Chapter 3

Pre-TRIPS and Intellectual Property Protection in the GCC States
3.1 Introduction

The legal systems of the GCC states have undergone dramatic, radical and progressive change and development over the last thirty years or so, and that change is continuing. The major trend has been a greatly increased codification of law and administered regulation which entail increasing substitution of institutionalised procedures for the traditional informal, discretionary and often arbitrary exercise of authority.¹

The pre-TRIPS history of the progressive formulation of intellectual property legislative regimes in the GCC states illustrates a remarkable cycle of developments over an equally remarkably short period of time.² A generation or so ago, the level of effective intellectual property protection in the GCC states was virtually non-existent. None possessed any laws in respect of copyright and neighbouring rights or subscribed to any international or regional convention in respect of protection of literary works or author’s rights. The position in respect of trademarks, patents or other areas of industrial property was hardly brighter, although some limited legislation was in place in a few states.

Concern and consequent legislative activity in respect of the protection of intellectual property rights existed primarily in relation to trademarks and trade descriptions, and then only in respect of a state’s commercial dealings with expatriate and foreign traders and businesses. There was little, if any, concern in respect of patent protection, and nil concern or activity in respect of

² For an excellent background to the state of pre-TRIPS intellectual property protection in the Gulf region, see Alastair Hirst, “Developing IPR in the Gulf: Current Coverage, Problems, Post-Uruguay Round Trends” (1994) 17(2) Middle East Executive Reports 9-14.
author's rights, and other areas of intellectual property such as plant varieties, geographical indications and the like.

Three distinct phases can be observed in the development of the GCC states intellectual property laws:

- laws enacted before independence or during a period of effective foreign control, and which are an extension of or subordinate to those foreign sources – the prime example being Bahrain's 1955 omnibus patents, industrial designs and trademarks of 1955, and Kuwait's intended equivalent 1958 regulation;
- laws which were developed as part of a post-independence codification of commercial and civil laws, led by Kuwait as the first of the British protected states in the Gulf to achieve independence;
- more recent legislation, generated by the states' recognition of the necessity to become part of the international trade community, and the obligations on compliance with international protection benchmarks that accompanied such membership.

The hallmark of the pre-independence laws was a subordination to, or transplantation of, laws or regulations already in existence in other jurisdictions. The Bahraini 1955 regulation providing protection for patents, industrial designs and trademarks, for example, borrowed much from the

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3 Strictly speaking, none of the then Trucial States (Bahrain, Kuwait, Qatar, and the seven emirates that subsequently became the UAE – Abu Dhabi, Dubai, Ras al-Khaimah, Sharjah, Ajman, Fujairah, Umm al-Quwain) were ever colonies, or even protected territories of the UK, although they were on occasion referred to as such in some laws (see Bahrain's Patents, Designs and Trade Marks Regulation of 1955, for example). Instead, they were recognised by the UK as sovereign states which, by virtue of various Agreements of Friendship, sought the protection of the UK against unfriendly intentions or acts by other countries, and which were accordingly deemed by the UK to be “Protected States”. However, since their foreign relations and disposal of their lands were subject to prior UK approval, since resident UK subjects, foreigners and non-Muslims were subject to English law and authority under British extra-territorial jurisdiction, the states were subject to effective UK control. Hence the use of the term 'independence' to describe their newly acquired status in 1961 (Kuwait) and 1971 (Bahrain, Qatar and the seven emirates) is appropriate.
Indian pre-independence equivalent statute, and was generally dependant upon UK laws and processes to be valid and operable. The laws or regulations were not really directed towards purely domestic operation at a local level, except to the extent that they impacted on foreigners and expatriates relations with the local populace.

By contrast, the post-independence laws were largely developed by the respective GCC states with domestic needs and applications to the fore. However, they were still subject to external influences – but the influences were becoming more regional in nature and possessing a greater degree of Arabic character. Sources of laws were also becoming increasingly regionalised – partly as a consequence of the states taking advantage of the opportunities to interact with their fellow Arab countries through their memberships of regional Arab bodies such as the League of Arab States and the GCC. Kuwait’s constitution and early laws, particularly its commercial code which incorporated provision for trademark protection, were largely based on Egyptian statutes, which in turn were based on French legal codes. And since Kuwait’s codes and laws were already in Arabic and had already undergone a period of extended testing in the context of common usage, it is not surprising that many of them became models for the equivalent laws required by the other GCC states. The inconsistencies that could be observed in the equivalent laws across the other states largely arose as the states adapted the Kuwaiti models for their own particular perceived needs and use.

As the legislative regimes of the GCC states became increasingly codified, secularized and sophisticated, and as the states themselves moved at their own separate pace towards membership of the international trade community, they were obliged to address the standards

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4 Bahrain, Patents, Designs and Trade Marks Regulation, No. 1 of 1955. The Regulation was derived from the British Indian patents statutes; see also below n 49.
5 The Kuwaiti constitution and the civil and commercial codes secular codes were drawn up largely under the guidance and influence of the eminent Egyptian jurist Abdul Al-Rizaq Al-Sanhouri; see Susan Rayner, *The Theory of Contracts in Islamic Law* (1991), 51.
and obligations relating to intellectual property protection required of by these bodies. New laws were introduced and enhancements were made to laws already in place, presaging the pending creation of the WTO and the introduction of TRIPS - for which WIPO was arguably the major source of influence by virtue of the legislative and other technical assistance it provided to the states. The suite of intellectual property laws enacted by Oman in 2000 is a prime example of this assistance. However, the developed countries with commercial interests in the Gulf region also endeavoured to bring considerable influence to bear upon the GCC states to conform to international standards of protection, particularly in respect of trademarks and copyright and neighbouring rights.

3.2 Early Regional Initiatives on Intellectual Property Protection

As the following table so succinctly illustrates, the early 1970's saw little specific provision in place for the protection of intellectual property rights per se. Saudi Arabia had introduced a trademark protection law over thirty years earlier, in 1939. But Kuwait was setting the regional benchmark in respect of protection standards, with the introduction in the early 1960s of its patent and industrial design statute, and with its civil, commercial and penal laws which also gave some measure of intellectual property protection. By the mid 1970s Kuwait and Bahrain had already introduced and upgraded trademark protection laws, and Qatar had set plans in motion to introduce its own trademark law. Oman and the UAE, on the other hand, lacked any specific intellectual property legislation, and had little else by way of civil or commercial codes. None of the GCC states had any copyright protection provisions, although, as is discussed later,
other laws regulating publications and printing, and legal deposit of works, did enable some degree of protection – albeit by association rather than by design.

Table 1: Intellectual Property Laws and International Conventions in the GCC States up to the mid 1970s

<table>
<thead>
<tr>
<th>National Laws</th>
<th>Bahrain</th>
<th>Kuwait</th>
<th>Oman</th>
<th>Qatar</th>
<th>Saudi Arabia</th>
<th>UAE</th>
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Source: compiled by the Author

The Gulf states were also conspicuously absent from the signatory lists of the major international bodies and the conventions on intellectual property rights. Kuwait became a signatory to the WTO’s precursor, the General Agreement on Tariffs and Trade (GATT), soon after independence, and remained the sole signatory from the Gulf region for over thirty years until Bahrain, Qatar and the UAE also became signatories just prior to the creation of WTO. Qatar and the UAE joined WIPO in the 1970’s, again, soon after they each gained independence. Yet

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6 The emirate of Ras Al-Khaimah introduced a trade mark registration statute in 1974.
none of the GCC states were signatory to any of the international treaties and conventions administered by WIPO, and in particular the Berne, Paris and Rome conventions. Nor had they utilised any of the model laws for the protection of intellectual property rights that WIPO had devised specifically for developing countries and which encompassed:

- inventions and know-how;
- marks, trade names, and acts of unfair competition;
- industrial designs;
- appellations of origin and indications of source.

All GCC states were members of the League of Arab States, Saudi Arabia joining in 1945 as a foundation member, and the other states joining progressively as they achieved independence. The League, with the assistance of WIPO, had sponsored the development of two model laws for League members, one in 1972 addressing patent protection, and the other in 1975 on trademarks, trade names, commercial indications and unfair competition. Again, none of the GCC states had taken advantage of the availability of this set of model laws to introduce or update their legislative regimes, although some of the other Arab countries, which were also members of the Arab League, had done so.

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7 The Model Law for Arab Countries on Patents (1972) and the Model Law for Arab Countries on Trade Marks, Trade Names, Commercial Indications and Acts of Unfair Competition (1975) were devised by the Industrial Development Centre for Arab States (IDCAS), the organisation within the League of Arab States responsible for industrial property matters. The model laws were drafted with assistance from WIPO.
3.2.1 Trademarks

Trademarks have been the form of intellectual property most familiar to the states and to the business communities in the Gulf region. Trademarks lie at the heart of the system of commercial agencies that has dominated the nature and structure of regional and local business. For both practical and legal reasons, foreign merchants have nearly always had to appoint a local commercial agent (who was also a national of the state) if they wished to do business in a sustained way in an Arab state. The agent thereby enjoyed, in effect, a local monopoly to import and distribute the foreign merchant’s goods or services, and trademarks provided the means by which those goods and services were identified. Trademark protection was thus actively pursued by the local agent as an essential requirement in the protection of one’s own trading territory. Local regulatory authorities, such as ministries of commerce or customs, helped to give practical effect to the local monopoly concept. In fact, many monopolies were (and still are) held by members of “well-connected” families who often also held dual roles as senior members of the ruling elites. This was not necessarily construed as a conflict of interest, but more an appropriate and reasonable exploitation of position, capacity and available financial resources for the generation of both further wealth and employment for the local community.

Attempts to parallel import goods bearing a foreign merchant’s mark or goods which fell within the monopolistic control of the local commercial agent would be implacably opposed by the agent, irrespective of whether the goods in question were authentic or counterfeit. In this way, commercial agency legislation served indirectly as the main instrument whereby trademarks were protected. The appearance of trademark infringement cases in the civil courts were relatively rare occurrences. When they did appear, they focused on the protection of commercial
rights and the elimination of the threat to monopoly, rather than the recognition and protection of intellectual property rights. Hence early litigation arising out of the protection of these interests, such as the *Brylcreem*\(^8\) case in the UAE and the *Dettol*\(^9\) case in Saudi Arabia, were not lodged under the trademark laws then in place but under the laws of commercial transactions.

