises all property and financial rights left by the deceased after settlement of debts, including real property, movables, and financial rights.[11]

Accordingly, the definition of the estate within both the legal framework and Islamic jurisprudence brings intellectual property rights within the category of financial rights capable of valuation and exclusive appropriation, against which no encroachment is permissible. Patents fall within this category, and the study therefore proceeds to the question of the transmission of financial rights to heirs.

2.1.2 Financial Rights Capable of Transmission to Heirs

[6]Al-Rashid Bin Shuwaykh, Wills and Inheritance under the Algerian Family Law, Dar al-Khalduniyya for Publishing, 1st ed., Algeria, 1429 AH/2008, p. 75.
[7]See Article 222 of the Family Code (Order No. 75-58 of 20 Ramadan 1395 AH, corresponding to 26 September 1975, as amended and supplemented by Law No. 05-02): "In all matters not provided for in this Law, reference shall be made to the provisions of Islamic Sharia." The Supreme Court has affirmed this approach: Supreme Court, Personal Status Chamber, 25 July 1995, Case No. 123051; and 23 May 2001, Case No. 251656, Year 2002, Issue No. 1, pp. 306–307.
[8]Belhadj al-Arabi, A Concise Guide to Estates and Inheritance, Office of University Publications, 6th ed., Algeria, 2008, vol. 1, p. 80.
[9]Supreme Court, Inheritance Chamber, 14 April 1982, Case No. 24770; 13 May 2009, Case No. 490334, Supreme Court Bulletin, 2009, Issue No. 2, p. 296.
[10]Belhadj al-Arabi, General Theory of Obligations in Algerian Civil Law, Office of University Publications, 6th ed., Algeria, 2008, vol. 1, pp. 13–14.
[11]Belhadj al-Arabi, A Concise Guide to Estates and Inheritance under the Algerian Family Law, cited above, p. 81.

The principle established in both Islamic jurisprudence and Western scholarship is that the rights of the estate pass to the heir. Rida Wahdan notes: “The rule in law is that the heir is considered a continuation of the personality of the deceased, and on this basis the rights of the deceased pass to the heir, who likewise assumes the obligations of the deceased, unless the agreement, the nature of the obligation, or the law provides otherwise.”[12]

Al-Sanhuri, writing under the heading “Estate Rights,” states: “If the deceased concluded a contract from which rights arose, those rights pass as such to the heir after the death of the deceased. Thus if a person sold property he owned for a deferred price, and died before the deferred date arrived, or after it arrived but before he collected the price, the right arising from the contract of sale passes as such to the heir — whether deferred or due. If the seller had taken a pledge as security for the price, the right of pledge also passes to the heir together with the right to the price.”[13]

Al-Sanhuri identifies certain rights that do not pass to heirs: “If the rule in Islamic jurisprudence, as in Western jurisprudence, is that estate rights pass to the heir, there are exceptions to this rule, arising — as in Western jurisprudence — from the nature of the right. What is not a financial right, what is a financial right but whose enjoyment is personal to the deceased, and what is connected to the will of the deceased rather than to his estate, all of this does not pass to the heir, because the nature of the right resists such transmission.”[14]

Among the rights capable of transmission are real property of all kinds, movables, real rights valued in money and deriving from the right of ownership, such as easements,[15] usufruct, rights of use, pledges, privileges, surface rights, and pre-emption rights. Among commercial rights that are inheritable are trade businesses, enterprises, companies, shares, securities, bonds, equipment, trade names, patents, trademarks, and other such rights — all of which fall within the category of intangible rights. The Islamic Fiqh Academy has affirmed the proprietary nature of such rights in its resolution: “Copyright and patent or innovation rights are protected by Sharia, and their holders have the right to dispose of them; they may not be violated.”[16]

[12]Rida Mutawalli Wahdan, Transfer of the Effects of Contracts to Successors, Dar al-Jami'a, Alexandria, Egypt, 2001, p. 33.
[13]Abd al-Razzaq al-Sanhuri, Sources of Rights in Islamic Jurisprudence, Dar Ihya' al-Turath al-Arabi, Beirut, Lebanon, 1st ed., 1998, vol. 2, part 5, p. 60.
[14]Al-Sanhuri, Sources of Rights in Islamic Jurisprudence, vol. 2, part 5, p. 69.
[15]Supreme Court, Inheritance Chamber, 3 June 1978, Case No. 49799, Issue No. 3, p. 33.
[16]Islamic Fiqh Academy, Resolution adopted at its Fifth Session, held in Kuwait from 1 to 6 Jumada al-Ula 1409 AH, corresponding to 10–15 December 1988.

