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Compulsory license to utilize the patent in accordance with UAE law and in light of the TRIPS Agreement

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Abstract. The study deals with legal texts dealing with compulsory licensing to exploit an invention, covered by legal protection in accordance with UAE law and TRIPS, the researcher follows the curriculum. Descriptive analysis and comparison of texts dealing with compulsory licensing in UAE Law. In the light of the TRIPS Agreement, the study focused on determining what is meant by compulsory licensing The right to grant a compulsory license in the event that they are available to the judiciary or cases where the UAE law permits the Minister to grant the license Compulsory with the conditions to be granted for the granting of compulsory license in each case of Cases in which UAE law and the TRIPS Agreement permit the compulsory licensing of third parties The study examines the conditions for granting a license Compulsory and its legal effects, the study was divided into two subjects, and the section of each topic to two requirements, in addition to a conclusion containing the most important findings and recommendations.

Keywords. Compulsory Licensing, Federal Law, Compulsory Licensing Cases, TRIPS Agreement

Introduction:

The Federal Law of the United Arab Emirates No. (17) For the year 2002, in Regulation and protection of industrial property for patents and industrial designs in Article 1 clarifies the intent of the invention (1) for which the patent is granted and indicated the same article specifies what is meant by a patent The patent gives the owner of the invention the right to exploit his invention financially by himself or by another person in the event that the inventor grants the owner of the unlicensed patent, however, the owner of the patent may cease.

The exploitation of the invention in question during a certain period or its exploitation may be insufficient to satisfy the needs of the domestic market or the invention may be of interest to the public interest, in such Cases The UAE law allows the judiciary and the competent authority to intervene and remove the right of the inventor In exploiting his invention for the benefit of others in return for fair compensation, this restriction comes and allows others.

The exploitation of the invention compels the inventor or his legal successor for the most important considerations that the requirements The Patent Law states that the legislator intervenes not only to protect the inventor but also to protect National industries and ensure their progress and development In general, the right of the patent owner to exploit his invention

is not absolute but subject to Restrictions referred to in the UAE law include restrictions in terms of duration and restrictions in terms of exploitation Invention.

Subject and questions of the study:

A compulsory license is the right to forcibly exploit the invention from the inventor or his successor Compulsory licensing is established in UAE law by a decision by the judiciary (3) or by decision of the competent minister (4), UAE law has been addressed Provisions relating to compulsory licensing in Articles 24 to 3 (1) Referred to the application of the provisions of articles ((1 / TRIPS Convention in turn and in Article (2)

Up to 12 and 19 of the Paris Convention, that is, the member states of the TRIPS Agreement

Article 5 of the Paris Convention provides for grants

Compulsory licenses in case of non-exploitation or insufficiency of the invention in question this exploitation and the TRIPS Agreement in Article (31) of which deals with cases of compulsory licensing has been lost

Paragraph (a) stipulated that compulsory licenses were granted on a case-by-case basis, and noted Paragraph (b) stipulates that a compulsory license may not be granted except after the applicant Compulsory to make reasonable efforts to obtain an agreement and reasonable commercial terms Within a reasonable period, the same paragraph authorized an exemption from the requirement of prior negotiation in cases Public emergency, utmost necessity, and non-commercial public interest.

The study answers several questions about the concept of compulsory licensing of exploitation Patent covered by legal protection compels the inventor and the extent of compatibility among the provisions of UAE law regarding compulsory licensing with the TRIPS Agreement, In the interest of achieving a balance between the right of the inventor to exploit his invention and exceptions Contained on this right.

Study Methodology and Plan:

The study will rely on the descriptive approach and the analysis and comparison of legal texts that The compulsory license for the exploitation of patents is addressed in UAE law and an agreement. Legal aspects of trade of intellectual property rights (TRIPS), to find out the term of compatibility Harmony and the impact of the TRIPS Agreement on UAE law on the subject of study, The study will be divided into two subjects according to the following plan:

The first topic: compulsory licensing of the exploitation of patents.

First requirement: Definition of compulsory license.

Second requirement: Cases of compulsory licensing.

The second topic: the terms of the compulsory license and its legal effects.

First requirement: Conditions for granting compulsory license.

Second requirement: Effects of the compulsory license contract.

The first topic

Compulsory licensing of the exploitation of patents

The issuance of a decision to grant a patent to a particular person shall entitle the owner to a right.

Article 15 of the Federal Law No. (17) of the year 2002 stipulates,

Regarding the organization and protection of industrial property for patents and industrial designs on "The patent shall be granted to its owner: (a) the right to exploit the invention ..."

(1) The exploitation of the patent means that the owner of the patent can materially use it. The means deemed appropriate by the owner, for example, if the subject matter of the invention is an industrial product with a right of manufacture, use, offer for sale or import for these purposes and has the right to prohibit third parties. He did not obtain his consent to manufacture, use and offer to sell, sell and import these products.

The exploitation of the patent as it is directly from its owner may be through the granting of its third party owner. Licensing the exploitation of the invention subject to the patent, that is, exploitation arises by agreement.

Between the owner of the patent and the licensee (2), this contract is a consensual contract that takes place. The licensee shall have the right to exploit the subject matter of the patent without prejudice.