However, rather than reliance merely on statute, the customary practice throughout the Gulf region to obtain some notional measure of protection for trademarks was through the publication of cautionary notices in the local Arabic and English-language daily press. Whilst the cautionary notices had no legal status per se, they served to establish and reinforce claims of prior ownership, useful in a dispute before a Shariah court, or judicial or administrative authority on commercial conduct involving trademark ownership, rights of usage, or commercial agency rights.

Saudi Arabia was the first GCC state to introduce any form of statutory protection in any field of intellectual property with its trademark decree of 1939.\(^{10}\) The decree provided for the local registration of trademarks and protection for a period of 10 years with provision for renewal. Significantly, it also provided for both criminal and civil liability, for the ordering of provisional measures, and for sanctions that must have been substantial for the region and the time – up to six months imprisonment and between five and 50 guineas (being the official currency in circulation at the time). The decree did not address any other areas of intellectual property.

Bahrain, while still a protected state as part of the British Persian Gulf and Trucial States interests, provided limited trademark protection with the issuance in 1955 of an omnibus patents,

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\(^{8}\) UAE Court of Cassation Case No. 116/981 of 1981; commonly known as the *Brylcreem/Berylcream* case.

\(^{9}\) Saudi Arabia, Board of Grievances Case No. 2067/1/4 of 1992; commonly known as the *Dettol/Bettol* case.

\(^{10}\) Saudi Arabia, Royal Decree No. 8762 of 1358 AH (1939), concerning Trade Marks.
industrial designs and trademarks statute. The original form of the statute was made by the British Government as a Queen’s Regulation issued by its Political Resident in the Gulf (and resident in Bahrain), as part of the British Government’s extra-territorial jurisdiction in Bahrain. The statute was subsequently translated into Arabic and issued by the Emir as a Bahraini statute. This status was very much reflected in the statute, which was subordinate and supplementary to the then UK trademark law. In effect, it enabled the local registration of trademarks (and industrial designs) which were already protected by virtue of registration in the UK, and extended to them the same level of protection locally as enjoyed in the UK. It also enabled the registration of trade marks of local origin, for which protection applied only in Bahrain, Kuwait and the other regional “territories” of Qatar, Oman and Muscat (now Oman) and the Trucial States (now the UAE). Bahrain did not entirely remove its 1955 regulation from the statute books until 1991, although in 1977 it introduced a number of amendments to remove references to the UK and UK-related institutions.

The Political Resident issued the equivalent regulation for Kuwait in 1958. However, unlike his Bahraini counterpart, the Kuwaiti Emir did not translate and reissue it as a Kuwaiti local statute. Since Kuwait was moving towards independence in the near future, and was well-advanced in preparing a constitution and suite of post-independence statutes, it decided against bringing this colonial era regulation into local effect. Instead it incorporated trademark

12 The Political Resident was the senior representative of the British Government in the Gulf region, and was responsible for the implementation of British policy in the Gulf through a number of Political Agents resident in Bahrain, Qatar, Dubai and Abu Dhabi. The Political Resident enjoyed ambassadorial status. The British Government appointed a Consul-General to Oman in recognition of its long-established sovereignty, but the Consul-General was administratively responsible to the Political Resident.
13 Bahrain, Patents, Designs and Trade Marks Regulation, No. 1 of 1955.
14 Trade Marks Act (1938) (UK), Registered Designs Act (1949) (UK).
16 Queen’s Regulation No. 5 of 1958, the Patent, Industrial designs and Trade Marks Regulation.
protection provisions within its new commercial code which, at the time and by regional standards, was well advanced and enlightened.17

In the three states which possessed trademark laws (Saudi Arabia, Bahrain and Kuwait), the examination of trademark applications was simple – the grounds for rejection being limited to procedural deficiencies or marks which were contrary to public policy or morality, or confusingly similar to armorial bearings and flags, and official signs and marks. Saudi Arabia extended its examination to include marks which were confusingly similar to international symbols or elements with a religious significance, marks contrary to the traditions or principles of Islam, and marks similar to marks already registered or under application.

Qatar enacted its first intellectual property law and first law on trademark protection, late in the 1970s.18 The law regulated the protection of trade and service marks, group marks, commercial indications, and indications of source and origin, but did not go so far as to encompass industrial designs. The law was largely derived from the League of Arab States’ 1975 model law on trademarks, trade names, commercial indications and unfair competition, and was influenced by the corresponding sections of the Kuwaiti commercial code.

Trademarks still lacked any statutory form of protection in Oman and the UAE. Historically, Omani and UAE businesses, and local authorities and courts have considered both states to be essentially free markets into which any licensed business may import goods without any form of regulatory control, such as restrictions on the sale of counterfeit merchandise. Accordingly, trademark owners had no real statutory means available to protect their interests from infringing

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17 Kuwait, Law No. 2 of 1961, the Commercial Code (Articles 54 – 61 for trade names, Articles 62 – 67 for protection against unfair competition, and Articles 69 – 92 for trademarks).
18 Qatar, Amiri Law No. 3 of 1978, the Trade Marks and Commercial Indications Law.
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marks. Ras Al-Khaimah, one of the smallest of the seven emirates comprising the UAE, independently introduced a decree in 1974 which provided for a trademark registration and protection service administered by the emirate’s Chamber of Commerce, Industry and Agriculture. The protection afforded by registration did not extend outside the emirate, but it did serve as a useful stratagem for reinforcing claims of ownership in the other emirates, and was therefore utilized by foreign merchants and their agents based in those other emirates.¹⁹

Information on the level of trademark registration activity in the region during these early years is patchy and uncertain. According to a survey conducted by WIPO in 1978 on intellectual property activity in the Gulf region, only Bahrain and Kuwait provided statistics on trademark applications and registrations.²⁰ The study reported that, for 1974, the latest year for which any statistics were recorded in the study, Bahrain granted 184 trademark registrations, and Kuwait approved 372 applications. What is more telling is that only ten of the Bahraini applications and 13 of the Kuwaiti approvals were of Arab/local origin.²¹ The pattern in Ras Al-Khaimah (RAK) in respect of the predominance of trademarks of foreign origin was even greater than that in Bahrain and Kuwait: of the 800 marks registered in Ras Al-Khaimah during the period 1974-8, only two were of Arabic/RAK origin.²²

¹⁹ The Ras Al-Khaimah statute appears to have been largely based on the trademark provisions of the Kuwaiti Commercial Code, since with a few exceptions, the order of the articles and their wording is near-identical. The Ras Al-Khaimah statute had some deterrent potential insofar as it prescribed a penalty of up to one year’s imprisonment and/or a fine of not more than 3,000 emirati dinars for persons found guilty of unlawfully using a registered mark, forging or imitating a registered mark, or using a counterfeit or forged mark, or selling goods with a forged mark. Articles 24 – 25 of the statute provided for the issuance of precautionary orders.

²⁰ ‘Situation of Industrial Property in the Arab States’, WIPO, Geneva, 1978, 34. The report warns that the absence of Saudi statistics in the report should be construed as a reflection on the difficulty of obtaining reliable statistical data from local Saudi sources and the paucity of local data collection procedures, rather than any indication of local trademark inactivity.

²¹ Ibid, 35.

3.2.2 Patents

Until a pre-TRIPS flurry of legislative activity in the early 1990's, only Bahrain and Kuwait provided any measure of notional patent protection during the 1970's and 1980's. None of the other GCC states possessed any patent protection statutes.

Bahrain’s omnibus Patents, Designs and Trade Marks Regulation of 1955 also provided a form of protection for patents and industrial designs. Totally subordinate and supplementary to the then UK patents and industrial designs legislation, it required prior registration of a patent with the UK Patent and Trade Marks Office as a pre-condition of eligibility for local registration, and granted local protection only for the duration of the UK period of protection. Bahrain amended the law in 1977 after independence to remove any reference to UK-dependency. However it did not replace it entirely until 2004 when it issued a new law governing the protection of patents and utility models.

Kuwait, on the other hand, issued its original *sui generis* patent law (which also applied to industrial designs and models) in 1962. The law provided for a period of protection of 15 years for patents, and five years for designs and industrial models, from the date of application. By virtue of this law, Kuwait was the first GCC state to introduce its own patent law. Although only seven years apart, the Bahraini and Kuwaiti laws were markedly different, with the Bahraini law very much reflecting its then status as a British protected territory, and Kuwait’s 1962 law reflecting its newly acquired independence.

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23 *Patents Act 1949* (UK).
25 Bahrain, Legislative Decree No. 1 of 2004 in respect of Patents and Utility Models.
26 Kuwait, Law No. 4 of 1962, governing Patents, Designs and Industrial Models.
27 Ibid, art 12.
The level of service available in respect of patents was even more limited than it was for trademarks. Bahrain and Kuwait would accept patent applications, but would limit examination to matters of form and local application procedural requirements, since neither state possessed the means or expertise to carry out substantive or technical examinations. Hence the function of the respective receiving offices was in fact to serve as little more than a mailbox and a record of ownership – fulfilling a similar role to that of cautionary notices in the local media.

Available information on the amount of patent-related activity is even more difficult to identify than that for regional trademark activity. The aforementioned WIPO report also recorded that in 1974, 35 patent applications were filed for protection in Bahrain, all of which were of non-Arab origin, while for the same year 115 applications were filed in Kuwait, of which only 4 were of Kuwaiti origin. However, there is no record of any of these patents having been granted. In any case, judging by the data of recent patent applications from the Gulf region states, it is more than likely that these few applications originated not from Kuwaiti nationals, but from foreign expatriate workers in the oil industry and also claimed priority on the basis of another foreign patent.

