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Master's Thesis of Law

Protecting the Textile Carpet
Industry by Intellectual Property
Rights

섬유 카펫 산업에서의 지적재산권 보호

February 2017

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Protecting the Textile Carpet Industry by Intellectual Property Rights

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Abstract

Protecting the Textile Carpet Industry by Intellectual Property Rights

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This dissertation examines the role of intellectual property law in the textile carpet industry and the aids that each rubric of this discipline provides for the protection of intellectual properties in this industry. A carpet has different components and each of these components requires different protections according to its characteristics. Therefore, in order to provide a better understanding, these components are divided into three categories, namely: (1) reputation of origin (2) external appearance and; (3) know-how.

Apart from analysing international intellectual property provisions applicable to this industry, current research, by using related lawsuits within the United States and the United Kingdom, determines that copyright is the dominant means for protecting designs in the carpet industry. In contrast, the Iranian legal system applies industrial design rights to protect this feature of carpets.

Besides, despite the importance of geographical indications and traditional cultural expressions in the carpet industry, there are not enough and effective

legal provisions at the national and international levels for comprehensive protection for appellation of origin and traditional cultural expressions in the carpet industry. Therefore, it is necessary to use alternative measures such as concluding multilateral or bilateral IP agreements as well as alternative rubrics of intellectual property law to preserve the latter features.

Keywords: Textile carpet industry, Intellectual property rights, Reputation and distinctiveness, External appearance, Traditional cultural expressions.

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List of Abbreviations

IP	Intellectual property
IPRs	Intellectual property rights
GIs	Geographical indications
TK	Traditional knowledge
TCEs	Traditional cultural expressions
WIPO	The world intellectual property organization
USPTO	United States Patent and Trademark Office
TRIPS	The Agreement on Trade-Related Aspects of Intellectual Property Rights
ATC	The Agreement on Textiles and Clothing
WTO	The world trade organization
EU	The European Union
UK	The United Kingdom
US	The United States
EUIPO	European Union Intellectual Property Office
OHIM	Office for Harmonization in the Internal Market

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Chapter I. Introduction

The manufacture of carpets and textile floorcoverings dates back in several thousand years and has been constantly evolving, especially after the industrial revolution. Nowadays, this industry has been established in most countries and has found its way into overseas markets. This industry covers a wide range of activities, from spinning and dyeing yarns to designing, weaving and maintaining carpets. Therefore, the textile industry is a capacious sector and has the potential to create plenty of job opportunities. Furthermore, textile carpets are one of the main exports of some countries and an important source of income for thousands of households and many enterprises.

Notably, the importance of this industry is not limited to its economic benefits; it also has cultural value. To illustrate, hand-made floorcoverings and their designs are considered cultural and indigenous products in some regions of the world and should be preserved as traditional cultural heritage. Therefore, it is necessary to provide efficient legal means to protect these products at the national and international levels.

One of the disciplines of law that offers legal means to protect intellectual rights related to making and selling carpets is intellectual property rights (hereafter referred to as IPRs). Undoubtedly, ignoring the protection of intellectual ownership in the carpet industry, at the national and international levels, can cause grave harm to this sector by allowing the unlawful exploitation of intellectual properties.

In contrast, providing effective legal means for the protection of intellectual property rights in the carpet industry induces further developments and provides a stable economic environment for the entities practicing in this sector.

Regarding the importance of protecting intellectual properties in this industry, current research shall scrutinize the international IPRs provisions applicable to the textile carpet industry as well as the national provisions for the protection of textile products within the United States, the United Kingdom and Iran.

Pursuant of this goal, the first chapter presents the scope of this research, a brief history of the carpet industry and the current economic status of textile floorcoverings across the globe.

In the second chapter, provisions of different fields of IP law applicable to the carpet industry are determined. In the first section of this chapter, protecting the reputation and distinctiveness of carpets by geographical indications, trademarks, collective and certificate marks and laws against unfair competition is illuminated. The second part illustrates available protections for the external appearance of carpets by perusing related lawsuits in the U.S. and the UK. Following this section, protecting the know-how within the textile industry is briefly introduced in the third section.