Rights of the Patent Owner (3)

However, the patent owner may not be able to exploit the patent in question in his own name. For its calculation, it may not license the exploitation of the invention in question to a third party by agreement, and therefore the community is deprived of the advantages provided by the invention, so the provisions of the TRIPS Agreement are organized and organized. Cases of licensing the exploitation of patents forcibly from the owner as well as the act of the legislator.

The first requirement

Definition of compulsory license

UAE law did not address the definition of a compulsory license and did well since it was addressed. Definitions: It is not the duty of the legislator as well as to make the law able to keep up with developments. Patents are held, and the legislator has dealt with the provisions relating to licensing regulation.

36) of the Federal Law No. - compulsory in Chapter II of Part II in Articles (24)

(17) for the year 2002 concerning the regulation and protection of industrial property patents and Industrial Designs. The provisions of the compulsory license issued by the elimination at the request of those concerned in specific cases due to a public emergency or need of general urgency as well as for non-commercial public uses. Article (29) of the same law deals with the provisions of the administrative compulsory license issued upon a decision of the competent minister in case the invention is of public interest according to the conditions specified in Article (24) of the same law. As for the definition of compulsory licensing in jurisprudence, there are those who know it as a permit issued by the administration or court, under certain conditions, is compelled by the owner of the patent to be given to another person. The right to exploit the invention in question (1) under certain conditions. Some of them defined a compulsory license as a contract concluded between the inventor and the authority public with the intent to exploit an invention to satisfy general needs. Some of them defined the contract of compulsory license as "that contract under which the owner of intellectual property right, whether patent, trademark, industrial model ... or any kind of intellectual property is to grant another right to exploit this right for a certain period of time. It is clear from the foregoing that the UAE legislator regulated the provisions of the compulsory license to deal with a case of non-compliance. The owner of a patent is able to exploit his or her invention that is protected, once or for all. A certain period of grant of the patent certificate or its sufficient exploitation, and accordingly, it is authorized.

Legislator: Any interested party may apply to the competent court for a judicial ruling on the exploitation of an invention protected by a patent certificate or submitted to the competent

minister for licensing the exploitation of an invention protected by it Patent Certificate compulsory licensing is a decision issued by the competent judiciary or administration upon request A person concerned with the exploitation of an invention protected by a patent shall submit a patent for the owner The invention and give the patent owner the exclusive right to exploit his invention, but it is not a pure property For the owner, society and the necessities and importance of the invention of the national economy allows the judiciary or management The competent authority shall face the arbitrariness of the patent owner in the use of his monopolistic right .The TRIPS Agreement (3) deals with the compulsory license under Article 31 "Other uses without the consent of the rights holder," the cases stated that Justifies the granting of compulsory licenses: national emergencies or other very urgent situations; And correcting anti-competitive practices and non-commercial use of the invention for purposes In general, the patent is Although Article (31) of the TRIPS Agreement is left to WTO members Universal freedom to assess cases of granting compulsory license without adherence to advanced cases that Article (31) However, the agreement sets strict conditions that must be met for granting a license Compulsory hinders the use of compulsory licensing and limits its effectiveness as part These include the provisions of Article 31 (f) of the TRIPS Agreement, which stipulates The grant of a compulsory license shall be granted in the Member State of the WTO International invention primarily for the purposes of providing the invention in the domestic markets of that country In addition to the special terms conditions related to the compulsory license you have mentioned The TRIPS Agreement added to it the conditions and controls referred to by the Paris Convention, including the application The text of Article 5, which restricts the Member States in granting compulsory licenses. Article 5 Paragraph (a) of the Paris Convention gives the right to Member States to grant licenses Compulsory to prevent the arbitrariness of the owners of exclusive rights and not to exploit the patent. From the above, it is clear that the TRIPS Agreement has confirmed the legality of the compulsory license under conditions Specific controls (1), in effect, are limitations on management when using this right to assert the rights of the patent holder and the right of the State to intervene to grant third parties a compulsory license to exploit (The invention is approved by most legislation, including UAE law). Article (24) of the Federal Law No. (17) of the year 2002 stipulates:

Patent or utility certificate The patented invention or utility certificate has never been used or exploited on a face Inadequate, any interested party may apply in accordance with the procedures set forth in Article 30 of this Law A compulsory license under the following conditions: Must have been granted a patent or utility certificate three Years at least. B. The applicant must prove his efforts within a reasonable period to obtain a license from The owner of the patent at a reasonable price and with reasonable commercial conditions. The executive regulations of this law shall determine the procedures required on this. C. The license shall not be absolute and may include the terms of the compulsory license Obligations and limitations on both the licensee and the licensee. Dr. License to be blocked The needs of the local market, and the applicant is obliged to provide the necessary guarantees as determined by the executive regulation This law shall be used to adequately exploit the invention to remedy the deficiencies or to meet the needs that have resulted To apply for a compulsory license. e. The license decision shall specify the scope and duration of the license including Required by the purpose for which it was granted. And. The patent owner shall be granted fair compensation. G. That is limited Exploitation of the patent on the licensee and the license is not transferred to third parties only in the case of transfer of ownership of an enterprise The licensee or the part of his establishment that exploits the patent, subject to the approval of the competent court for such transfer,

The provisions of Articles 28 and 32 of this Law shall apply to the transfer. H. If the invention relates to a quasi-technology Transportation may be licensed only for general non-commercial purposes or for the correction of judicially determined practices Administratively it is not competitive. 2. A compulsory license is not granted if the owner of the patent or utility certificate justifies it
"The import of the product is not a legitimate cause. "