28 WIPO, above n 20, 36.
29 The US Patent and Trademark Office (USPTO) reports that, for the period 1977 – 82, only four patent applications from the Gulf region were granted registration, all to applicants from Saudi Arabia. However, the USPTO determines the origin of a patent according to the place of residence of the first-named inventor, as distinct from nationality. In each of the four cases, the application claimed priority on the basis of a US-origin patent. USPTO, Patent Counts by Country/State and Year, January 1 1997 – December 31 2001, February 220. Available online at www.uspto.gov/web/offices/ac/ido/oeip/taf/est_all.pdf. Last accessed 31 December 2004.
3.2.3 Copyright

None of the GCC states possessed any *sui generis* copyright protection legislation until 1989, when Saudi Arabia issued the region’s first copyright law.\(^{30}\)

Most states had in force laws which addressed the control and registration of published works, such as newspapers, journals, pamphlets and books.\(^{31}\) The primary purpose of these laws was to ensure that all publishers were registered and that all material that they intended to publish or publicly distribute was first approved by the responsible ministry. Hence the laws’ main objective was one of control. As part of the control mechanism, the laws generally required literary works to be lodged in a national repository, registered and approved by a central authority prior to their publication. They also required the publisher to provide written certification of the author’s agreement to the publication of the work in the format presented for governmental approval. This was very much control and censorship function rather than an acknowledgement of, and provision for, the protection of author’s rights. Saudi Arabia’s printing and publishing law was one which specifically directed that, in addition to meeting the control and censorship elements of the law, publishers must also respect the rights of the author, provided he was a Saudi national:

> "Copyright of literary works, printing, translation and publishing are reserved for their Saudi owners, their heirs and persons whose works are printed ..."


\(^{31}\) Bahrain, Legislative Decree No. 20 of 1975 with respect to the Legal Deposit of Intellectual Works; Kuwait, Law No. 3 of 1961, the Press and Publications Law.
The Ministry must prevent every infringement of the rights stipulated in the above article; a committee ... shall have jurisdiction to consider every infringement on said rights and award compensation to the interested party for the material and moral damages suffered.\textsuperscript{32}

However, none of the publication and registration control laws offered a definition of an author or of a literary work. It is telling that responsibility for the control of publishing houses, and the printing and public circulation of material, rested with a ministry whose responsibilities also extended to the control and censorship of all material and information entering the public domain, and often included the administration of justice and the Shariah as a public order and morality issue.

3.3 Early Regional Intellectual Property Legislation

The Bahraini 1955 omnibus patents, designs and trademarks regulation and the Kuwaiti 1962 patents law show in stark contrast the fundamentally different philosophical and structural attitudes between the subordinated pre-independence regulation and the emancipated post-independence statutes. The objective of the Bahraini regulation was to address and protect the commercial and industrial interests of the UK businesses trading in Bahrain and, by association, the interests of their local agents. The patents and designs provisions in particular, by virtue of the UK registration prerequisite, precluded any real opportunity for the encouragement and development of locally-generated industrial property and its protection. The provision for a dual system of trademark registration, allowing for the protection of marks of local origin and usage, at least recognized the realities of regional trade.

\textsuperscript{32} Saudi Arabia, Royal Decree No. M/17 of 1402 AH (1982), the Printing Matter and Publications Law, Arts 20-21
3.3.1 The Bahraini Patents, Designs and Trade Marks Regulation of 1955.

The subordinated status of the Bahraini regulation was established very clearly in the statute’s opening definitions, which included the following:

"‘Comptroller-General’ means the UK Comptroller-General of Patents, Designs and Trade Marks, and included any person authorized by him or the UK Board of Trade to issue certificates in respect of UK-registered patents, designs or trade marks.

‘Court’ means the Joint Court.33

‘Patentee’ means a person or persons for the time being entered on the UK Register of Patents as grantee or proprietor of the patent and the personal representative of a deceased grantee or proprietor.

‘Registrar’ means the person appointed jointly by the Political Resident34 and the Ruler of Bahrain to be Registrar of Patents, Designs and Trade Marks for the Territory...

‘Territory’ means the territory for which the 1955 law has been made applicable."35

Bahrain was not specifically identified as the territory in question. However, some guidance was later provided by the description of the territory of a local trademark as constituting "the

33 The UK Government envisaged the establishment of Joint Courts in Bahrain, Qatar and the Trucial States as part of the system of British extra-territorial jurisdiction, to consider mixed cases, that is matters between nationals of the individual states concerned and non-nationals. While the jurisdiction of the Joint Court could encompass both civil and criminal cases, in practice it confined itself to civil matters only. The Joint Court was composed of a judge of the British Court in the Gulf states and the Ruler (Emir) or his representative. The system was only fully established in Bahrain, where the jurisdiction of the Joint Court was extended specifically to include matters under the Queen’s Regulation and the Bahrain Regulation on Patents, Designs and Trade Marks Regulation of 1955. Joint Courts were not established for Kuwait; although they were planned for introduction in Qatar, they did not eventuate.

34 See above n 12, in respect of the Political Resident.

The law did not distinguish between local or otherwise in respect of the other areas of industrial property protected by the legislation.

To be competent to apply for local registration of a patent or design, the applicant was required to first have his right, title or interest entered on the UK Register of Patents, and either be the patentee or designer or otherwise have legal title. The law did not define a patent or describe its characteristics, the fundamental proposition being that an invention or article was a patent by virtue of its registration as such in the UK. By contrast, a distinction was drawn between trademarks already registered in the UK, and trade marks of local origin and for local use only. In the former case, an applicant was required to first have his right, title or interest entered on the UK Register of Trade Marks, and be either the owner or assignee of the mark. In the case of an original local registration only, any person claiming to be the proprietor of a mark was entitled to seek registration.

Some limited degree of protection was provided in respect of well-known marks in that a mark could not be registered if it was identical with, or confusingly similar to, a mark already registered in either part of the local Register in respect of the same goods or description of goods. However, the Registrar might not refuse an application for registration solely on the grounds of being identical or very similar to a locally registered mark if the applicant could
demonstrate that his mark was already registered in the UK or had been in regular local use for at least one year before the other mark was first used or locally registered.\textsuperscript{41}

The Registrar possessed not inconsiderable discretionary powers. The Registrar could accept or reject any application for registration, or require any modifications or impose such conditions or limitations as thought fit.\textsuperscript{42} The Registrar could reject a mark if it was considered that its use would:

- be injurious to public order, morality, or the interests of the community as a whole;
- be contrary to law or public policy;
- deceive the public;
- hurt or arouse religious susceptibilities of any part of the community; or
- be otherwise inconsistent with any part of that law.\textsuperscript{43}

A local mark (but not a UK-registered trademark, to which the following conditions did not apply) could not be registered in whole or in part if it consisted of or contained:

- public or armorial bearings, crests, insignia or decorations of any state or nation, or official hallmarks or signs indicating an official warranty, unless properly authorized;

\textsuperscript{41} The Registrar of Patents, Designs and Trade Marks was appointed by the Political Registrar and notionally the Emir, and was an officer of HM Government. It is interesting that the subordinate Supplementary Rules for the 1955 Regulation were issued by the Registrar, on behalf of the Ruler of Bahrain and the UK's Political Resident in Bahrain jointly, instead of by a Bahraini government Minister, department or authorized local official. In a subtle display of cultural sensitivity, the Supplementary Rules stipulated in Article 2 that trademark applications in respect of all goods in classes 32 (beer and stout) and 33 (wines and spirits) were to be published separately from the main Official Gazette (in which trademark registration were normally publicly notified), and posted concurrently on the Registry Noticeboard at Her Britannic Majesty's Political Agency, Bahrain.

\textsuperscript{42} Bahrain, Patents, Designs and Trade Marks Regulation 1955, art 8.

\textsuperscript{43} Ibid, art 9.
marks identical with or similar to national flags, military or naval flags, medals or badges, or the signs of the Red Crescent or Red Cross, or emblems of exclusively religious significance;

- a geographical name or surname, or the name of a sect, castle or tribe in any of the territories;

- marks which were or contained the picture, name or trade name of a person, body corporate, association, without prior consent.  

The period of protection for a patent, design or UK-dependant trademark was not granted in terms of a stipulated period of time, but existed only as long as the corresponding prerequisite UK registration remained current and valid. Where a term was extended in the UK, the local registration could also be similarly extended.  
By contrast, the validity of a local origin and use trademark registration was seven years, with provision for renewal for periods up to a maximum of 15 years. 

A suit for infringement could only be brought by the registered owner or assignee, and then only in respect of a duly registered patent, design or trademark. However, provision existed for the granting of injunctive relief, including the seizure and destruction of infringing goods and any associated materials and equipment, and the award of damages and costs. The nature of the scale of penalties for different types of infringements reflected the commercial imperatives of the statute. Unauthorised use of the [British] Royal Arms or Arms or Emblems of the ruler of the Territory [that is, Bahrain] or of deceivingly similar arms or emblems, or using any sign or

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44 Ibid. art 26.
45 Ibid. art 22.
46 Ibid. art 32.
47 Ibid. arts 46-47.
title to create the impression of being an employee of, or supplier to, either government carried a fine of only 300 Indian Rupees. In contrast, such acts as:

- applying a false trade description to articles or goods protected by a registered patent or trademark;
- forging or counterfeiting a registered trademark, patent or design or possessing equipment for such purpose;
- importing, selling or possessing any goods which infringed a registered patent;
- importing, selling or even possessing any goods which carried a counterfeit or misleadingly similar trademark, design or description, or which were so presented as to enable them to be passed off;

carried penalties in each case of imprisonment for a period not exceeding two years, or a fine of up to 1,500 Indian Rupees, or both. The court could also award damages of up to 1,500 Indian Rupees for any losses which had been suffered as a direct result of the infringement, and which had not already been otherwise compensated.

The 1955 regulation remained unchanged until 1977, when a new law made sweeping changes to reflect and recognize Bahrain’s change of status in 1971 from a UK-administered territory to an independent sovereign state. The effect of the 1977 amendments was, in general terms, to:

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48 Ibid. art 56.
49 Ibid, arts 55, 60. The use of Indian Rupees as the legal tender for the purposes of the regulation was a legacy from British Indian patents and trademarks regulation, on which the Bahraini regulation and the 1958 Kuwaiti regulation was based, from the period when the administration of the British Persian Gulf interests were under the control of the British Indian Office until India’s independence in 1947. Control then moved the British Foreign and Commonwealth Office.
50 Bahrain, Amiri Decree No. 22 of 1977.
remove any subordination or cross-reference to UK patents, design or trade mark legislation, regulation or procedure;

- remove any reference to the UK or UK institutions such as the UK Patents Office or Trade Marks Registry, or ‘Comptroller-General’, and to any local offices or organizations which were part of Bahrain’s former status as a UK protected state, such as the ‘Joint Court’, the ‘Political Resident’ and the ‘Crown Prosecutor’;

- expand the registrability of marks to include services;

- stipulate provisions and conditions in lieu of the former UK-dependent provisions and conditions for registered patents, designs and non-local trademarks;

- introduce provision for semi-independent review of administrative decision-making, by transferring the quasi-judicial discretionary authority of the Registrar of Patents, Designs and Trade Marks to a semi-independent committee formed by the Minister of Commerce and Agriculture.