Due to the importance of the carpet industry in Iran, the third chapter introduces the history of infringements on intellectual property rights in Iran's carpet sector and the classic approach for tackling those violations.

Furthermore, in this chapter the current approach to protecting IPRs in the carpet sector in Iran is illuminated.

The fourth chapter is assigned to comparative studies on protecting the textile industry by the means of IPRs in the United Kingdom, the United States and Iran.

Finally, the last chapter concludes by referring to the existing obstacles to the proper protection of intellectual properties in the carpet industry and possible solutions to overcome those problems.

It should be noted that the current research is mainly focused on surveying IPRs protections for carpet designs. Therefore, the majority of case studies are devoted to the issue of infringements on carpet designs.

Section 1: Background and Literature Review

Over the past two centuries, carpet manufacturing and trade has circulated a considerable amount of capital around the world. Accordingly, tufted carpets, with a total value of \$7.04B, are the 393rd¹-most-traded product in the world, and other types of carpets, with a total value of \$1.32B, are the 834th-most-

¹ The top exporters of tufted carpets are China (\$1.3B), Belgium-Luxembourg (\$1.12B), the United States (\$902M), the Netherlands (\$882M) and India (\$526M) and The top importers are the United Kingdom (\$961M), the United States (\$884M), Canada (\$653M), Germany (\$596M) and the Netherlands (\$288M). OEC - Tufted Carpets (HS92: 5703) Product Trade, Exporters and Importers. 2016. OEC - Tufted Carpets (HS92: 5703) Product Trade, Exporters and Importers. [ONLINE] Available at: <http://atlas.media.mit.edu/en/profile/hs92/5703/>. [Accessed 06 September 2016].

traded product in the world.²

Moreover, in some countries such as India, Nepal³, and Pakistan, the carpet industry provides a great number of job opportunities and is source of income for many households. Therefore, it is crucial that such countries provide effective legal protections at the national and international levels for protecting and expanding their domestic carpet industries.

Whenever a product or service exists, it involves creation by the intellect. Accordingly, in the carpet industry, IPRs are capable of providing legal protections which accompany IP owners in all stages of manufacturing and selling their products. For instance, patenting innovations as well as protecting designs of carpets or protecting the reputation of their origin are among the services which IPRs provide for the carpet industry.

Moreover, the carpet industry holds some unique features which amplify the need for protecting intellectual properties in this sector. Firstly, the carpet and rug industry falls within the scope of a greater sector, namely the textile industry, which is treated in a unique way in the TRIPs agreement. Article 25.2 of this agreement has given member states the authority to determine

² top exporters of rugs are China (\$535M), India (\$205M), the United States (\$59.4M), the United Kingdom (\$54.5M). OEC – Other Carpets (HS92: 5705) Product Trade, Exporters and Importers. 2016. OEC – Other Carpets (HS92: 5705) Product Trade, Exporters and Importers. [ONLINE] Available at: <http://atlas.media.mit.edu/en/profile/hs92/5705/>. [Accessed 06 September 2016].

³ The first top export of Nepal is Knotted Carpets amounting \$78.4M per a year. From OEC – Nepal (NPL) Exports, Imports, and Trade Partners. 2016. OEC – Nepal (NPL) Exports, Imports, and Trade Partners. [ONLINE] Available at: <http://atlas.media.mit.edu/en/profile/country/npl/>. [Accessed 04 September 2016].

the form of IP protection for textile design either by industrial design law or by copyright law. Therefore, the member states of the TRIPs agreement can follow different approaches for protecting textile design. Thus, different jurisdictions apply different methods of IPRs protection concerning textile design.

Secondly, due to the decorative function of carpets, it is vital to protect new and innovative designs as well as the indigenous patterns and motifs that are employed in the design of carpets and are considered to be cultural heritage of some regions.