The second requirement

Cases of compulsory licensing

First: Cases of Compulsory Licensing in UAE Law:

30 of the UAE law, compulsory licensing cases, lost, 29, dealt with articles (24)

Paragraph (1) of Article (24) of the same law stipulates that "if the owner of the patent is not exploited or Utility certificate A patented invention or utility certificate has never been used or exploited on Insufficient face, ... "

Paragraph (1) of Article (29) of the same law stipulates that it is permissible by a decision of the Minister Issue a compulsory license to exploit an invention protected by a patent or utility certificate The invention was important for the public interest ... ". 1) of the same law that "if the invention / Article (c) of Article (24) Regarding semiconductor technology, licensing may only be made for non-commercial or general purposes

To correct practices that are judicially or administratively determined to be uncompetitive. "

Paragraph (1) of Article (30) of the same law stipulates that "it is not possible The exploitation of an invention protected by a patent or utility certificate in the State without prejudice to the rights derived of a patent or utility certificate granted, upon prior request, the owner of a patent may be granted The invention or the last utility certificate is a compulsory license upon request ... ". With reference to the provisions of UAE law, we find out which cases may be available if available Granting a compulsory license:

(1) If the owner of the patent does not exploit the invention in an absolute manner or his exploitation is not Sufficient to meet the needs of the market. This case assumes that the patent owner is unable to exploit the invention in question The patent either absolute or that its exploitation is insufficient to meet the needs of the domestic market in the State of United Arab Emirates. The legislator has restricted the issuance of the decision to grant a compulsory license that must have passed On granting the patent at least three years (1), it is clear from the text that the legislator assumed The owner of the patent did not exploit the invention protected in absolute or on Inadequate face for three years, ie, this case addresses the shortcomings of the patent owner Of the exploitation of the patent due to illicit (1) and not to benefit from it, either personally or

By third parties with his consent 1) Any person who submits to the court / UAE law is required in accordance with paragraph (b) of Article (24) The competent authority has requested permission to exploit a protected patent to prove that it has been made Reasonable efforts within a reasonable period to obtain a license from the patent owner at a price Reasonable and reasonable commercial terms, it is clear from the text that UAE law is under license It is compulsory that all applicants applying for a compulsory license must prove that they have negotiated with the owner. Patent in serious negotiations and offered to grant an agreement under conditions Reasonable and fair price, he did not succeed to negotiate with the owner of the patent to arbitrary owner Patent without justification, that is, the UAE legislator considered such a request and made efforts Reasonable and fair price and unjustified refusal of the owner of the patent as a sufficient reason for the applicant to obtain On its compulsory license The UAE legislator also restricted the decision to grant the compulsory license to the applicant on

the need to The compulsory license shall be for the purpose of meeting the needs of the local market of the products it provides Exploitation of the invention (4), and the legislator stipulated that the applicant must provide sufficient guarantees that prove Through its ability to exploit the invention adequately to ensure the needs of the local market The production of the invention is subject to legal protection to the extent that it meets the needs of society

The Emirati

2) Compulsory licensing in the public interest.

1) of the UAE law, "Article (29) may be issued by a decision of the Minister

It is compulsory to exploit an invention protected by a patent for public interest considerations and (b) of clause (1) therefore The text makes it clear that the minister's authority to grant compulsory licenses is limited in the case of interest

The public invention requires the use of this invention (1), such as the preservation of national security and public health Environmental safety, emergency response and unusual circumstances The legislator did not require the decision to be issued for considerations relating to the public interest Years of granting the patent certificate as in the case of non-exploitation of the patent in a manner Absolute or insufficient to meet the needs of the domestic market even authorized the decision though 1 of the law/lack of conditions stipulated in paragraph (a + b) of Article 24

The Emirati

It should be noted that the decision of compulsory licensing in the public interest should not be And to meet the needs of the local market for a limited period and for fair compensation, and the owner The invention has the right to challenge the decision of the Minister to issue a license decision or estimate compensation before Competent Court The TRIPS Agreement was authorized in paragraph (b) of Article (31) when it provided for a case National emergencies or other very urgent situations or in cases of non-commercial use Granting a compulsory license in the event of any of the above-mentioned cases that achieve the interest the public. 3) Compulsory licensing of inventions related to semiconductor technology.) (1) of UAE law refers to the provision and areas/paragraph (c) of Article (24) Compulsory licensing of semiconductor inventions as being granted only for purposes Public or non-commercial practices, or to correct practices that are judicially or administratively determined to be non-competitive. Semiconductor inventions shall mean those inventions relating to substances Silicon and germanium, materials that are not good conductors of heat and are not at the same time It is heat-insulated at the center of the center, but the properties of these materials can be changed to become Send feedbacks It is a good conductor of heat under certain technical conditions and has an electronic function when converting their properties and utilization in the precision industries, it is this technology is changing Characteristics of the uses of semiconductors shall be patented in this field

1) Of the UAE law not specified / It is worth mentioning that the text of paragraph (c) of Article (24) The applicant for compulsory licensing of inventions related to semiconductors and in accordance with the regulations

The conditions stated in the same article that the license is for general non-commercial purposes or To correct practices that are judged by the judiciary or administratively to be uncompetitive. Any person may request a Compulsory license provided that it is for general non-commercial purposes.