The former UK-dependent term of protection for patents and designs was replaced by a period of 15 years for patents, and 5 years for designs, with provision for renewal.\(^{51}\) Patent protection could be renewed for another ten years if it could be shown that the patent was of special significance and had not returned a financial award proportional to the expenditure incurred by the inventor.\(^{52}\) Similarly, the former UK-dependant trademark term of protection was replaced by a period of 5 years with provision for further ongoing renewals for successive periods of 5 years each.\(^{53}\) Curiously, although all references to the UK were deleted throughout the new law, the former reference to a two-part Register of Trade Marks (Part II for UK registrations, and Part III for local registrations) remained unchanged. Hence the original provision for a 7 year term

\(^{51}\) Ibid, art 11.

\(^{52}\) Ibid, art 11.

\(^{53}\) Ibid, art 11.
for local trademarks remained unchanged, thereby creating a contradiction between the two provisions and confusion as to the proper and valid period of protection. Similarly, the description of a local trademark and the territories in which it was applicable, and the reference to trademarks which fell outside its bounds, was also overlooked in the 1977 amendments.

Nor did the 1977 amendments include any changes to either the description of the nature of infringements, or to the nature or level of sanctions available. The relief and precautionary measures available to a court in respect of infringements remained unchanged, as did the use of the Indian Rupee as the currency of the legislation, notwithstanding the fact that Bahrain since independence had adopted the dinar as the state’s legal currency.

3.3.2 The Kuwaiti Patents Law of 1962

By virtue of Law No. 4 of 1962, Kuwait was the second country after Bahrain amongst the GCC states to introduce its own patent legislation. The law also provided protection for industrial designs and models.

National treatment was extended to non-Kuwaitis living in or who had an established business in Kuwait, other foreigners who were nationals of or lived in countries that gave Kuwait reciprocity, as well as companies, public institutions and other legal entities, established in Kuwait or of countries which gave reciprocity to Kuwait.  

The Kuwaiti law provided for the grant of letters patent for “any new invention which is utilizable in industry whether it concerns new industrial product, original industrial process and

\[\text{[Kuwait, Law No. 4 of 1962, the Law on the Control and Register of Trade Marks, art 5.]}\]
techniques or a new application of known industrial process or techniques".\textsuperscript{55} Excluded from protection by the granting of a patent were:

1. inventions whose utilization results in a breach of morality or public policy;
2. chemical inventions relating to foodstuffs, medicines or pharmaceutical formula unless such products are made by special chemical methods or processes. In the latter event, the patent shall not be issued for the products themselves but for the method of their preparation.\textsuperscript{56}

Protection was granted for 15 years from the date of filing of the application, with provision for a single renewal for a further 5 years. An application for a pharmaceutical patent, being a patent which fell within the scope of the above exemption from exclusion provision (that is, certain types of chemical inventions requiring special chemical methods or processes), could be protected for only 10 years without provision for renewal.\textsuperscript{57} Protection for a registered industrial design or model was valid for five years, and renewable for two additional consecutive terms.\textsuperscript{58}

Provision was also made for appeals to independent judicial authority, namely the Kuwait court of first instance, against decisions of the Trade Marks Control Office to reject an application or objection against an application, or non-renewal.\textsuperscript{59} The jurisdiction of the court also extended to appeals against decisions of the Office in respect of compulsory licences and compensations, and revocation of patent registrations.\textsuperscript{60}

Compulsory licencing could be granted in circumstances where the patented invention had not been utilized in Kuwait within three years from the date of grant of the patent, where the patent

\textsuperscript{55} Ibid Art. 1.
\textsuperscript{56} Ibid art 2.
\textsuperscript{57} Ibid art 12.
\textsuperscript{58} Ibid art42.
\textsuperscript{59} Ibid art 22, and Implementing Regulations Art. 66.
\textsuperscript{60} Ibid, arts 31 and 32.
owner was unable to utilize it adequately to meet the needs of the country, or where the utilization of the invention had ceased for at least two consecutive years. Authority for granting the compulsory licence rested with the Trade Marks Control Office, provided the applicant could demonstrate that the invention would be utilized effectively, and the patent owner had received suitable compensation. The decision of the Trade Marks Control Office in respect of a compulsory licence was also challengeable before the courts, but in the 40 years since this law was promulgated, no compulsory licences have been issued in Kuwait.

If the invention was deemed to be of great national importance and its utilisation necessitated use of another invention for which a patent had already been granted, the Trade Marks Control Office could grant a compulsory licence to exploit both patents to either the applicant or to the owner of the previous invention, depending on which invention was of greater importance. An invention could also be expropriated if such expropriation was deemed to be in the public interest or for national defence by the Minister of Finance and Economy.

Infringement of the rights of a patent, design or model holder was limited to the following:

- imitating the subject matter of a patented invention, or duly registered design or industrial model;
- knowingly selling or offering for sale or circulation, or importing or acquiring with intent to trade, imitated products or materials bearing an imitated design or industrial model, if the invention or industrial model is registered in Kuwait;

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61 Ibid arts 29 and 30.
without right, placing on products, notices, trade marks or packing articles, particulars leading to the belief that of his having obtained a patent of invention or a registration of a design or industrial model. 63

Where a civil or criminal action had commenced, the right holder could request the court to issue provisional orders, particularly seizure of the infringing products or goods, and any equipment or machinery used in the infringement. 64 Penalties available to the court included a term of imprisonment for up to two years or a fine of not less than 10 Kuwaiti Dinars and not more than 225 Kuwaiti Dinars, or both, and seizure and destruction of the offending goods and any tools, machinery and equipment used as part of the infringing activity. 65

Law No. 4 of 1962 is remarkable for its longevity by regional standards, which stands as testimony to its enlightened and careful construction. Subject to amendments in 1991 and again in 2001, the law is still essentially in force today. 66 In recent years of the present TRIPS-plus era, however, it has attracted criticism because of the flexibility and scope of its patentability exclusion provisions, and because of the perceived gross inadequacy of its sanctions by modern standards. In particular, the exclusion from protection of patentable pharmaceutical and agricultural products has attracted criticism from the US pharmaceutical industry. 67

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63 Ibid art 46.
64 Ibid, art 47. The article provides that the owner is limited to seeking such relief “during the hearing of a civil or criminal case ..”
65 Ibid arts 46-7.
66 By Law No. 4 of 1999, and Amendment Law No. 3 of 2001.
67 The issue of the inadequacy of the sanctions are discussed further in Chapter 5.2.5, while the issue of protection for pharmaceutical patents in the context of the US Special 301 reports is discussed further in Chapter 6.3.
3.4 Protection by association - Non-Intellectual Property Sources of Protection

Notwithstanding the paucity of intellectual property law in the GCC states throughout most of the pre-TRIPS era, some degree of protection can be found in sources other than intellectual property-based laws, although the protection granted to rights holders was at times incidental and fortuitous. The primary beneficiary was intended to be the local trader or agent or the consumer, and not necessarily the owner or right holder of an intellectual property right. Hence the main objects of the protection were items of a commercial nature such as trademarks, trade names and indications of origin. While provisions existed for the punishment of infringers, the same degree of attention was not available for the award of financial compensation to the owner or right holder or for the payment of damages. In the application of these laws by the courts, the primary objective was to secure the cessation of the infringing activity, rather than the imposition of deterrent sanctions.

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68 The following represent just some of the laws enacted across the GCC states from the 1970’s onwards which included to a lesser or greater extent, some degree of intellectual property rights protection. The list is by no means intended to be exhaustive, but does illustrate the range of laws then in force:

**Bahrain**: Law No. 12 of 1971, the Civil and Commercial Procedures Code; Law No. 20 of 1975, concerning the Legal Deposit of Intellectual works;

**Kuwait**: Law No. 2 of 1961, the Commercial Code; Law No. 3 of 1961, the Press and Publications Law; Law No. 67 of 1980, the Civil Code; Law No. 16 of 1960, the Penal Code; Law No. 56 of 1966, the Commercial Companies Code.

**Oman**: Royal Decree No. 7/1974, the Penal Code; Royal Decree No. 49/1984, concerning Printed Matter and Publications;

**Qatar**: Law No. 14 of 1971, the Criminal Code; Law No. 16 of 1971, Civil and Commercial Code; Law No. 8 of 1979 in respect of Printed Materials and Publication;


**The UAE**: Law No. 5 of 1973, concerning Press and Publications; Law No. 5 of 1985, the Civil Transactions Code; Law No. 3 of 1987, the Federal Penal Code; Law No. 18 of 1981, the Commercial Agencies Law; Law No. 4 of 1979, the Commercial Transactions Law.

The UAE Civil Transactions Code of 1985, for example, restates the principle drawn from the *Shariah* that, while an individual may exercise certain rights, it cannot be done so at the expense of the same rights that others are entitled to enjoy. In essence, a right is balanced by an obligation. Damage to, or infringement upon, the rights of others by one's actions must be compensated, but the original damage cannot be offset by another damage. The Code postulates three fundamental principles in respect of causing damage to others in commercial transactions, which can equally be applicable to the protection of intellectual property:

1. A person shall be held liable for the unlawful exercise of his rights.

2. The exercise of a right shall be unlawful:

   (a) if there is an intentional infringement of another's rights;
   (b) if the interests which such exercise of right is designed to bring are contrary to the rules of the Islamic *Shariah*, the law, public order, or morals;
   (c) if the interests desired are disproportionate to the harm that will be suffered by others; or
   (d) if it exceeds the bounds of custom and usage.  

The UAE Penal Code of 1978 addresses misrepresentation in commercial transactions, and provides a degree of protection for the consumer in respect of the true nature of goods offered for sale. The Code provides that any person who:

"... resorts to deception or fraudulent means in contracting with another person and disseminates information contrary to the facts as to the nature or essential qualities of his goods or to the elements of its competition or as to the basic description or origin of his..."

\[69\] In other words, two wrongs don't make a right.

\[70\] UAE, Federal Law No. 5 of 1985, the Civil Transactions Code, Art. 106.
goods ... shall be punishable ... Any person who imports, purchases or promotes such goods for commercial gain with full knowledge of their reality shall also be liable ...”  