1. Scope and Definitions

The general meaning of carpet includes all kinds of floorcoverings made of different materials, including wood, composites, coir, and textiles and so on. However, this research is exclusively focused on textile carpets, either used as floorcoverings or as wall hangings.

A textile carpet is defined as a textile floorcovering that can be made by either weaving or felting methods.⁴ Some definitions emphasize the “thick or heavy” feature of this fabric that distinguishes a textile carpet from other types of textile products.⁵ However, the usage of a carpet is not limited to covering floors and can be used for other purposes, such as (Hornby, 2015)(Hornby, 2015)decoration. For instance, some handwoven carpets and tapestries made of silk or wool are mainly used as tableaus hanging from walls or as décor in showcases.

⁴ A.S. HORNBY, OXFORD ADVANCED LEARNER'S DICTIONARY OF CURRENT ENGLISH (2015).

⁵ Ibid.

Textile carpets can be classified based on their construction. The main types of carpet constructions are: flat-weave, needlepoint, hand-knotted, hand-tufted, hand-hooked and machine-made, but these are just some of the many classifications.

Another classification of carpets that was also used in the Agreement on Textiles and Clothing (ATC) is based on the type of pile fibres used for manufacturing a carpet, which can be silk, wool, coir, nylon, polyester, polypropylene (olefin) and triexta.

Nevertheless, non-experts most commonly recognize carpets as handwoven (handmade) or machine-made.

Furthermore, while the term “carpet” in some regions differs in meaning from the term “rug” and refers to a type of floorcovering that is fixed to the floor, in the current work, the term “carpet” covers all types of textile floorcoverings whether used as wall-hangings or for other decorative purposes and whether fixed on the floor or not.

Accordingly, since textile carpets fall within the scope of textile industry⁶, the need to examine general IP issues, lawsuits and regulations related to the textile industry is inevitable.

⁶ The Agreement on Textiles and Clothing (ATC), chapter 57, annex, The World Trade Organization, 1994, terminated on January 1, 2005. As referred to in chapter 57 of the ATC annex, twenty-three types of textile floorcoverings are covered as textile products. The Agreement established a ten-year period that would eliminate the use of quotas in all textile and clothing trade between WTO nations. It expired on December 31, 2004. Since January 1, 2005, the garment and fabric trade worldwide has been operating without quotas.

Section 2: Evolution of the Carpet Industry and Emersion of Intellectual Property Issues

In order to better comprehend the issue at hand, an overview of the evolution of the carpet industry through time is indispensable. As historians say, the carpet is hardly a new item. Carpet weaving dates back to 3000 B.C. when people learned to spin cotton and wool and weave mats instead of using coverings made of animal skin or grass to protect themselves from the cold winters.⁷ However, the oldest hand loomed carpet that has been found in Central Asia comes from 500 B.C. and is known as Pazyryk carpet.⁸ Accordingly, the development of manmade carpets was mainly expanded in the regions around Caspian Sea, including Persia, Armenia, Turkey and later India and China.⁹ Until 1300 B.C., European countries were purchasing their floorcoverings from the Middle-East. (Revere, 1988) (Revere, 1988)¹⁰ In 1608, Henry IV established a carpet factory in his palace for supplying rugs demanded by the French market.¹¹ However, the first original carpet design in Europe was created by his successor, Louis

⁷ F Heshmati Razavi, *Carpet history*, SAMT PUBLICATION, TEHRAN (2008).

⁸ IN Khlopin, *The manufacture of pile carpets in bronze age central Asia*, 5 HALI (1982).

⁹ Ibid.

¹⁰ GLENN REVERE, *ALL ABOUT CARPETS: A CONSUMER GUIDE* (Tab Books. 1988).

¹¹ MADELEINE JARRY, *THE CARPETS OF THE MANUFACTURE DE LA SAVONNERIE* (Lewis. 1966).