Paragraph (c) referred to the possibility of a compulsory license To correct practices that are judicially or administratively determined to be uncompetitive, indicating that the legislator has

decided to grant Compulsory licensing in such a case to deal with the effects that the judiciary or the authorities prove

There are abuses or practices that contravene legitimate competition, such as raising prices The product is protected or put on the market on unfair terms or acts that adversely affect freedom of competition or the use of patent rights that adversely affect the transfer technology 2

Paragraph (f) of Article (31) of the TRIPS Agreement states that the license shall be granted for correction Practices determined after judicial or administrative action that they are not competitive, that is, the TRIPS Agreement It provided for the same exception to the exclusive right of the owner of the patent, which was provided for by law The emirate's unfair and uncompetitive practices are a must Address them by granting compulsory licensing to prevent or minimize their negative effects on an economy State and business dealings. 4) Compulsory licensing in case of interrelated inventions. Article (30) of the UAE law deals with the existence of interrelated inventions, ie one The existence of two protected inventions belonging to two different persons and that one of them is not exploited Except by the other invention as necessary for such exploitation which, in the case of Its use has made significant technical progress and achieves high economic importance (3), in such a case the law is authorized The UAE owner of the patent may obtain a compulsory license upon his request in the face of The other invention provided that the invention serves industrial purposes different from those purposes The first subject of the invention, or constitutes a significant technical mechanism. Paragraph (2) of Article (30) of the UAE law, if the inventions serve The law permits the compulsory license of the owner of the subsequent patent By exploiting the first invention, while preserving the right of the first patent owner to obtain A compulsory license for subsequent patents upon request when the inventions serve (1) The provisions of UAE law shall be considered as a fair judgment between the two parties.

The TRIPS Agreement, in paragraph (1) of Article (31), states that he is a patent holder An invention whose invention involves a tangible development of economic importance and cannot be exploited Without the exploitation of another patent, the license is given to the other patent. Second: Cases and provisions of compulsory licensing in the TRIPS Agreement. The TRIPS Agreement referred to exceptions to the rights granted to the patent owner, Article 30 stipulates that "member countries may grant limited exceptions to rights Provided that such exceptions do not conflict Unreasonable with normal use of the patent and not unreasonably prejudice the interests The legitimate owner of the patent, taking into account the legitimate interests of third parties. "TRIPS Agreement to apply the provisions of Article 5 of the Paris Convention that bind member countries Subject to the provisions of Articles 1 through 12 and Article 19 of the 1967 Paris Convention, she added The TRIPS Agreement has many limitations in addition to those in the Paris Convention for the Promotion of Rights Patent owners do not even allow compulsory licensing except in circumstances Private (2)

(31) of the TRIPS Agreement relating to grants, and reference to the provisions contained in Articles 30The compulsory license to exploit the patent is clear to us as follows:

The TRIPS Agreement has authorized the granting of a compulsory license to exploit a patent: Article 31 of the Convention provides for other uses without access The consent of the rights holder, paragraph (a) of the same article referred to the "examination of each license In light of its own merit, "it is evident that the TRIPS Convention has granted A compulsory license without the consent of the holder of the patent right It is compulsory, including that each case should be examined on a case-by-case basis, and therefore Member States should When a compulsory license is granted, each case is examined and evaluated before the compulsory license is granted.

2) The need for prior negotiation between the owner of the patent and the applicant for the compulsory license:

Paragraph (b) of Article (31) of the TRIPS Agreement states that no grant may be granted A license is compulsory for the applicant only after the applicant proves that he has made reasonable efforts to obtain the optional license under commercial terms and reasonable duration, only the owner of a patent The invention refused to grant its optional license, provided that the condition of the lapse of time has been met without the exploitation of the invention

No excuse was provided to justify non-exploitation, and the same paragraph referred to situations where it was not required Negotiating condition including the case of extreme necessity, public emergency, and non-public interest Commercial.

3) TRIPS Compulsory Licensing Cases:

The cases of compulsory licensing are mentioned in Article 31 of the TRIPS Agreement Paragraph (b) of the same article refers to these national emergency situations or other urgent situations Or in cases of non-commercial use for general purposes ”and paragraph (k) of the same article She referred to the case of “correction of non-competitive practices” and paragraph (l) of the same article referred to the case of interconnected patents.

It is noteworthy that the cases referred to by the TRIPS Agreement were received, for example, not That is, Member States are granted a compulsory license to observe due conditions Availability in accordance with Article (31) when granting a compulsory license on a case-by-case basis and taking into account that Its aim is to provide the needs of the local market primarily, ie to decide the demand according to circumstances And the conditions and conditions of the field in which the compulsory license application is submitted without any confusion between Conditions of other cases Send feedback It is worth mentioning that the TRIPS Agreement, although left to WTO members The international community is free to assess the cases of granting a compulsory license without observing the cases to which it referred Article (31), however, has set strict conditions that must be met for the granting of a compulsory license Obstruct the use of compulsory licensing and limit its effectiveness as parts The same article mentioned in paragraph (f) that a license is required in the Member State of an organization World trade is primarily for the purposes of providing invention in the domestic markets of those countries.

