



The Luzzatto Group

# Israel: The Importance of IP in a Technology-Based Economy

*Israel's extensive experience in dealing with crises has proven itself during the COVID-19 pandemic. Kfir and Michal Luzzatto review the unique characteristics of IP in Israel, as well as the steps that Israel has taken to grow in times of crisis.*

## IP IN ISRAEL

We live in a technological era of innovation, where intellectual property (IP) plays a crucial part in the economic growth of corporations and countries.

In many cases, IP assets, such as patents, trademarks, designs, and copyrights, are the most lucrative assets of the corporation, as well as trade secrets; therefore, IP laws (and commercial torts laws) are of great importance in the world of modern law, and especially in the Israeli technology-based economy.

Intelligent management of IP rights is the key to creating incentives for inventors and fostering a significant growth engine in the country's economy. But this cannot happen without proper legislation and regulation. For that reason, the Israel Innovation Authority (formerly known as the Office of the Chief Scientist) has advanced many reforms, together with the ILPTO, to lower regulatory barriers, also regarding COVID-19 solutions specifically.

In Israel, like in most countries, some IP rights, such as patents and breeder's rights, cannot be created without registration, while other IP rights, such as trademarks and designs, should be registered to receive as broad a protection as possible. Still, such registration is not mandatory, and some protection is available for unregistered

rights. In addition, there are rights, such as copyright, for which registration has primarily an evidentiary purpose.

Enforcement of IP rights in Israel can be done on several levels: The first is in certain proceedings before the Patent and Trademark Office (the ILPTO), such as oppositions. The second is in court proceedings, in various claims such as IP rights infringement, an application for Preliminary/Permanent Injunction, and more. The third is by seizing and confiscating counterfeit goods by the Customs Authorities and the police.

Unlike ILPTO proceedings, where cases are heard by someone who specializes in IP, there are no judges in the courts who officially specialize in IP (although some judges have already gained experience in the field). Therefore, there is an increased tendency to divert disputes to mediation or arbitration as an alternative dispute resolution route.

## IP IN ISRAEL DURING COVID-19

There's no doubt that the past year and a half have created many challenges, as the COVID-19 pandemic entered our lives and impacted almost every aspect of it. When it comes to IP in Israel, the pandemic has created both challenges and opportunities, and while the pandemic took everyone by surprise, it didn't find us unprepared, as Israelis are early

adopters and fast adapters by nature.

The day COVID-19 hit us, we realized that we had to learn to live with lockdowns and social distancing, so we simply switched to full-time remote operation, which proved itself well.

As in other organizations, the activities of the Israeli Patent Office (ILPTO) in 2020 were impacted by the coronavirus, when the employees of the ILPTO worked on a part-time basis, and 50% of the ILPTO employees were on leave. In addition, since the beginning of the outbreak and until the end of 2020, ILPTO employees worked almost full-time from home.

Despite these challenges, and thanks to the significant investment made in the past in providing services online, throughout 2020-2021 all the ILPTO services were provided almost as usual, except certain legal proceedings which, during lockdowns, could not be conducted online.

In addition, in May 2020, the patent division of the ILPTO began using artificial intelligence-based software to search for prior art, which is used in the initial search by the examiner who completes the search if necessary, using additional searching capabilities. The search results and their reliability are believed to be improved, although this endeavour is too new for an observer to reach a final conclusion.

In general, it can be said that COVID-19 did not significantly affect the submission of applications for registration of intellectual property rights in Israel and may even have had a positive effect. IP practitioners in Israel were amazed to see that the pandemic did not slow down IP activity. On the contrary, the activity level had increased.

In 2020, for the first time, the number of patent applications filed in Israel exceeded the 8,000 threshold, when more than 8,100 new patent applications were filed in Israel, an increase of about 5% compared to 2019.

Working from home is unlike office work in many respects, and it seems that inventors, creators, and entrepreneurs found more time to pursue projects previously set aside or delayed because of time and work constraints. Additionally, some new projects were postponed, allowing the handling of previous backlogs.

Thus, despite the shortage of manpower in the ILPTO in 2020, approximately 6,700 Israeli



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patent applications and 1,470 PCT applications were examined – more than in any other year. The trademark division issued the first examination report in 22,238 applications, and the designs division examined close to 1,900 applications.

In addition, there was a significant decrease in the average waiting time for a patent, trademark, and design examination and a reduction in the total examination duration.

## RECENT DEVELOPMENTS

In addition to the required changes that COVID-19 has brought with it, such as enabling online discussions and proceedings, improving regulation, and providing online services, there have been some interesting developments in the various areas of intellectual property that are reviewed below.

### A SUPREME COURT RULING WILL IMPROVE LITIGATION EFFICIENCY

In April 2021, the Israeli Supreme Court rendered a decision of principle in intellectual property, which has far-reaching implications for the entire industry (CLA 6161/20 Ayala Plast Ltd. V. Photex Molds Ltd.).