Similarly, the Oman Penal Code of 1974 provides a certain degree of protection for both the commercial agent and the consumer in respect of the use of imitated or confusing similar trademarks and trade names. The Code provides that a person who commits the following acts may be liable to a fine or term of imprisonment or both:

- imitates a registered mark belonging to a third party, or places such mark on any product, or knowingly, offers for sale or sells a product bearing such imitated mark;
- uses a mark that is very similar to a registered mark to sell or offer for sale a product, with the intention of misleading a buyer;
- illegally uses, in any way, another person’s trade name or a name which is very similar, with the intention of confusing or misleading or creating an association with that other trade name.  

Similar provisions can be found in the penal codes and commercial transaction codes of the other GCC states.

The laws governing the operation of commercial agencies generally recognise the exclusive right of a registered commercial agent to deal in the goods or products which are the subject of his agency. In establishing the commercial agent’s monopolistic rights, the laws establish a limited form of protection for the marks and indications carried by those goods, providing that both the

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71 UAE Federal Law No. 3 of 1978, the Penal Code, Art. 423.
72 Oman Royal Decree No. 7/1974, the Penal Code, arts 305 – 307.
agency agreement and the associated marks are registered. The net effect of this protection is that other parties are prohibited from importing or trading in those goods, or in goods that are deceivingly similar or which carry deceivingly similar marks. Again, the law is directed at protecting the commercial rights of the agent and less so the rights of the owner of a trademark.

The role that the press and publications laws could play in providing some notion of copyright protection has been mentioned above. The fact that an application by a publisher to the government authority for approval to publish a work had to be accompanied by the author’s agreement to publication, at least provided the opportunity to clearly establish ownership of a literary work and thereby offered some degree of protection in limited circumstances. However, the approval requirement did extend to literary works that were not published in commercial quantities or works already published outside the state. By the same token, the laws requiring the lodgement of a published work in a repository holding may have established ownership, but the intellectual property protection they provided was incidental, where it did occur. Accordingly, the protection provided by the publishing laws and the lodgement laws were at best incidental and could not be considered to represent an unequivocal or adequate means of copyright protection.

The pursuit of the protection of intellectual property rights through the region’s judicial systems has been a mixed success – in part due to the deficiency of qualified and experienced judges familiar with the concepts of intellectual property rights, and the interpretation of the intellectual property laws. The common law doctrine of stare decisis is not recognized under the Shariah, and thereby not adhered to in the Shariah courts or the civil courts. Consequently, the absence of accepted legal precedent also contributes to problems in respect of consistency in the

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73 Angell, above n 1, 4.
application of judicial principles and interpretation of the statutes on intellectual property rights and their protection. The following two cases from the Dubai courts illustrate this inconsistency.

In 1977, the owners of the trademark Brylcreem, an internationally well-known hair care product, brought an action in the Dubai courts against a local manufacturer of an identical product offered for sale under the trademark Berylcreem. The Dubai court held that prior use and registration in a foreign country were persuasive elements in confirming ownership of a trademark and that fraudulent use of a well-known and original mark, irrespective of whether the original mark was also used in the UAE, constituted unfair competition. It further held that protection of the original mark should be provided according to the general laws against unfair competition and that the law should not turn a blind eye to the harm done to the rightful owner of the mark simply because of the absence of a law regulating the use of trademarks:

"non-existence of a law regulating the registration of trademarks leads to the fact that this court cannot levy the penalties which are usually provided for in such laws, but that does not prevent the court from granting the necessary protection to the trademark on the bases of general principles of law and the principles of justice and equity." 75

It further held that "as to proving damage and fraud to the public through the use of the imitation trademark, the Court is of the opinion that it is not necessary to prove the actual occurrence of misrepresentation, but it is sufficient to say that there is a probability of such an imitation misleading the public." 76

75 Dubai Court of First Instance, Civil Division, Case No. 1378/1977, decided 24 June 1978; discussed in Al-Kamali, above n 22, 212, and S H Amin, Law of Intellectual and Industrial Property in Developing Countries: Muslim World (1993), 41-2.
76 Kamali, above n 22, 212.
However, in an action brought by the owner of the TIDE trademark, against a local manufacturer of a similar product offered under the trademark TIPE, the Dubai appellate court held that, without a trademarks law in Dubai, imitating a trademark did not constitute an offence. It further held that, because Dubai was a trading community, it would be “contrary to the principles of justice and equity” to impose any restriction upon free trade in the absence of government legislation. In so ruling, it overturned the decision of the lower court that had been in favour of granting protection to the TIDE trademark. The Dubai Court of Cassation upheld the judgement of the appellate court, on the grounds that, in the absence of any statutory trademarks law, or customary law or Islamic law, protecting trademarks, there was no basis for trademark infringement or unfair competition.

In 1980, the Abu Dhabi Appeal Court held that an internationally known mark did not need to be registered locally in order to be entitled to local protection, since the property right to the mark was established by its first use and not by the act of registration. Registration merely served to confirm, rather than establish that right. The Court upheld the decision of the lower court that, although the McDonald’s trademark was not at that time registered in the UAE, it was so well-known internationally that local use of an identical or confusingly similar mark was likely to be both fraudulent and to cause confusion. This same principle was later endorsed by the Sharjah civil court, in a similar action brought the McDonald’s corporation (in fact, against the same defendant). In the absence of any trademark laws in the UAE, the first law not being enacted

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77 See Maren Hansen, “Taking a Realistic Approach to Trade Mark Protection in the Gulf Countries”, (1993) 16 Middle East Executive Reports, 12.
78 Dubai Court of First Instance Case No. 3/1981, decided 10 January 1982; Dubai Court of Appeal Case No. 17/1982, decided 15 May 1982; discussed in Al-Kamali, above n 22, 180.
79 McDonald’s Corporation v Hassan Arzouni, Abu Dhabi Court of Appeal, Case No. 240/1980, decided 18 March 1981; discussed in Al-Kamali, above n 22, 143 and 177.
80 McDonald’s v Hassan Arzouni, Sharjah Court of First Instance, Case No. 823/1985, decided 13 January 1986; discussed in Al-Kamali, above n 22 143.
until 1992, the decision in favour of McDonald’s was based on the Shariah, the local civil codes and the general principles of justice and equity.

The case of Reckitt and Colman v Al Jazirah has been generally recognised as a landmark decision in controlling the production of locally manufactured counterfeit products in Saudi Arabia. The case, the first under the Saudi 1984 trademark law, was brought by Reckitt and Colman as the owners of the Dettol trademark against a local producer of Bettol, an imitation of Reckitt & Colman’s Dettol disinfectant. On behalf of the company, the Saudi Ministry of Commerce had successfully appealed the original judgement in favour of the defendant, the local producer. The Ministry further appealed the appellate judgement, even though the decision was in its favour, on the grounds that the Ministry considered that the penalty was not commensurate with the gravity of the infringement. The Board of Grievances reversed the earlier decisions, and ordered that the defendant be fined SR50,000, the maximum allowed under the trademark law. It also ordered that all products and other labels, signs and materials bearing the imitation trademark Bettol, be destroyed. Interestingly, though, the Board of Grievances did not order the defendant to pay any compensation, damages or costs. A civil case was reportedly satisfactorily settled out of court.

However, apparently this was not the end of the matter for Reckitt & Colman in its protection of its Dettol trademark. According to one local report, over 29 imitations of Dettol were found in

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In a landmark case in early 1996, McDonald’s pursued six companies in Riyadh and Jeddah for violations of trademark legislation and filed suits against four of them. McDonald’s had registered all its trademarks and promotional logos with the Ministry as soon as it entered into the Saudi market. McDonald’s had settled its cases by the end of 1997, and is building further restaurants in Saudi Arabia, which suggests that it was satisfied with the outcome; EIU Viewswire, 15 June 2004, at www.proquest.umni.com.au, last accessed 11 February 2005.


82 Hansen, above n 77, 8.
Saudi Arabia in 1993, a year after the conclusion of the landmark decision in its favour.\textsuperscript{83} The need to again defend \textit{Dettol} arose in Ras Al-Khaimah where a producer of allegedly counterfeit \textit{Dettol} tried to register the trademark \textit{Dollen}. The application for registration was rejected after the lodgement of an objection by Reckitt & Colman. The local producer reportedly simply moved production to Qatar, and subsequently began exporting \textit{Dollen} to the other GCC states, including the UAE.\textsuperscript{84}

\section*{3.5 The Pre-TRIPS Status of Intellectual Property Protection}

\subsection*{3.5.1 Trademarks}

By the mid 1990's and just prior to the establishment of the WTO and the appearance of TRIPS, all GCC states had in place long-established trademark laws – in some instances 2\textsuperscript{nd} and 3\textsuperscript{rd} generation legislation. Bahrain, for example, issued a new trademark law in 1991 which eventually replaced entirely the 1955 regulation and the 1977 amendments, and thereby provided the opportunity to redress a number of the inconsistencies and contradictions which arose from an unsatisfactory and incomplete amendment of the original 1955 regulation.\textsuperscript{85} Similarly, Kuwait over the years issued a number of enhancements to the trademark provisions of its longstanding commercial code.\textsuperscript{86}

\footnotesize
\begin{itemize}
\item \textsuperscript{83} Ibid, 14.
\item \textsuperscript{84} Ibid, 15.
\item \textsuperscript{85} Bahrain, Legislative Decree No. 10 of 1991 in respect of Trade Marks, promulgated 25 June 1991.
\item \textsuperscript{86} Kuwait, Laws No. 67 of 1980, Law No. 68 of 1980, and Ministerial Order No. 8 of 1995, for example.
\end{itemize}
The most recent versions of the trademark laws of this period showed a high level of consistency and similarity, since most borrowed from the original Kuwaiti provisions, and thereafter continued to cross-fertilise each other as each round of new laws or amendments were introduced. However, most laws also relied quite heavily on the model laws on trademarks that had been prepared by the League of Arab States with the assistance of WIPO. Accordingly, they all contain similar provisions, particularly in respect of protection against counterfeiting and trademark infringement. 87 By the same token, they also all contain similar inadequacies in the eyes of WTO and WIPO, and would require a number of changes to bring them into compliance with TRIPS, notably in respect of:

- protection for well-known marks, including foreign marks;
- provision for licencing;
- existence of sanctions that would act as a deterrent;
- expansion of remedies and relief;
- protection of trade secrets and protection from unfair competition;
- appeal provisions to independent judicial bodies on administrative decisions.