4) Reference to the provisions of the Paris Convention on compulsory licensing:

Pursuant to the text of Article 2 of the TRIPS Agreement, the Member States of the Agreement shall observe 12) and Article (19) of the Paris Convention, has - the application of the provisions contained in Articles (1) Paragraph (A / 2) of Article (5) of the Paris Convention states that "each country of the Union The right to take legislative action to grant compulsory licenses without arbitrariness Exercise the exclusive right assigned by the patent, such as non-exploitation. ”

3) From the same article to the conditions for granting a compulsory license which relate to the case of non-exploitation Patent or the insufficiency of such exploitation, the same paragraph indicated that no such shall be granted Licensing before the expiration of four years from the date of filing the patent application or three years from the date of filing Granting the patent with the application of the period that has elapsed recently, and the owner of the patent may decline A compulsory license if it provides sufficient legitimate justifications to justify its cessation of exploitation of a patent Invention or insufficient exploitation The TRIPS Agreement also reiterated the Paris Convention on Non-Exclusivity Article 31, paragraph (d), of the TRIPS Agreement, has decided not to The compulsory license is restricted to the licensee only. Paragraph (e) of the same article refers to the prohibition

Waiver of the compulsory license except where it relates to part of the business or the commercial reputation of the licensee, as referred to in Article 24 of paragraph (g) of the law The Emirati.

5) Provisions relating to medicines in the patent and the requirements of the public interest. One of the most important requirements of the public interest in granting compulsory licenses is those related to health General and related to the need to provide therapeutic drugs, it is worth mentioning that the member states in the WTO has taken the decision to amend Article 31 of the Convention by adding the Article (Bis to the Convention allowing export of manufactured pharmaceutical products) Under the compulsory licensing contract for countries that do not have the capacity to manufacture drugs, as has been Add a supplement on the release of pharmaceutical products to countries other than the licensing countries Compulsory to meet their needs, such an amendment in the event of the adoption of national laws and ones UAE law allows pharmaceutical companies to apply for compulsory licenses To manufacture legally protected medicines.

The second topic

Conditions for granting a compulsory license and its legal effects

Article (31) of the TRIPS Agreement, as well as Article (24) of the UAE Law dealt with a statement The scope and duration of compulsory licensing The cases of compulsory licensing were specified and in this paper We will address the conditions for granting a compulsory license and the legal implications of granting a license Compulsory in TRIPS and UAE law in two requirements. The first requirement Conditions for granting a compulsory license first: Conditions for granting a compulsory license in the TRIPS Agreement.1) compulsory license may not be granted, except after negotiation and efforts by a student) Licensing:

Paragraph (b) of Article (31) indicates that a compulsory license may not be granted unless it is issued The compulsory license required reasonable and genuine efforts and negotiation with the patentee (1) The invention is presented with fair and favorable terms commensurate with the return on the investment of the invention The same paragraph referred to the state of exemption from this requirement in the case of a national emergency or Other situations are very urgent or in cases of non-commercial use for general purposes as well Paragraph (k) of the same Article is exempted from the condition of negotiation if the use is for correction purposes Practices determined after judicial or administrative proceedings that they are not competitive. 2) The scope and duration of the compulsory license:

Paragraph (c) of Article (31) of the TRIPS Agreement defines the scope and duration of the compulsory license,It states that "the scope and duration of such use shall be limited to the service of the purpose authorized For such use, and in the case of semiconductor technology, this shall not be permitted Use only for general non-commercial purposes or to correct practices decided after taking

Judicial or administrative proceedings as non-competitive, "as referred to in paragraph (e) of the article (24) of the UAE community

3) Restricting the License and Preventing Assignment to Others:

Paragraphs (d) and (f) of the same article state that the grant of a compulsory license is not absolute It should be spatial and temporal in scope and use for purposes Provision of invention in domestic markets (2). Paragraph (e) of the same article also states that it does not A compulsory license may be waived unless it suspends that part of the institution commercial use or reputation enjoyed by that use, as referred to in paragraph (c) of Article (24) "The license shall never be...", and paragraph (g) of the same article stated The license shall not be transferred to third parties except in the case of transferring the ownership of the license's

establishment or the part of its establishment that exploits the patent and provided that the approval of the competent court for this transfer.

4) Fair Compensation to the Patent Holder Subject to the Compulsory License

Article 31 (h) of the Convention states that the granting of a compulsory license shall be in return Fair compensation to be paid to the patent holder, to be assessed according to each case of grant The compulsory license taking into account the economic value of the invention subject to the compulsory license.

UAE law In Article 24 (f), it refers to the same right it enjoys The owner of the patent subject of the compulsory license shall grant the owner of the patent, however, the provision in UAE law is contrary to what was stated the TRIPS Agreement stipulates that the economic value of the invention must be taken into account, preferably if it is taken UAE law stipulates that the economic value of the invention in question shall be observed Compulsory because of its importance both for the licensee and the licensee.

5) Appeal against the decision to grant the compulsory license and the amount of compensation:

Article 31 (i) of the TRIPS Agreement gives the patent holder a subject Compulsory license The right to appeal against the decision to grant a compulsory license ... before the courts or Independent review by a separate, higher authority in that member. "

Paragraph (j) of the same article also gives the holder of the right to the patent a subject Compulsory license to appeal against the decision to assess compensation "... before the courts or for review Independent by a higher separate authority in that member country. "

UAE law and in Article (34) gave the right to any interested to request revocation Compulsory licensing and the law requires the administration to declare the owner of the invention subject Compulsory licensing and the same article cited cases that, if available, may be revoked The compulsory license of others to exploit a protected invention, including in the case of granting a license Compulsory to third parties without the availability of the conditions stipulated in the law or its executive regulations or in If the compulsory license is granted without taking into account the priority of the previous applications and the same article has been approved Heroes may be limited to part of the compulsory license.