A patent falls within the category of assets capable of transmission and disposition, by virtue of the effective role of custom in conferring financial value on them in human transactions, and by virtue of the dual nature of patent rights — comprising a financial dimension capable of transmission to heirs, and a moral dimension that also passes to heirs, though only within the limits of protection rather than outright ownership, as will be elaborated in the discussion of the heirs' exercise of the moral rights of the patent.

2.2 The Heirs' Exercise of Procedures to Appropriate Patent Ownership

Patent ownership rights have become assets in their own right, capable of transfer to others by any means of legal disposition, against which no encroachment is permissible during the lifetime of the owner or of any person to whom ownership passes by assignment. Since personal exercise of these rights becomes impossible after the death of the holder, the heirs assume the holder's legal position.

2.2.1 The Heirs' Exercise of Procedures to Benefit from the Patent

In order to exercise the inventor's financial rights, heirs must carry out certain procedures that may vary according to the circumstances of the death. The inventor may die before filing the patent application, or death may occur after the statutory protection period has expired and the exercise of rights is required to prevent lapse of the patent. The study therefore addresses all relevant procedures.

(a) Filing of a Patent Registration Application by the Heirs. The general rule is that the application is submitted by the true inventor as the first holder of the right to own the invention. However, the legislator has permitted the particular successor who legally assumes the inventor's position to submit the application. The inventor has the right to have their name stated in that capacity in the patent, and the heirs of a deceased inventor who made the invention may likewise have the inventor's name so stated. Where the deceased inventor did not file a registration application, the heirs are entitled to file an application to register the invention in their own names.

(b) Payment of Registration and Filing Fees by the Heirs. Article 9 of Order 03-07 on Patents provides: "The duration of a patent shall be twenty (20) years from the filing date of the application, subject to payment of registration fees and annual maintenance fees in accordance with the applicable legislation." The Algerian legislator has provided for automatic lapse of the right to ownership of the patent if the holder fails to pay the fees referred to in Article 9. However, the legislator grants the patent holder and the heirs a grace period of six

months from the date one year has elapsed since filing, within which the heirs may pay the fees due, subject also to a late-payment penalty.[17] This is confirmed by Article 54 of Order 03-07.[18]

(c) Obligation of the Heirs to Exploit the Patent. The holder of patent ownership and the heirs are granted full freedom to decide whether or not to exploit the patent. However, the distinctive feature of a patent is that it is capable of industrial application, and failure to use it leads to its lapse — as confirmed by Article 11 of Order 03-07.[19]

2.2.2 The Heirs' Exclusive Appropriation of Patent Ownership

A patent is a protection certificate granted to the inventor in respect of their invention, by which their ownership is established and by which they alone are entitled to exploit the patent and to dispose of it by all means of exploitation throughout the period of protection afforded by law.[20]

Once a patent is granted, satisfying all substantive and formal requirements,[21] it becomes a title of ownership and evidence of priority of the invention for the purposes of the application, thereby making the invention the subject of legal protection that safeguards the inventor's rights and efforts, and ensuring for society as a whole the benefits to be derived from exploiting the invention, while also accruing to the patent holder's successors — the heirs.

A patent is a document issued by a competent official authority pursuant to which the inventor and their heirs enjoy several rights, including the right to exploit the invention and to assign it by sale, importation, and the like.[22] The World Intellectual Property Organization defined the invention in Article 12 of the Model Law published in 1965 as: "an idea arrived at by an inventor which provides, in practice, the solution to a specific problem in the field of technology; the invention may be a product or a process." The Algerian legislator defined a patent in Article 2 of Order 03-07 as: "a document issued for the protection of an invention."

Article 10 of Order 03-07 expressly recognizes the heirs' right to exercise the rights of their deceased relative, stating that the patent belongs to its holder, as defined in Articles 3

[17]Marmoun Musa, Ownership of Patents under Algerian Law, doctoral dissertation, Faculty of Law, University of Constantine, 2012–2013, p. 88.
[18]Article 54 of Order No. 03-07 (identified as No. 03-05 in the original reference): "A patent shall lapse if the annual maintenance fees due on the filing date are not paid, in accordance with Article 9..."
[19]See Article 11 of Order No. 03-07 on Patents.
[20]Nabil Wengi, "The Patent System as a Tool for Achieving and Protecting Economic Development," Annals of the University of Algiers Journal, vol. 34, no. 1 (2020), p. 183.
[21]See the provisions concerning the substantive and formal requirements for patentability in Order No. 03-07 of 19 July 2003 on Patents, Official Gazette, no. 44, 23 July 2003.
[22]Nahida bint al-Shamrukh, "Innovation Rights from the Perspective of Islamic Law," Journal of the Saudi Fiqh Association, no. 9 (2014), p. 562.

through 8, “and to their successor.” Article 11 further confirms the heirs’ entitlement to appropriate the rights of their deceased relative in the ownership of the patent, providing: “Subject to Article 14 below, a patent shall confer upon its holder the right to assign it or to transfer it by inheritance.”

