

The advantages and the disadvantages of a small country

The past two years have brought many Covid-19 related challenges in almost every aspect, but as far as intellectual property (IP) in Israel is concerned, it also created opportunities. Israel was not unprepared; its extensive experience in dealing with crises, coupled with its top technological abilities, have proven themselves equal to coping with the pandemic.

All the services of the Israeli Patent Office were provided almost as usual, thanks to the significant investment made in the past to develop online services, with the exception of

Madrid Protocol, The Berne Convention for the Protection of Literary and Artistic Works, and more. In 2020, Israel also joined The Hague Agreement Concerning the International Deposit of Industrial Designs. As expected, the number of design applications filed by Israeli applicants via the Hague Agreement continues 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

extension term, and to adapt the situation of Israeli companies to that of foreign companies in international markets.

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

WHY ISRAEL'S IP IS DIFFERENT

When looking at Israel from the point of view of IP and the legal activity associated with it, one may note an anomaly. The population of Israel in 2022 is a little less than nine million, which is not different from countries like Switzerland, Austria, and Serbia. However, the level of legal activity in the IP field is disproportionately greater. Taking the number of patent applications filed in the United States, we can see that Israel and Switzerland are approximately the same (2,500–3,000 applications) although Switzerland has a very strong pharmaceutical and chemical industry, which is very prolific in terms of patent protection, and as such, it would be expected to generate way more patents than Israel. Austria, on the other hand, only filed approximately 1,200 patent applications in the same period, and Serbia only 14.

Israel, also known as the ‘start-up nation’, does not owe its activity in the IP field to large, multinational corporations, but rather to myriad companies, large and tiny, which operate in virtually every field of research. Some areas are those in which Israel leads, such as in cyber, medical devices, security, irrigation, and desertechnology, but other flourishing fields include foodtech, biotech, and agrotech, to mention but a few. This great variety presents challenges not only for the IP practitioner but also for the legal profession in general, which needs to assist those industries, specifically because of the country’s size.

In a big country in which a large number of IP firms operate it is possible for a firm that wishes to specialise in a particular area to do so while maintaining a size that allows it to provide high-level services to its clients throughout the whole range of activities they need. However, in a small country like Israel, a boutique firm that wishes to specialise in a given field cannot efficiently provide the whole spectrum of services that the industry needs. As a result, Israel only has a tiny number of large IP firms

‘In truth the divide between people and businesses has never run as deep as the political situation would suggest.’

certain legal proceedings which could not be conducted online.

In general, Covid-19 did not significantly affect the submission of applications for registration of IP rights in Israel; it may strangely even have had a positive effect since instead of slowing down, the IP activity level increased.

Working from home apparently opened unexpected possibilities for inventors, creators, and entrepreneurs, who found more time to pursue projects previously set aside or delayed because of time and work constraints. So much so that we see now a reluctance to go back to work in the office as before the pandemic, although the general sentiment in Israel (true or not) is that Covid-19 is behind us. This is undoubtedly also due to the swift action of the Israeli government that secured Covid vaccines for the whole population at a very early stage.

In addition to the changes introduced because of Covid-19, such as enabling online discussions and proceedings, improving regulations, and providing online services, there have been some interesting developments in various areas of IP that are reviewed below.

CONTINUOUS DEVELOPMENT OF INTERNATIONAL CO-OPERATION

Israel is a member of many multilateral international treaties, such as the Patent Co-operation Treaty, The Paris Convention for the Protection of Industrial Property, the

further peace and co-operation agreements with Bahrain, Sudan, and Morocco. Recently, they also brought about a small step forward with Saudi Arabia, which now allows Israeli aeroplanes to fly over its territory, which significantly shortens flying times to some destinations. 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.

As is natural because of their international orientation, 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, but in truth the divide between people and businesses has never run as deep as the political situation would suggest.

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

that can provide a full service. The upside of this situation is that the firms that were successful in developing a high-level IP practice for decades have the ability to assist their clients in the most challenging situations, pretty much throughout the globe. The downside, of course, is that the choice of firms at that level is extremely limited and, because of conflicts of interest, industries and individuals seeking legal assistance often have to make do with firms only capable of providing more limited services.

This situation is inherent to a market that, on the one hand, is small, and on the other hand has a frenetic activity where the development of IP is concerned. It also played a role in moulding how Israeli enterprises think and operate. A small company with big ideas and a small market has no choice but to look at the rest of the world to develop its market, and hundreds of such enterprises are created every year.

BECOMING FAMILY

An interesting result of the environment in which IP practitioners operate in Israel is that often what develops is much more than an attorney-client relationship. It starts with one or two entrepreneurs seeking legal advice to establish a company and safeguard their IP; soon the project takes off, the number of employees skyrockets, and so does the need for legal assistance. Sometimes a patent attorney must spend a significant part of his time assisting this one company, which is not large enough to hire an inside counsel, but nevertheless needs continued assistance, particularly when its activity expands to other countries. This often leads to the development of a relationship that feels more like family than a business.

Israel has also invested in the development of incubators from which interesting and often groundbreaking projects are born. There are several ways in which these incubators are fostered, both via government investments and by private enterprises.

This review would not be complete, however, without a sombre view of the current situation. The dramatic problems that plague the rest of the world, such as the supply chain and the various related and unrelated problems, reached Israel too. The slowing down of the R&D activity is already felt and is expected to worsen. Israel is affected by what happens abroad, particularly in the US and Europe, and therefore cannot be expected to remain immune from the damaging effects of international events. However, there are two sides to the fact that Israel is a small country: on the one hand, it cannot influence major economic developments that affect Europe or America; on the flip side,



‘Because of its small size, and because of the entrepreneurial character of its people, Israel is much more agile in making changes needed to confront adverse situations than bigger countries.’

however, because of its small size, and because of the entrepreneurial character of its people, Israel is much more agile in making changes needed to confront adverse situations than bigger countries. Therefore, when looking at the future, particularly in the IP field that derives much of its activity from the imaginative nature of the Israeli entrepreneur, it is not improper to maintain a level of optimism; after all, Israel has done it all before, more than once.

ABOUT THE LUZZATTO GROUP

The Luzzatto Group is the leading IP group in Israel, celebrating 153 years of practice. The Group’s unwavering dedication to clients has carried it into its second century and fifth generation.

The Group includes the patent law firm Luzzatto and Luzzatto and the Luzzatto Law Firm, which specialises in IP and commercial law, along with other business companies. Entrepreneurs, inventors, start-up companies, scientists, artists, and developers seek out The Group’s services to enjoy a personalised approach with a global outlook that helps clients protect their IP and commercialise research, inventions, and products.

For more information, please contact:

Dr Kfir Luzzatto, president and senior patent attorney (*pictured, above left*)

E: kflirl@luzzatto.co.il

Lilach Luzzatto Shukrun, partner and senior patent attorney (*pictured, above right*)

E: lilachl@luzzatto.co.il

T: 972-73-226-2626

The Luzzatto Group
The Luzzatto Building
9 HaGat St.
Omer Israel 8496500

www.theluzzattogroup.com/en