This decision stipulates that intellectual property lawsuits can be filed in the District Court, even if the requested monetary relief is less than NIS 2.5 million (which is the subject-matter jurisdiction's limit under the Israeli Courts Law), provided there is a provision in the specific law

regarding authority so that these cases will not be filed in a sweeping way in the Magistrate's Court as stipulated in the earlier Gabriel's ruling.

Gabriel's ruling, which was given in the matter of copyright about a year ago by the Supreme Court, ruled that in the case of a lawsuit under NIS 2.5 million, the Magistrate's Court has jurisdiction, as in an ordinary civil lawsuit.

## The Supreme Court's decision is precedent-setting and will affect all litigation in the field of intellectual property

This ruling, as stated, was changed in the decision given in the case *Plast V. Photex*. This case dealt with a lawsuit for designs infringements filed by Photex Templates Ltd. in the District Court in November 2019 against Ayala Plast Ltd. Between the years 2014-2016, Photex, which was represented by The Luzzatto Law Firm of The Luzzatto Group, registered 10 designs concerning boxes for electrical connections. In the statement of claim, Photex petitioned for a permanent injunction to secure its rights in the designs and prevent their continued infringement by Ayala Plast and requested a financial relief of less than NIS 2,500,000.

The district court first sought to apply Gabriel's ruling to the case, which was given after the lawsuit was filed, and to transfer the case to the Magistrate's Court. Photex disagreed with this position and argued for the existence of a specific provision of law, section 51 of the Designs Ordinance, by virtue of which the authority to hear such a claim is given to the district court only.

The district court accepted Photex's position and held that according to section 51 of the Designs Ordinance, the claim should be heard in the District Court. In respect of this decision, Ayala Plast filed an appeal to the Supreme Court based on Gabriel's ruling.

At the court's request, the Attorney General

announced his appearance at the Supreme Court, submitted his position, and agreed with Photex's claim that the court was correct in its decision to leave the hearing in the District Court.

In the judgment that was rendered, the Supreme Court ruled that Gabriel's ruling could not be applied broadly and sweepingly to all intellectual property lawsuits. When there is a specific provision in the legislation regarding a unique substantive authority, which determines in which court the case will be heard, it should be preferred over the remedy test (which relies on the monetary amount of the claim).

The Supreme Court further ruled that "in order to save unnecessary litigation in the future, we will clarify that the same analysis also applies to other cases where there are special legal provisions in the field of intellectual property law that relate to the issue of subject-matter jurisdiction." "It has been determined that the court competent to hear a claim for patent infringement is the District Court. Therefore, such claims must be submitted to the District Court, without requiring a remedy test at all."

This is a precedent-setting decision of the court, which will affect all litigation in the field of intellectual property. There is a considerable advantage to litigating in the District Court in light of the professionalism, proficiency, and experience of the judges in general, and for some judges also regarding their expertise in the complex and complicated field of intellectual property, gained over years of practice in the field. Moreover, when it comes to the field of intellectual property, these are lawsuits involving a considerable amount of money (sometimes the financial remedy does not represent the actual value of the lawsuit, which is embodied in a restraining order, the economic value of which is difficult to estimate). The fact that in some cases, these are matters of principle, in which a final ruling of the Supreme Court is sometimes required, also gives an advantage to litigation in the District Court, from which the path to the Supreme Court is shorter.

### CONTINUOUS DEVELOPMENT OF INTERNATIONAL COOPERATION

Israel is known to be the "Startup Nation" but is also a small country (a population of a little

more than 9 million people) that has to confront a particular situation (a perpetual state of danger from declared enemies). Therefore, developing international cooperation is of high importance in all aspects, including, of course, IP.

Israel is a member of many multilateral international treaties, such as the Patent Cooperation Treaty, The Paris Convention for the Protection of Industrial Property, the Madrid Protocol, The Berne Convention for the Protection of Literary and Artistic Works, and more, and just of last year Israel also joined The Hague Agreement Concerning the International Deposit of Industrial Designs. It is expected that the number of design applications filed by Israeli applicants via the Hague Agreement will continue to grow.

“The Abraham Accords,” the peace agreement signed initially between Israel and the United Arab Emirates, is one of the most significant developments in this area in recent times. Briefly known as “the Accord,” it resulted in further peace and cooperation agreements with Bahrain, Sudan, and Morocco. These agreements have far-reaching positive implications for the region’s economic development, both for Israel and the Gulf states. This formal peace agreement is a natural evolution of the relationships that Israelis have maintained with Arab states “under the radar” for many years.

The moment the agreements were out in the open, a deluge of connections began, cementing business and personal relationships. As is natural, IP firms were among the first to openly reach out to each other, and they found professional, warm, and eager business partners at the other end. It may seem incredible that strong relationships could develop spontaneously in a matter of days after years of disconnect between the Arab world and Israel. Still, the truth is that the divide between the people was never a real one, and it was only incited by the atmosphere created by politicians.