A patent may take one of two forms: a single-owner patent, in which case the rights attaching to the patent pass directly to the legal heirs, though this may give rise to difficulties where there are multiple co-owners; or a jointly owned patent. In the latter case, Article 10(2) of Order 03-07 provides: “Where two or more persons have jointly made an invention, the right to ownership of the patent shall be deemed to be held jointly by them as co-inventors, or by their successors.”

3. Effects of the Transfer of Patent Ownership to Heirs

Having established in the preceding section that the deceased holds the exclusive right to patent ownership and that this ownership passes to the heirs, and that the heirs are entitled to dispose of their deceased relative’s ownership within the limits prescribed by the governing law, this section turns to the effects of the transfer of patent ownership. Among these effects is the exercise by the heirs of all rights flowing from this entitlement, and compliance with all relevant procedures, with a view to advancing the economy through the exercise of patent rights, enjoying the financial dimension, and protecting the moral dimension.

3.1 The Heirs’ Exercise of the Financial Rights of the Patent

The heirs’ exclusive right to patent ownership confers upon them all powers to exercise their deceased relative’s financial rights and to defend the moral rights, within the limits permitted by Order 03-07 as to time and place, given that patent rights are rights of a temporary character.[23] The heirs’ exercise of this ownership is accordingly limited in time. The duration of exploitation available to the heirs will be longer or shorter depending on the time of the inventor’s death.

The financial right entitles the inventor to exclusive exploitation of the invention for financial gain, to benefit from the material returns resulting from their intellectual effort. It is natural that the inventor should hold this right exclusively, that it may not be violated, and that the inventor is permitted to pursue all means of exploitation to obtain the resulting financial

[23]Article 9 of Order No. 03-07: "The term of a patent shall be twenty (20) years from the filing date of the application, subject to payment of registration fees and annual maintenance fees in accordance with the applicable conditions."

return. This is confirmed by Article 11 of Order 03-07, which provides that a patent confers upon its holder the following exclusive rights:

- Where the invention is a product: the right to prevent third parties from manufacturing, using, selling, offering for sale, or importing the product for those purposes without the holder's consent.
- Where the subject-matter of the invention is a process: the right to prevent third parties from using the process, or from using, selling, offering for sale, or importing a product obtained directly by that process, without the holder's consent.

The financial right thus enables the inventor to exploit the invention in a manner that generates financial return; this exploitation necessarily becomes impossible to exercise personally after death, conferring upon the heirs the right to exercise these rights.

The heirs may employ the available legal instruments: total or partial assignment of the right to exploit the invention; licensing of exploitation to third parties; pledging the patent; or contributing the right as a share in a commercial company.

Article 23 of Order 03-07 permits such transmission of rights, providing: "Rights arising from a patent … may be transferred in whole or in part in accordance with applicable legislation." Such transfer may be with or without consideration.

3.1.1 Assignment of Patent Ownership by the Heirs

The heirs may assign the patent in its entirety, together with all rights deriving from it, in which case all rights pertaining to the ownership transfer to the assignee, who assumes the position of the heirs in all their entitlements. The exclusive right to appropriation accordingly passes to the assignee, who may then dispose of the patent by all acts transferring ownership. This right is nonetheless restricted by the prohibition against encroachment on the moral dimension, which subsists throughout the period of protection and indeed beyond it, without being subject to prescription.

Alternatively, the heirs may partially assign to the contracting party, for example by assigning the right of production alone, or the right of sale only, or by assigning the patent for a specified period or in respect of a specified territory.[24]

The heirs are obligated to follow the legal procedures for the assignment agreement in order for the assignment to be valid and effective against third parties, including delivery of the

[24]Marmoun Musa, Ownership of Patents under Algerian Law, p. 105.

invention in accordance with the agreed specifications, and the obligation to warrant against legal and physical interference by third parties.

3.1.2 Pledging of Patent Ownership by the Heirs

In addition to assigning the patent to third parties, the heirs may pledge the patent as a right falling within the general security. In accordance with general law, a pledge is constituted by a written agreement specifying the secured amount, the name of the owner of the pledged asset, the date, and the subject-matter of the pledge.[25]

A patent is closely linked to the commercial establishment, though it may be transferred separately therefrom. Article 119(2) of the Commercial Code provides:[26]

> *"The pledge of a commercial establishment must expressly include patents; it may not be implied. Registration shall be effected at the National Institute."*

3.1.3 Contributing Patent Ownership to a Commercial Company

The heirs may contribute their inherited interest to one of the commercial companies, by granting a power of attorney to one of the heirs to legally represent the others in the event of their plurality. Such a contribution is more readily effected in companies of capital than in partnerships, since in the former it is capital rather than the personality of the members that is of primary significance.