Article (29) of the UAE law allowed the appeal to the competent court within sixty days from the date of publication of the Minister's decision in the special bulletin concerning the granting of a compulsory license by the Minister Or compensation estimate.

6) Cancellation of Compulsory License Paragraph (g) of Article (31) of the TRIPS Agreement refers to the protection of the right of the Licensee Termination of the compulsory license contract by giving him a reasonable period of time to avoid any damages to him as a result Sudden stop

2) of the UAE law in accordance with the provisions of the TRIPS Agreement, where / Article 31

The authority that granted the compulsory license, whether it is the competent court or the minister, may cancel Compulsory licensing at the request of the patent owner if the licensee does not follow the conditions The license or if the reasons justifying granting the compulsory license are removed, and in such case The licensee shall be given reasonable time to cease exploiting the invention if it is an affair Sudden cessation of the licensee causing serious harm. Second: Conditions for granting compulsory license in UAE law. Article (24) of the UAE law refers to determining the necessary controls and provisions Take into account when the Minister issues a decision on compulsory licensing to exploit a protected invention Patented, these controls and rulers can be divided into objective and formal conditions. The substantive conditions of the compulsory license are as follows: 1) A condition stipulating that he/she has been granted / (a) mentioned in paragraph (a) of Article (24)

Patent (1) or certificate of utility (2) at least three years. " In accordance with the provisions of this paragraph, a compulsory license to exploit patents may not be granted," Unless the applicant for a compulsory license proves that the owner of the patent did not exploit the invention on The launch or exploitation in a manner that does not meet the need of the local market without justification legitimate (3) despite the passage At least three years to grant the patent. It is worth mentioning that according to paragraph (2) of Article (24) of the same law to a patent owner The invention may object to granting the applicant a license to exploit the patent (2/24) provided that "a compulsory license shall not be granted if the owner of the patent or certificate certifies) Benefit his position on the grounds of his project, ... ", and from the text review we find that the law gave the owner The patent provides justification based on the reasons for its project, such as proof that it has already begun preparation To exploit the invention subject of the patent, the nature, and exploitation of the invention need more than three Years or there are technical, legal or economic reasons to which he is not a party and has no income The invention in question is precluded from exploiting the patent (B) A compulsory license to exploit the invention in question shall not be granted in accordance with the provisions of paragraph 1) of UAE law unless the applicant proves compulsory license / (b) of Article (24) Make efforts within a reasonable time to obtain a license from the patent owner at a price and terms Reasonable business.

Under this condition, compulsory licensing may not be granted to third parties to exploit the invention The subject of the patent, unless the applicant proves that the compulsory license is a negotiation with the owner of a patent

Invention and make efforts to obtain the voluntary license from it and offer suitable conditions Within a reasonable period (1), such as proof of compulsory license applicant to conduct friendly negotiations Within a reasonable period, and that the objective of the negotiations is to obtain an optional license freely

However, the owner of the patent refused to grant the license Compulsory, and the negotiations prove by all means of proof, that and that just a one-time contact or Some times insufficient to obtain the optional license is taken into account in estimating this period Reasonable nature of the invention, the areas of its use, its economic importance and the fair consideration which is Proportionate and material benefit to the applicant for the impact on the duration Negotiation It is worth mentioning that Article (29) of the same law exempted from the requirement of making a student Licensing reasonable efforts within a reasonable period in case the Minister issues a decision granting third parties A compulsory license to exploit a protected invention if the invention is of interest to the interest the public.

In turn, the TRIPS Agreement in Article 31 (b) permits exemption from the negotiation clause Advance in case of public emergency, extreme necessity and non-commercial public interest The TRIPS Agreement was expanded by exemption from the pre-negotiation clause when it covered the state of practice

Other than the competitiveness for which a judicial or administrative decision has been issued in accordance with paragraph (k) of the same Article; UAE law did not cover such an exemption; Advance in the event that the invention was of interest only to the public interest without elaboration as provided for in an agreement Thrips. (C) Paragraph (c) of Article (24) of the UAE Law states: "License shall not be Compulsory licensing conditions may include obligations and restrictions on Both the licensee and the licensee are compulsory.

The text makes it clear that a compulsory license must never be, but must be Restricted in terms of duration and within the scope of the use of the invention in terms of quantity, location, and conditions Production and financial compensation, paragraph (e) of the same article of UAE law The license decision shall determine the scope and duration of the license in accordance

with the purpose for which it was granted. Paragraph (f) of the same article of UAE law stipulates that the owner of a patent shall be granted The invention is a fair compensation commensurate with the nature of the invention, its economic benefit and the duration of the license. TRIPS Agreement In paragraph (d), a compulsory license may not be absolute. Paragraph (h) of the same article indicated compensation for a compulsory license must be compensated Sufficient to be paid to the licensee shall be assessed according to the circumstances of each case in which grants are authorized Compulsory licensing of third parties, taking into account the economic value of the invention in question It is compulsory, and if UAE law indicates that the assessment should be made according to the circumstances of each A case taking into account the economic value of the invention as stated in the TRIPS Agreement because of its importance The licensee and the licensee shall encourage and encourage the compulsory license and not fear the owner of the invention Appropriate assessment of the economic value of the invention and the benefit to the licensee. (D) Paragraph (f) of Article (24) of the UAE law referred to a necessary condition for granting Compulsory license is to be a compulsory license to exploit the patent to fill The needs of the local market, the applicant is obliged to provide the necessary guarantees for exploitation