The UAE was the last of the GCC states to provide some formal of statutory trademark protection when it finally issued its first trademark law in 1992. 88 By mutual agreement, the law also superseded Ras Al-Khaimah’s trademark registration statute of 1974.

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87. WIPO, above n 20, 38.
3.5.2 Patents

By the mid 1990s, all states except Oman and Qatar had introduced their own domestic patent legislation, although implementation and administration systems and services varied from state to state. Oman and Qatar, on the other hand, intended to adopt the regional patent regulations that had recently been approved by the GCC Supreme Council for their own domestic purposes, and therefore did not introduce any patent legislation. The major drawback with this strategy was that the GCC statute was intended to be supplementary to domestic laws. In particular, it did not contain any enforcement provisions or sanctions – this being deemed a matter for domestic laws to address.

Where patents laws were in place, the laws contained shortcomings which ensured that they would attract pressure for change. Kuwait’s 1962 law as amended, for example, provided protection for only 15 years instead of the conventional 20 years, and excluded certain chemical inventions involving foods, pharmaceuticals and medicines from protection. By the same token, the UAE’s patent law produced thirty years later contained a similar glaring deficiency - and one that attracted severe criticism from the United States - in that it did not provide any patent protection for pharmaceutical products, and only a ten year term of protection for pharmaceutical processes. Only Saudi Arabia provided for a working registration system that allowed for both formal and substantive examination.

89 The GCC’s Unified Patent Regulations were approved by the GCC Supreme Council in September 1992, and issued in December 1992. At the same time the GCC Supreme Council approved the establishment of the GCC Patent Office, to be located in Riyadh, Saudi Arabia.
90 Kuwait, Law No. 4 of 1962 governing Patents, Designs and Industrial Models, as amended, arts 2 and 15.
Protection for industrial designs was achieved, notionally at least, in Kuwait and the UAE by the extension of the application of the general provisions of their patent laws to encompass industrial designs and models.

With the agreement of all member states, the GCC issued its regional patent regulations in late 1992. The regulations established a scheme for regional protection throughout all GCC states by allowing the lodgement of a single application with a regional patents office. However, the regional patent regulations were somewhat wanting both in respect both of their effective operation and their compliance with TRIPS, because of their:

- exclusion of pharmaceutical and chemical inventions from any form of protection;
- protection commencing from date of grant, instead of date of application;
- protection for only 15 years, contrary to TRIPS Article 33 requirement of 20 years;
- absence of any effective enforcement provisions, or sanctions, remedies or relief;
- prohibition of concurrent applications to national patent offices and to the GCC Patent Office.\(^{92}\)

The regional patent regulation specifically prohibited the simultaneous lodgement of a patent application, or even the enjoyment of concurrent protection, with the GCC regional office and a national receiving office.\(^{93}\) The practical implications of this prohibition was that an application to the regional office was required to demonstrate that any former or simultaneous application to a national receiving office had been withdrawn, and any national protection already granted had

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been surrendered, prior to the GCC regional office accepting the application for regional protection. Also militating against the effective utilisation of the unified patent regulation was the delay by the GCC in issuing the corresponding implementing bylaws, which did not eventuate until some four years later, in 1996. Furthermore, the regional patents office did not come into operation and was not in a position to accept any patent applications until October 1999.

While Kuwait, Oman and Qatar all claimed to ascribe to the GCC unified patent regulations as their national patent law, only Oman enacted a decree prior to 1995 to formalise and legitimise this arrangement.94

In practical terms, patent infringement issues were less likely to arise in the GCC states than trademark or copyright issues, and patent protection would have been the area in which it would arguably have been easier for the GCC states to satisfy demands from the industrialised countries to improve intellectual property protection. Indeed, the amount of local and original patent generation was so small there was little pressure to test the efficacy of the local laws and organisational structures. The fact that the Kuwaiti patents office, established under its original 1962 patents law, was still not examining or publishing applications or granting patents thirty years after it was established, did not appear to have attracted any great concern either locally or internationally.95 Even in the immediate pre-TRIPS period of the early 1990s, the primary purpose of the Kuwaiti patents office appeared to be that of a repository only, with the issuance by the office of reminder notices for the renewal of applications to maintain protection a common practice.

3.5.3 Copyright

The situation in respect of copyright was very much different to that in respect of trademarks and patents, with little progress having being made throughout the GCC region towards the provision of effective national protection regimes. All GCC states were signatories to the League of Arab States’ 1981 Agreement on the Protection of Author’s rights, but only Kuwait, Qatar and Saudi Arabia appear to have issued domestic regulations to formally recognize the provisions of the Agreement at home. This Agreement espoused many of the principles enshrined in the Universal Copyright Convention, and some elements of the Berne Convention. However, it limited the term of protection of literary works, performances or broadcasts to the life of the author or date of performance or broadcast plus twenty five years. Protection was limited to the works of nationals of the Arab signatory states and foreign nationals resident in those states whose own governments provided reciprocal rights. Further, the Agreement relied entirely on the signatory states to have in place their own national copyright laws to enable the effective implementation and enforcement of the rights enshrined in the Agreement. None of the above states at that time possessed the necessary domestic legislation, and hence their adoption of the Agreement was largely symbolic.

By the mid-1990’s, only three states possessed their own copyright laws, namely Bahrain (1993), Saudi Arabia (1989) and the UAE (1992).76 Saudi Arabia enhanced copyright protection environment provided by its 1989 law by acceding to the Universal Copyright Convention (UCC) in 1994. The UAE introduced its first copyright law in 1992, reportedly after

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considerable and sustained pressure from the United States for the UAE to issue copyright and neighbouring rights protection legislation.  

These copyright laws were deficient in respect of complying with a number of the provisions and minimum standards of copyright protection required by the Berne Convention and which would soon be required by the impending TRIPS, particularly in respect of the following matters:

- inadequate, or in some instances absence of, provision for the protection of neighbouring rights;
- existence of compulsory licencing provisions;
- absence of detailed provision on rental rights, particularly in respect of computer programmes and cinematographic works;
- absence of national treatment for the protection of foreign works that had already been published abroad;
- terms of protection of only up to 25 years, much less than the minimum period of 50 years that TRIPS would stipulate;
- little or no provision for independent judicial review of decision-making processes;
- sanctions which were perceived as being inadequate and with little or no deterrent effect.

Protection of foreign works was a matter of particular concern to the developed countries and the United States in particular. Generally speaking, both the Berne Convention and the UCC require member states to protect foreign works on the same basis as they protect national works. In

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97 See Reema Ali & Loubna Haddad, “WTO Membership and Compliance in the Middle East Countries”, (1999) 16(2) Middle East Executive Reports, 15; Rolf Meyer-Reumann, “The Endeavours of Gulf Countries to Meet WTO Requirements”, (2001) 16 (1) Arab Law Quarterly 49; Amin, above n 75, 112, 126, 129. See also the discussion in Chapter 6.3 following, under the heading "The UAE’s Experience with the Special 301 Annual Report".
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terms of actual standards of protection that all members undertake to provide, the UCC requirements are few in number, modest, and vaguely worded; the Berne Convention, on the other hand, prescribes a much more fully articulated scheme of mandatory minimum standards of protection. Adherence could therefore permit a significantly lower level of protection for foreign works than would be allowed under Berne. None of the three GCC states with domestic copyright legislation had acceded to the Berne Convention, and in any case, their domestic laws did not meet its standards.

In any case, effective implementation of the above laws was hampered by the ongoing non-appearance of the necessary implementing regulations – a pattern of extended delay which often repeats itself throughout the GCC states. Saudi Arabia’s implementing regulations for its copyright law of 1989, for example, did not appear until some three years after the law was enacted.

This disinterest or disinclination to embrace copyright and neighbouring rights protection can in part be explained by the still entrenched attitude by officialdom that copyright was still essentially a mechanism for the control of local press and publications. This attitude is reflected by the pre-publication approval, and registration lodgement provisions contained in the

98 The Universal Copyright Convention (UCC) comprises 25 articles, only ten of which really address substantive issues of copyright protection, two accompanying protocols and resolutions. The UCC was developed by UNESCO as an alternative to the Berne Convention for those states which disagreed with aspects of the Convention, but still wished to participate in some form of multilateral copyright protection. These states included developing countries and the Soviet Union, which thought that the strong copyright protections granted by the Berne Convention overly benefited western copyright-exporting nations, the United States and most of Latin America. The United States and Latin America were already members of a Pan-American copyright convention, which was weaker than the Convention. The Berne Convention states also became party to the UCC, so that their copyrights would exist in non-Berne convention states. Berne Convention states were concerned that the existence of the UCC would encourage parties to the Berne Convention to leave that convention and adopt the UCC instead. So the UCC included a clause stating that parties which were also Berne Convention parties need not apply the provisions of the Convention to any former Berne Convention state which renounced the Convention after 1951. Thus any state which adopts the Berne Convention is penalised if it then renounces it in favour of the UCC, since its copyrights might no longer exist in Berne Convention states. (from Wikipedia Encyclopædia, at http://en.wikipedia.org/wiki/Universal_Copyright_Convention)
copyright laws of Bahrain, Saudi Arabia and the UAE, which, in the case of Bahrain and Saudi Arabia, were still compulsory and carried provision for the imposition of fines for non-compliance. 99

Table 2: Intellectual Property Laws and International Conventions in the GCC States in pre-TRIPS 1990s 100

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Source: compiled by the author

99 Bahrain, Law No. 10 of 1993 concerning the Protection of Copyright art 35; Saudi Arabia, Royal Decree No. M/11 of 1410 AH (1989) Law on the Protection of Copyright, arts 26 & 27; UAE, Federal Law No. 40 of 1992 concerning Copyright, arts 33-36. The lodgement had to be made by the publisher, and not by the author.
100 That is, prior to January 1995 and the establishment of the WTO and introduction of TRIPS.
101 The League of Arab States (LAS) formally adopted the Arab Agreement on Author’s Rights at the Conference of LAS Ministers of Culture held in Baghdad on 5 November 1981. The Agreement was prepared with assistance and guidance from UNESCO. However, the Agreement did not come into force until 1985, when ratification by the required number of Arab states was achieved. Accession to the Arab League did not necessarily also require formal adoption of the Agreement. It is worth noting that none of the three GCC states which acceded to the Arab Agreement on Author’s Rights possessed their own copyright laws to enable them to locally implement the limited protection to copyright provided by the Agreement.
102 Although all GCC states had endorsed the GCC Unified Patent Regulation, and had at various times declared that they recognised its validity, only Oman had enacted a statute formally adopting the Regulation as the Patent Law of Oman (Ministerial Regulation No. 219/1993 Adopting the GCC Unified Patents Regulation as the Patents Law
Other areas of intellectual property for which the forthcoming TRIPS would require WTO members to provide protection - notably plant varieties, geographical indications, layout designs of integrated circuits, undisclosed information and trade secrets - still remained largely ignored or overlooked, and without targeted or specific protection provisions.