The contribution may be made in one of two ways: either as a transfer of ownership, in which case the general rules of sale apply, or as a right of usufruct, in which case the general rules of lease apply. This is confirmed by Article 79 of the Commercial Code,[27] which permits a patent to be contributed as a share in a company in conjunction with a commercial establishment.

3.1.4 Granting of Licences by the Heirs to Exploit the Invention

The patent owner and the heirs have the right to decide whether or not to use the invention. The heirs may not see the need to exploit it, or may await a suitable opportunity to do so in order to achieve a satisfactory return and competitive advantage. However, since the protection of innovative rights is granted in return for the owner's exploitation thereof for the benefit of

[25]Hayat Shirak, Rights of the Patent Holder under Algerian Law, Master's thesis, Faculty of Law, Ben Aknoun, Algeria, 2001–2002, p. 84.
[26]Order No. 75-59 of 26 September 1975 comprising the Algerian Commercial Code, as amended and supplemented.
[27]See Article 79 of Order No. 75-59 comprising the Algerian Commercial Code.

society, any failure to serve society in this respect may cause the public authority to grant a third party the right to exploit the invention through a compulsory licence, subject to specified conditions.

Article 24 of Order 03-07 provides: "The patent holder may grant another person a licence to exploit the invention by contract." Although this article addresses the patent holder during their lifetime, the right passes to the heirs after death, in addition to a set of procedures the heirs must carry out to obtain the patent — from the registration application to the expiry of the financial right.

3.2 The Heirs' Exercise of the Moral Rights of the Patent

A review of the legal provisions governing patent rights in Order 03-07 reveals no explicit provision addressing the moral rights of the patent holder, either as to their duration or the legitimacy of their transmission to heirs. This compels an examination of the provisions that indicate the heirs' entitlement to exercise defence rights, on the basis that moral rights are inalienable, cannot be attached, and constitute an aspect of the personality of the deceased inventor.

3.2.1 The Heirs' Right to Attribute the Invention to their Deceased Relative

This right is the right of paternity over the inventor's ideas: that the inventor's ideas be attributed to them, that the work be attributed to its author, and the invention to its inventor. It encompasses the right to maintain the secrecy of the invention or to disclose it to the public, as well as the right to modify the invention or to refrain from doing so.

The earlier Algerian legislation on patents repeatedly affirmed the status of the inventor: Article 8 of the Law on Inventors' Certificates and Invention Licences provided that an inventor's certificate confers upon its holder: "the right to the status of inventor; the right to have the family name and given name stated in the certificate." Article 10(3) further provided: "The inventor or inventors are entitled to have their names stated in the patent application where the inventor holds the right to ownership of their invention." Article 16(4) stated: "in any event, the inventor has the right to have the status of inventor stated."[28]

These provisions demonstrate that the legislator accorded great importance to the inventor's right to have the right attributed to them through the mention of their name. The heirs are accordingly obligated to preserve the right of paternity in the invention registered in the

[28]Legislative Decree No. 93-17 of 7 December 1993 on the Protection of Inventions, Official Gazette, no. 81.

name of their deceased relative. As regards Order 03-07, Article 10 refers to the heirs' right to attribute the status of the invention to their deceased relative: "The right to the patent belongs to its holder … or to their successor."

3.2.2 The Heirs' Right to Protect the Patent

A patent confers upon the heirs the right to defend their deceased relative's financial rights and to benefit from them, as well as the right to defend the moral rights of the deceased inventor. This protection is not limited in time, unlike copyright, which is characterized by perpetuity.

Order 03-07 expressly recognizes the heirs' right to repel infringement: "The patent holder or their successor may bring legal proceedings against any person who carries out or is carrying out any of the acts defined in Article 56 above." Article 56 refers back to Article 11, which sets out the rights granted to the patent holder and to the heirs after death.[29]

4. Conclusion

The findings of this study may be summarized as follows:

- Inheritance is one of the means of transmitting a patent.
- A patent is an industrial property right capable of industrial application, and among the financial rights that may be valued in monetary terms.
- A patent is subject to both temporal and territorial limits.
- The patent holder enjoys both financial and moral rights.
- Financial rights are limited to twenty years; moral rights are not limited in time.
- A patent is capable of transmission to heirs.
- Moral rights pass to heirs by way of protection; financial rights pass by way of ownership.

Recommendations:

- The law should expressly provide for the heirs' exercise of all legal procedures to obtain the patent, rather than relying on implicit provisions.
- The Family Code should be referenced with respect to the question of the transmission of patent ownership rights.

[29]See Articles 11 and 56 of Order No. 03-07 on Patents.

- The heirs should be required to designate an agent to represent them, or any person of their choosing to exercise the rights of their deceased relative.

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