The invention is sufficiently exploited to address deficiencies or to meet the needs that have led to Compulsory License Application. This text specifies the primary purpose of a compulsory license, which is that it must be Compulsory licensing for the purpose of filling the needs of the domestic market (1), has referred to this article requirement 31 / f) of the TRIPS Agreement (the primary purpose of the compulsory license is to provide products) The subject of compulsory licensing in local markets, it should be noted that it is not required to be Manufacture of the product subject to compulsory licensing by the local licensee, ie it can The licensee is obliged to provide the product in the local markets even if it is imported from The licensee is compulsory from abroad, especially in the pharmaceutical industry for lack of availability Adequate technology (1), it is worth mentioning that UAE law did not address this type of

The license would have left it to the general licensing rules, and it would be preferable for UAE law to set out a text, In particular, the importance of compulsory licensing in the field of medicines and its relevance to public health

(E) Paragraph (g) of the same article of UAE law indicated that "exploitation shall be restricted The license shall be transferred to third parties only in case of transfer of ownership The establishment of the licensee or the part thereof which exploits the patent and subject to the approval of the court Competent on this transition. From the text, it is clear that the UAE legislator has limited the exploitation of the patent subject The compulsory license is exclusively for the licensee as a general rule (3) Licensee is obliged to assign to others except in certain circumstances, namely:

(A) the transfer of ownership of the licensee's establishment or the part of its enterprise that exploits the patent; (B) The consent of the competent court for such transfer. (C) Registration of the compulsory license and what is issued in the special register and goodwill in the bulletin After paying the prescribed legal fees 2) Formalities of compulsory licensing: Granting of compulsory license can only be done by following) Certain formalities, these formalities (5) are: (A) An application for a compulsory license shall be submitted in accordance with the provisions of Article 28 of the Law To the competent court in the form of a case in which the applicant has jurisdiction The owner of the patent subject of the compulsory license, which shall be announced by the administration (1) To attend a representative. (B) The competent court shall give the applicant and the owner of the invention a period of time They may extend the period if the court deems it justified In order for the parties to reach an agreement among

themselves. (C) In the event that the period prescribed by the Court passes without the agreement of the parties, the Court shall consider

The application shall issue its decision either to refuse to grant the compulsory license or to grant it and shall The decision to grant a compulsory license to exploit a patent includes the determination of its terms (2) and the decision shall be made public to the Party The other and to the management authority to mark it in the special register, and published after the payment of fees The decision issued shall have no effect for third parties, except from the date of its publication in the prospectus Own.

(D) Article (29) of the UAE law permits in case of urgency the Minister to issue A compulsory license to exploit an invention that is protected by law if the invention has Important to the public interest when all the conditions mentioned in Article (24) of the UAE law except paragraphs (a) and (b) of clause (1) of which (3), that is, the law He gave the Minister the right to issue a decision to grant a compulsory license to exploit an invention Covered by legal protection even if it has not been granted for three years At least without the applicant proving that he has made efforts to negotiate with a patent owner.

Invention within a reasonable period and at a reasonable price and with reasonable commercial terms to obtain An optional license provided that the invention is of interest to the public interest, preferably if made UAE Law Jurisdiction in case of licensing third parties to exploit a covered invention.

If the invention is important for the public interest of the judiciary and before the competent court Consolidation of bodies that consider and grant a compulsory license. 5) In the case of granting compulsory license or fair compensation assessment to the patent owner) The subject of the compulsory license by the competent minister (1) or the decision of refusal Compulsory license The decision may be appealed to the competent court within sixty days from the date of publication of the Minister's decision in the Special Bulletin.

The second requirement

Effects of Compulsory License Contract

It is understood that the compulsory license contract authorizes the licensee to exploit the invention subject Patent covered by legal protection for a certain period in exchange for fair compensation to the licensee Without prejudice to the proprietary right of the licensee, the license does not transfer ownership of the patent The licensee has the right to use and exploit the invention

My eyes The implications of the compulsory licensing contract for the exploitation of the invention are: Obligations arising from this contract stipulated by law, including 1) of UAE law, the license shall not be: First: Article (24) (c) Absolutely, the terms of a compulsory license may include obligations and restrictions on both Licensee and Licensee by Compulsory License. " It is clear from this text that UAE law stipulated that the license must not be absolute, and that the licensee shall be entitled to exploit the invention within a certain period for a fair compensation without prejudice Ownership of the licensee of the invention, and placing an obligation on the licensee which is to enable the licensee to Exploiting the invention during the term of the contract in accordance with the purpose for which the license was granted (3)

The license contract for the exploitation of the invention includes conditions imposed on the licensee Obligations for the purpose of enabling the licensee to exploit the invention to achieve the purpose of Send feedback History Licenses, such as providing the Licensee with all relevant technical and technical information and data (1) The license contract may include the right of the licensee to sell the invention or the licensee's right to license others to exploit the invention without prejudice to rights First licensee, that is, UAE law establish mutual obligations between

two parties to a contract Compulsory license. (1) Of the same law, the use of a patent shall be limited to (a) Article 24, paragraph (g) The license shall not be transferred to third parties except in the case of transferring ownership of an establishment The licensee or the part of his establishment that exploits the patent, subject to the approval of the court