In respect of membership of the multilateral trading system, Kuwait became a contracting party to GATT in 1963, soon after its independence, and remained the only GCC member for many years. Thirty years later, Bahrain, Qatar and the UAE became contracting parties to GATT, in 1993, 1994 and 1994 respectively. Saudi Arabia applied to contract to GATT in 1993, enjoyed observer status at the Uruguay Round of meetings on the new WTO, and continued to seek membership of WTO. Oman had not expressed any formal interest in contracting to GATT, and was not inclined to initiate an application for membership of WTO until 1996.

None of the states had yet expressed any intention of acceding to the major international intellectual property protection agreements, such as the Berne, Paris and Rome Conventions. It has been suggested that the long-term reluctance of the GCC states to accede to the major intellectual property conventions was not so much due to a policy of commercial isolationism or ignorance of intellectual property protection, but rather an indication of their full appreciation of the commercial implications of intellectual property and its protection, and an understanding of the restrictions upon their current commercial practices that accession to the international conventions would bring. The GCC states had always been aware that their own domestic production of the various forms of subject matter amenable to legal protection as intellectual

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103 The year listed in respect of the international bodies refers to the year in which the instruments of accession were lodged with WIPO or other administering body, and not the year in which a GCC state may have passed its own law authorising accession.

104 Hirst, above n 2, 10.
property, although growing, was still far outweighed by the volumes of foreign production that they imported for local use. Accession to the international conventions was perceived as being more likely to restrict that growth than to accelerate it.¹⁰⁵

One curious anomaly in this picture of general disinterest in the international intellectual property conventions is the accession by Oman (1984) and Qatar (1983) to the Nairobi Treaty on the Protection of the Olympic Symbol.¹⁰⁶ In Oman’s case, accession took place more than a decade before it achieved membership of WIPO and almost fifteen years before it acceded to any of the core intellectual property protection conventions. However, in both cases, accession could be construed more as a reflection of the keenness of the two states to become involved in the Olympic movement, for which adoption of the Nairobi Treaty was an essential political prerequisite in the absence of an international sporting pedigree, rather than a commitment to intellectual property protection.

### 3.6 The External Influences

#### 3.6.1 The Gulf Cooperation Council (GCC)

The GCC is portrayed by its advocates as the means for the fulfillment of the aspirations of the citizens of the Gulf states for some form of Arab regional unity. Accordingly, they exhort that

¹⁰⁵ Ibid.
¹⁰⁶ Oman, Royal Decree No. 7/1986. Qatar is listed by WIPO as having become a party to the Nairobi Treaty in July 1983, but Qatar does not appear to have issued any domestic decree or ministerial regulation, as it normally would have done, authorising this action. Saudi Arabia enacted Royal Decree No. M/2 of 1406 AH (1986), approving accession to the Nairobi Treaty, but does not appear to have lodged the instruments of accession with WIPO, which does not record it as being party to the Treaty.
the decision to create the GCC was not a product of the moment but an institutional embodiment of an historical, social and cultural reality reflecting the deep religious and cultural ties that link the six member states, and the strong kin relations that prevail among their citizens. From a more pragmatic perspective, it was also a response to a perceived threat from an Islamic fundamentalist Iran, a Ba’athist Iraq, the state of civil war in Yemen and the recent Soviet intervention in Afghanistan – all of which threatened to destabilise the ruling dynasties in the Gulf region and to involve their states in wider conflicts.

The GCC’s advocates further argue that the GCC establishes a cooperative framework for mutual coordination and integration in many fields in order to achieve a strong degree of regional unity. According to the GCC Charter, the underpinnings for this framework are the special relations, common qualities and similar systems founded on the creed of Islam, faith in a common destiny, and the sharing of one goal. These noble sentiments have not been mere hollow words; in fact, parallels might be drawn between the movement towards Gulf regional integration and the early character of the European Union before the latter reached its current highly homogeneous state. While the GCC states have established common regional positions on such international political issues as regional security, support for Palestine and the Arab Boycott of Israel, the two Gulf wars and the US occupation of Iraq, they have also had differences of opinion on these same issues. But the mixed reactions and acrimony amongst the GCC members that emerged during the GCC Summit of December 2004, in reaction to Bahrain’s recent commitment to a free trade agreement with the United States, is a recent and

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110 Ibid.
pertinent illustration that the solidarity amongst the GCC members may not be as strong as the GCC’s advocates would wish to portray, when self-interest comes to the fore.\footnote{See Chapter 6.5 and 6.6 for further discussion on the US-Bahrain free trade agreement.}

Apart from the issuance of its regional unified patent regulations in 1992 and amendments in 2000, and the establishment of a regional patent office in Riyadh, Saudi Arabia, the GCC as a regional body has not produced much in the way of effective contribution to the development of intellectual property protection regimes in its member states. It took the regional patent office, for example, over six years from the time of its approval before it was able to commence operations and receive patent applications from October 1998. Even then, it was not able to undertake any substantive examination of the applications. A much more effective contribution to the development of intellectual property protection regimes has been the ongoing willingness and practice of the government officials with responsibilities for certain elements of intellectual property matters to network with their counterparts in the other GCC states. The networking generally focuses on emerging practical issues relating to intellectual property rights such as legislative drafting, administration and systems, and enforcement practices. There is no doubt that the GCC framework has facilitated this regional networking, but that is not to say that the GCC itself has proactively created or fostered this networking process.

For some years now, the GCC has been working on a proposed regional trademark law, the genesis of which predates the unified patent regulations, but this proposed law has yet to pass beyond the GCC technical committee stage. The law also appears to be under frequent review—which in part explains its non-appearance as a formal statute, but also illustrates the fluid state of regional trademark protection perceptions and regional differences of opinion. However, in
fairness, although it has not yet seen the light of day, it has influenced the nature of the latter-day trademarks laws of Bahrain, Oman and the UAE.\textsuperscript{112}

The GCC has also been working for some time on a proposed uniform law on commercial transactions which reportedly will contain a chapter regulating trademarks, trade names and unfair competition. However, the objective of this regulation, if it comes to pass, will be to establish a certain degree of regional harmonisation between the respective GCC states in respect of their trademark registration processes and to establish rules on intra-regional collaboration. It does not seem that it would attempt to compete with the national laws already in place and the international agreements on trade mark protection with which the states are obliged to adhere.\textsuperscript{113}

It is perhaps not all that surprising, then, that in terms of its contribution towards shaping the character and direction of its member states’ intellectual property laws and protection regimes, the GCC has been overshadowed by the contributions of other regional organisations, such as the League of Arab states, and by WIPO. In particular, WIPO has had a major influence on the states’ intellectual property laws, with input ranging from policy development and legislative drafting through to infrastructural capacity-building, systems, staff training and public awareness education.

\textsuperscript{112} Interviews conducted by the author, Oman Ministry of Commerce and Industry, and Bahrain Ministry Commerce, December 2004.
\textsuperscript{113} Hansen, above n 77, 16.
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3.6.2 The GCC States and the WIPO Relationship

The contribution of WIPO, and in particular its Bureau for Arab Countries, to the development of the GCC states' intellectual property laws, has ranged from policy development and legislative drafting through to infrastructure development, staff training and public awareness education. As earlier mentioned, WIPO had input into the development of the early models of intellectual property laws developed by the League of Arab States.

WIPO places its Economic Development Sector division (of which the Bureau for Arab Countries is a unit) at the disposal of any state that requests advice on issues of compatibility of existing or planned national intellectual property legislation with treaties administered by WIPO, and with other international norms and trends, including TRIPS.114 The Bureau is also available to assist developing member countries of either WIPO or WTO with translations of their intellectual property laws and regulations, and to provide legal and technical advice relating to TRIPS and its enforcement. It is also meant to take into account the unique situation of each country, given that Member States have different legal systems and different political and cultural structures. However, WIPO does have a particular agenda.

In relation to the preparation of intellectual property legislation for the implementation of TRIPS, assistance is given in the following ways:

- preparation and submission of draft laws on all areas of intellectual property;
- preparation and submission of draft provisions to amend and update existing intellectual property laws;

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preparation and submission of comments and suggestions on draft laws prepared by (and received from) governments of developing countries.

WIPO has constructed a number of draft or model laws, and has utilized these laws in providing legislative advice to countries which seek its assistance. The laws take into account developments in intellectual property at the international level as reflected in meetings of the various WIPO committees, and WIPO used these model laws as its preferred way of implementing the provisions of the various international treaties in each particular field of intellectual property.

The WIPO assistance to the GCC states included input into the creation and construction of the intellectual property laws of the GCC states' laws, and all states took advantage of this input. But it also included assistance with the preparation of responses to questions from members of the WTO Council of TRIPS, both in the pre-accession examination process, and also in the reviews that the Council conducted during 2000 and 2001 of WTO developing country members which had utilised the TRIPS five year transition period. Included in the reviews were Bahrain, Kuwait Qatar and the UAE went through this review process. So did Oman, even though its

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115 WIPO's current model laws (which it also describes as 'draft laws') address the major areas of intellectual property enshrined in TRIPS, namely:
- Copyright and Related Rights;
- Geographical Indications;
- Trademarks;
- Industrial Designs;
- Patents;
- Layout-Designs (Topographies) of Integrated Circuits;
- Protection Against Acts of Unfair Competition, including protection of secret information

intellectual property laws had received close scrutiny from WTO members just a year earlier as part of its WTO accession process.\textsuperscript{117}

The following extract from the WTO’s working party on Oman’s progress towards WTO accession clearly illustrates the close collaboration between Oman and WIPO and the major role played by the latter in the construction of Oman’s suite of seven intellectual property laws that were enacted throughout 2000.\textsuperscript{118} As the extract states, all seven laws were developed with the assistance of WIPO.