## ALIGNING WITH INTERNATIONAL LEGISLATION

The Ministry of Justice published a new draft bill to amend the Israeli Patents Law regarding Patent Term Extension (PTE). The purpose of this amendment is to allow drug manufacturing and stockpiling during the extension term, to adapt the situation of Israeli companies to that of foreign

companies in foreign markets.

This new draft bill answers the need to adjust the Israeli law in respect of the patent protection period to the changing market conditions, as these actions have recently been allowed in the European law (Regulation (EU) 2019/933 of The European Parliament and of the Council of May 20, 2019).

### **The proposed exceptions:**

The draft bill proposes adding exceptions for the following actions that would not be considered an infringement of the Patent during the extension period:

1) the manufacture of patented medical equipment or medical preparation containing the substance, for the purpose of marketing them outside of Israel, including any necessary action for this purpose;

2) the production during the six months before the end of the Patent Term Extension period for the purpose of marketing the patented product in Israel after the expiration of the extension order, including any necessary action for this purpose;

The draft bill is projected to apply to PTE applications, which will be filed after the formal publication of the Law, and from July 2, 2022, to PTE applications pending at that time. Additionally, it would apply to any granted PTEs for which the extension period has not started (i.e., for which the Basic Patent is still in force).

Since this is only a draft bill, the Ministry of Justice will have to review objections filed by third parties, and then the bill will be presented to the Knesset (the Israeli Parliament) for approval, so amendments can still be introduced if and before it is finally approved.

## CONCLUSION

The brief review presented above illustrates the vibrant, always-evolving IP environment that characterizes Israel; the COVID-19 pandemic emphasized the resilience of the Israeli IP environment. Many essential technologies are developed in Israel every day in various fields, such as cyber security, medical devices, biotech, agritech, environment, and much more. The world benefits from those technologies, most of the time without knowing their origin. This technological environment could not thrive without the robust IP

infrastructure that exists and develops constantly, taking into account the deep connection of Israel's industry with the world at large.

## ABOUT THE AUTHORS

### **About The Luzzatto Group**

The Luzzatto Group offers clients a range of complementary services to maximize the value of their IP. Our IP division, which includes Luzzatto and Luzzatto Patent Attorneys and The Luzzatto Law Firm, helps individuals, start-ups, companies, and multinational corporations protect their intellectual property. Our Business Division includes Luzzatto Consulting, Luzzatto Software, and Luzzatto BizDev. Luzzatto Consulting provides professional, technical, and scientific consulting. Luzzatto Software develops software for the Group's needs. Luzzatto BizDev develops business opportunities for the Group and, in some cases, for the Group's clients – creating growth opportunities.

### **Dr. Kfir Luzzatto, President of The Luzzatto Group**

Kfir is the fourth generation of his family to work in intellectual property. The firm he heads was founded by his great-grandfather in Milan, Italy, in 1869 and moved to Israel more than 50 years ago.

Kfir has vast experience in drafting and prosecuting patent applications in different fields, but nowadays, he mainly directs and participates in IP litigation and oversees complex portfolios requiring sophisticated strategy planning.

Kfir's multi-disciplinary experience ranges from pharmaceuticals and life science to software and defense. His extensive experience in litigation allows him a unique perspective on the development of strong IP protection for start-ups and multinational companies alike.

Kfir holds a Ph.D. in Chemical Engineering. He is known, among other things, for his work in litigation on important products such as PROZAC, VIAGRA, and less generally-known yet important projects in the life science, defense, and software fields.

Kfir is a recipient of the Landau Award for Research, the inventor of patented inventions, the author of many articles on intellectual property, and a member of multiple professional organizations in the field of intellectual property.

### **Michal Luzzatto, Managing Partner at The Luzzatto Law Firm**

Michal is a fifth-generation member of The Luzzatto Group and the managing partner of The Luzzatto Law Firm.

As a photographer and an artist herself, Michal devotes a significant portion of her time promoting the protection of intellectual property rights with an emphasis on copyright and trademarks and works closely with entrepreneurs, creators, artists, and inventors.

Michal's primary practice areas are Intellectual Property – Copyright, Patents, Trademarks & Designs, Commercial Law, Communications Law, and Internet Law.

Michal has a great love for working with people and developing meaningful relationships. Contrary to the stereotype about lawyers, Michal believes one should strive to resolve disputes outside of court. Therefore, in many cases, she helps her clients reach creative and effective solutions without conducting expensive and exhausting legal proceedings.

After graduating from the Interdisciplinary Center Herzliya (IDC) with two degrees, LL.B, Summa Cum Laude (2010), and B.A. in Business Management, Summa Cum Laude (2010), and passing the Israeli bar, Michal joined The Luzzatto Group. She currently manages The Luzzatto Law Firm, established a century and a half ago by her great-grandfather as a law firm specializing in intellectual property. ■



The Luzzatto Group

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Innovation thrives when innovators are free to create without fear of losing their intellectual property, and when they enjoy access to a vibrant business environment. At The Luzzatto Group, we are dedicated to enabling the world's most inventive individuals and companies to innovate and do business with confidence, knowing their ideas can fulfill their commercial and social potential.

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