(2) (competent to this transition, the provisions of Articles (28) and (32) shall apply Of this law. It is clear that the right to exploit the invention subject to the compulsory license is The licensee shall be compulsory only, and the licensee may not assign it to others and to the intended purpose The law that one of the controls for granting a compulsory license is that the body that issues the compulsory license Verifies that a compulsory licensee is able to exploit the invention subject to the compulsory license, However, the law permits the licensee to assign the compulsory license to others and stipulates that:

1) The compulsory license to exploit the invention is waived with the project based on Exploit it. (2) the assignment of the compulsory license to exploit the invention with the part of the project) The special subject of the invention subject to the compulsory license (1) The same law gives the licensee the right to exercise some or/or third: Article 25 All acts referred to in Article (15) of this Law in accordance with the terms of the license,

The right to import the product was excluded (2)The UAE law authorizes the licensee to use / fourth: Article (25) Civil and penal rights that the right of the patent owner to move to protect the invention And exploitation if one of them fails or fails to do so after being notified or aware of any other act Project.

From the text it is clear that UAE law permits the licensee in case of infringement of his right to Exploitation of the invention subject to the compulsory license after notifying the licensee and inaction Its failure to protect the right of the licensee to exploit the patent is a guided use to achieve the purpose From a cheap contract take all civil and criminal legal actions that enable him to prevent Violation of his right to exploit the invention. Send feedback HistoryFifth: Article (26) of the UAE law, stated that: "The granting of a license shall not entail Compulsory not to grant other compulsory licenses.

Pursuant to this provision, an entity that has granted a person a compulsory license may be whether they are the competent court or competent minister may grant to others a compulsory license to exploit the invention The compulsory license contract contains conditions The license that is presented clearly defines the form and subject of the license and the scope of spatial exploitation It is worth mentioning that the new license contract must not affect the rights of the licensee (1)Sixth: The right of the entity that granted the compulsory license to amend or cancel the license contract: 1) of the UAE Authority Law / 1) Amendment of Compulsory License Contract: Article (31) Which has granted the compulsory license to amend its conditions, and the article referred to that

Amendment of the compulsory license contract requires (A) Submission of an application by the owner of the patent or upon request of the licensee Forced.

(B) There must be a justification based on new facts such as granting the patent owner Compulsory licensing under better terms than the compulsory license.

It is clear that the patent owner has the right to apply for amendment of the license contract Compulsory and required that the application be based on justifications of new facts, and authorized by itself The time for the licensee to apply for amendment of the compulsory license contract in case the licensee obtains The terms of the agreement are better than those contained in the compulsory license contract2) of the UAE law authorizes the Authority / 2) cancellation of the contract of compulsory license: Article (31) Which granted the compulsory license, whether it is the competent court or the minister In any case, it shall be decided to cancel the compulsory license if the reasons for granting it are removed Cancellation shall prevent the

maintenance of the rights of any person related to this license (3) provided that:(A) an application by the owner of the patent subject of the compulsory license. (B) provide proof that the licensee has not complied with the conditions of the compulsory license, or

The reasons for compulsory licensing have been removed, or the invention is lacking Objective or formal conditions to be observed. (C) The licensee is compulsorily granted a reasonable time to cease exploiting the invention, if so

Immediate cessation caused or caused serious harm to the licensee.

(1) The provisions of Articles (35) and (36) shall apply for Compulsory Licenses. It should be noted that in the case of compulsory licensing by the Minister or by the Court Competent, this license will not result in the loss of the right of the owner of the patent (2), but rather It only entitles the licensee to exploit the invention for the duration of the license in accordance with the terms of a contract In case of expiry of the license or revocation of the license, the right to exploit it shall be re-used Patent owner (3)

Conclusion

In light of the study of provisions dealing with compulsory licensing in UAE law and an agreement TRIPS The extent to which they agree to grant third parties a compulsory license falls on the exclusive right In the event that the inventor refrains from granting an optional license to third parties, the provisions shall be observed The interests of both the inventor and the requirements of the interest are contained in the TRIPS Agreement and UAE law When you specify certain conditions that must be met when you grant a compulsory license, you must The applicant of the compulsory license shall observe it, in consideration of the interest of the inventor and the owner of a patent Invention by objecting to the granting of a compulsory license if it provides sufficient reasons to justify its non-exploitation The invention also gives it the right to receive just compensation commensurate with the nature of the invention Exploitation and the period of exploitation and gave him the right to challenge the decision to grant a compulsory license or The amount of compensation before the competent court as the case may be A set of conclusions and recommendations:

Conclusions and recommendations:

(1) The compulsory license restores the right of the owner of the exclusive patent to exploit An invention protected by a patent protected by law.

2) The TRIPS Agreement provides a general framework for compulsory licensing They are covered by legal protection and are left to the Member States to make provisions Detailed in its national laws in accordance with the provisions of Article (31) of the Convention. The TRIPS Agreement lists the cases of compulsory licensing and the conditions Every case so did UAE law.

(4) UAE law did not provide a specific definition of compulsory licensing. Cases of compulsory licensing and the conditions to be granted for granting it Article (30) provides exceptions to the rights granted to the owner of the patent provided that They shall not prejudice the legitimate interests of the inventor. Article 31 of the Convention sets forth the provisions B) Other uses without authorization His right)

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