\textbf{“REPORT OF THE WORKING PARTY ON THE ACCESSION OF OMAN TO THE WORLD TRADE ORGANIZATION”\textsuperscript{119}}

\textit{“Status of Legislation on Intellectual Property in Oman (June 2000)\textsuperscript{119}}

\begin{tabular}{|c|l|}
\hline
\textbf{Area of TRIPS} & \textbf{Present Position and On-going Program} \\
\hline
1 Trademarks & Trademark Law is in place since 1987 and is being implemented. Points of conformity and non-conformity of the existing law with the provisions of the TRIPS Agreement have been identified. Draft amended law has been prepared in consultation with WIPO. It has been examined, translated into English and submitted to WTO for comment. \\
\hline
2 Copyright and related rights & Copyright Law of Oman is in force since 1996 and is being implemented. Points of conformity and non-conformity of the existing law with the provisions of the TRIPS Agreement have been identified. Draft amended law has been prepared in consultation with WIPO and submitted to WTO for comment. \\
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\textsuperscript{117} Interview by the author with officials of the Oman Ministry of Commerce and Industry, December 2004.

\textsuperscript{118} Art. 63.2 of TRIPS requires members to notify the laws and regulations made effective by that member pertaining to the subject matter of TRIPS to the Council of TRIPS in order to assist the council in its review of the operation of TRIPS. These notifications are the basis for the reviews carried out by the Council. Initially the reviews focused on those WTO members that were developed countries and not entitled to a transition period. In 2000 reviews began for countries that had delayed notifying their laws until 2000, and continued throughout 2001. The reviews encompassed some 70 countries, although many of these members put into effect national legislation to implement much of TRIPS before January 2000. The record of the submissions made by the interviewed states, including the questions posed to them and their responses, are available at WTO Document series IP/C/W and IP/N.

\textsuperscript{119} WTO Document WT/ACC/OMN/26, 28 September 2000 (00-3948), Annex 1, 11.
What stands out from the above example is that the GCC states have maintained good working relations with WIPO and its International Bureau. They have relied, and continue to rely, on the Bureau for the formal roles stipulated above as part of the Bureau’s brief on technical assistance. Indeed, this close relationship generally continues through the present day, and officials in the GCC states’ ministries talk of a virtual “hotline between their offices and WIPO.” This close and positive relationship between WIPO and its member states has been reported by other commentators. The other side of this positive relationship is that the laws prepared and

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presented by WIPO to these states as their domestic intellectual property protection regimes, enshrine the formal position of WIPO as an international organisation “dedicated to helping to ensure that the rights and of creators and owners of intellectual property are protected worldwide .”, that is, a protectionist policy. WIPO’s position, perhaps not unreasonably so, is that the incorporation of these higher standards on intellectual property protection into the states’ laws at the earliest possible point – that is, at their drafting - will “resolve problems for the developing countries before they arise”.

3.7 Conclusion – A Prelude to TRIPS

TRIPS constitutes Annex IC of the Marrakesh Agreement Establishing the World Trade Organisation (WTO), which was concluded on 15 April 1994, and entered into force on 1 January 1995. In accordance with the requirements of Article II.2 of the Marrakesh Agreement, TRIPS is binding on all members of the WTO. In terms of its coverage, TRIPS is the most comprehensive multilateral agreement on intellectual property rights, encompassing most types of rights with the particular exception of breeders’ rights, utility models and traditional knowledge. It establishes minimum standards of protection in respect of:

- copyright and related rights, including computer programmes and data bases;
- trademarks, including service marks;
- geographical indications, including additional protection for geographical indications for wines and spirits;

WIPO, General Information, 1 (WIPO Publication No. 400(E)).
Drahos, above n 123, 777.
• industrial designs;
• patents, including new plant varieties;
• layout designs of integrated circuits;
• undisclosed information, including trade secrets; and control of anti-competitive practices in contractual licences.

It has been suggested that TRIPS was successfully advocated by the governments of the industrialised world in order to obtain worldwide protection for the innovations and technologies generated by their corporations. Industrialised countries forced developing countries to negotiate an agreement on TRIPS with a clear objective of universalising the standards of intellectual property protection that they had incorporated in their own domestic legislation once they had obtained a high level of technological and industrial capacity. Correa suggests that a number of factors that converged during the 1980's/1990's explain the priority given by some countries, notably the United States, to a far-reaching enhancement of the intellectual property system worldwide, namely:

- the growing importance of technology as a factor in international competition;
- elimination or reduction of trade barriers in developing countries, which increased both the opportunity for direct exports from those countries and their attractiveness to multinational companies to gain access to those markets without the obligation for local investment or technology transfer;

124 Carlos Correa, “Implementing the TRIPS Agreement”, Preface.
the erosion during the 1980’s of the US supremacy in manufacturing and technology by Japan and subsequently Asian “tiger-economies”, attributable to too-open policies in respect of technology transfer and innovation imitation.\textsuperscript{125}

The perception that this declining American competitiveness was in large part due to losses from overseas piracy and counterfeiting were effectively promoted by US industry lobbies, particularly the pharmaceutical, software and recording industries, which convinced the US government of the need to link trade and protection of intellectual property rights to preserve US technology supremacy and the consequent economic advantage. Thus TRIPS was not merely conceived as an instrument to combat counterfeiting and piracy, but also a component of a policy of “technological protectionism” by establishing international rules to counter a declining competitive position in world markets.\textsuperscript{126} The adoption of TRIPS represented a major victory for industrialised countries and for their most active industry lobbies. It mirrored the standards of Intellectual property rights protection that were suitable for industrialised countries at their then prevailing level of development. It thus has several serious and adverse implications for developing countries, as many of its protectionist provisions could place higher obstacles in the path of these countries in their endeavour to being able to achieve technological achievement.

While there may have been some misgivings amongst the GCC states concerning the adoption of these new minimum international standards, in some quarters WTO was viewed as being largely irrelevant and hence its minimum standards obligations required by TRIPS would have little practical impact at the domestic level.\textsuperscript{127} Furthermore, the economies of the GCC states were largely driven by products outside the remit of the WTO, namely oil and gas. However, the

\textsuperscript{125} Ibid.
\textsuperscript{126} Ibid, 7.
\textsuperscript{127} Yahya Al-Riaimi, “Intellectual Property Protection, Enforcement in the Gulf States and Copyright Protection in the Middle East”, unpublished LLM thesis, Franklin Pierce Law Centre (2002), 5,
states also saw that membership of WTO would give them potential ability to exert some influence on some areas of international trade, whereas outside the WTO they would have no such ability. Yet the states also realized that they would have little choice but to join the international community which the WTO represents, and to become part of the north-south argument, particularly as they tried to broaden their economic national bases. The perceived significance to the GCC states of membership of the WTO and the requisite intellectual property legislative framework as a key national political and economic strategy is illustrated by Oman's reaction to achieving WTO membership. The options before the Sultanate were limited; it was, in effect, a game of do or die - either accede to the WTO or face global isolation. Despite the opposition to the WTO and the vehement criticism of its policies in some quarters, it was widely accepted that remaining outside the WTO would not be in the interests of any country, particularly a developing country. And with membership of WTO came, along with a number of other agreements, a requirement to adopt and establish laws and systems to comply with the requirements of TRIPS.

Reporting in early 1995, and just after the introduction of TRIPS, the United States Trade Representative (USTR) reported that the GCC as a whole, as well as its member states, lacked a comprehensive set of laws and regulations to ensure effective intellectual property protection, although some progress had been made in recent years. While all three major areas of intellectual property, namely trademarks, patents and copyright, received critical attention, the report was particularly scathing of the inadequate levels of protection for literary works of foreign origin, for sound and video recordings, and for a wide range of foreign goods imported.

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128 In 2000, Oman became the fifth GCC state to join the WTO after Bahrain (1995), Kuwait (1995), Qatar (1996) and UAE (1996), but the first required to go through the WTO scrutiny process. Saudi Arabia has been in the process of seeking membership since 1993, firstly of GATT, and then WTO since 1995. It will finally attain membership at the WTO Ministerial Conference to be held in Hong Kong in December 2005.

129 Ibid.

130 Ibid.
for domestic consumption. It added that, in no case, was protection adequate for US works. The report was particularly critical of the absence of patent protection for pharmaceutical products, and inadequate terms of protection for pharmaceutical processes in Kuwait and the UAE, lack of protection for US copyright works and sound recordings in Bahrain and the UAE, and the widespread copyright and trademark violations in Oman and Qatar. At the same time, the report acknowledged that Bahrain had strong patent and trademark laws, that Saudi Arabia had a complete and adequate patent law, and that the UAE had taken very effective steps to eliminate copyright piracy in video products. However, the report focused on the inadequacy of levels of protection for US interests, and not on the degree of compliance with TRIPS requirements. In so doing the report reveals the major US corporate influences behind the direction the report takes, namely the pharmaceutical industry and the recording and video industry.

Also writing on the status of intellectual property protection in the GCC at the time of the establishment of the WTO, one expert commentator and long-term expatriate resident of one of the GCC states, showed considerable foresight when he suggested that the pre-TRIPS period of the Uruguay Round of negotiations represented “an era of resurgent bilateralism” and predicted that “the GCC states can expect to remain under continuing pressure ... for legislative and enforcement activity in intellectual property matters.” In fact, the GCC states would enjoy little respite from the US bilateralism for the next five years of transitional TRIPS. If the writer was short of the mark in his forecast, it was only in respect of an underestimation of the timing and duration of the period of US resurgent bilateralism. The GCC states would experience the effects of the increased “ratcheting up” of US policy in using bilateral trade agreements in the post-TRIPS climate to establish the Middle East Free Trade Area as one of its objectives in
attempting to establish a dominating diplomatic and economic influence in the Gulf region as part of its broader international political strategy.

As this chapter has attempted to explore, the history of intellectual property protection in the GCC states in the pre-TRIPS era shows that foreign influences have continually made their presence felt on the states intellectual property legislation. Sometimes the foreign influences have been obvious and intrusive, as in the case of the Bahrain pre-independence omnibus regulation; and at times the influences have been subtle but even more effective, as illustrated by Kuwait's post-independence introduction of commercial and civil laws based on Egyptian and French foundations. The foreign influences have been of both western and Arabic origin.

However, the next major influence of foreign origin on the development of the GCC states intellectual property regimes, and which would soon confront them, would be the introduction and implementation of TRIPS – as Chapter 4 discusses.