XIII, called “Savonneries”.¹² In 1655, England followed the same path, establishing the first carpet factory in Wilton.¹³

The industrialisation of the textile sector began in the second half of the 18th century with the invention of the spinning mule by Samuel Crompton, which was patented in 1769 in England, and continued with building power looms and cotton mills in Great Britain.¹⁴

Other than patenting new and original inventions within the textile industry, protecting original textile designs within the Britain began with the Designing and Printing of Linens, Cotton, Calicoes and Muslins Act in 1787.

Nevertheless, the provision of the latter act was aimed to protect textile designs within Britain, not to stop textile manufacturers from copying designs that originated in other regions, such as Persia. Although, it is undeniable that the circulation of carpet designs and weaving methods between different regions has been a fundamental factor in the development of the carpet industry to date.

Additionally, due to the reputation of oriental rugs in Europe, especially Persian rugs, merchants in Europe did not hesitate to sell their carpets as “Persian rugs” or rugs “made in Persia”. For instance, according to a

¹² Ibid.

¹³ Creassey Edward Cecil Tattersall, *A history of British Carpets* (JSTOR 1934).

¹⁴ GORDON CAMPBELL, *THE GROVE ENCYCLOPEDIA OF DECORATIVE ARTS* § 1 (Oxford University Press. 2006).

document issued by the ministry of agriculture and commerce of Iran published in 1922, the central custom office of Iran had received various verified reports mostly from the Switzerland of some commercial firms in Zurich, Geneva and Berne selling low quality rugs from the Caucasus, the Ottoman Empire and Central Asia as “Persian carpets”. Furthermore, those businesses were decisively advertising such rugs in newspapers as “carpets directly imported from Iran” and they had hung Iranian flags in their stores.¹⁵ There are many other reports, such as the latter report from Iranian embassies in Italy, the UK and the US, which were revealing the stream of counterfeit Persian rugs from 1920 onwards¹⁶. This issue has been a major concern in Iran for decades and despite efforts to combat it with such decisive claims on the origins of carpets, this dilemma persists.

Nevertheless, in the current era, IP protections such as copyrights, patents, industrial design rights, geographical indications and the laws against unfair competition have alleviated the unlawful exploitation of reputation or design of carpets. Although, such regulations per se shall not be influential unless they conjoin with resolute enforcements.

¹⁵ALI AKBARI BAYEGANI, *SELECTED DOCUMENTS ON IRAN’S CARPET INDUSTRY FROM 1913 TO 1978* § 1 (the ministry of Islamic culture. 2002).

¹⁶ Ibid 51, 53, 54.

CHAPTER II: Protecting The Carpet Industry by Different Fields of IPRs

The fashion and textiles sector covers the supply chain from the processing of raw materials to product manufacturing, to wholesale and trading activities and after-sales servicing of products.¹⁷ Textile carpets, as products of this sector, proceed in the same supply chain, from the very beginning stage of processing yarns, dyeing and designing to weaving, selling and after-sales maintenance. During all of these processes, different rubrics of IP law come in to aid individuals performing in this industry by protecting their intellectual rights.

Furthermore, a carpet has different components and each of these components requires different protections according to its characteristics. For example, the design of a carpet is protectable under the copyrights, industrial design rights or patent law, while protecting the reputation of carpets takes place under trademarks law, geographical indications or, unfair competitions.

Accordingly, in order to provide a better understanding, in the current chapter, these component are divided into three categories, namely: (1)

¹⁷ *Fashion and textiles apprenticeships - Detailed guidance at <https://www.gov.uk/guidance/fashion-and-textiles-apprenticeships>.*

reputation of origin (2) external appearance and; (3) know-how.

In the first section, protecting the reputations and distinctiveness of carpets by geographical indications, trademarks, collective and certificate marks and laws against unfair competition is illuminated. The second part illustrates available protections for the external appearance of carpets by perusing related lawsuits in the U.S. and the UK. Following this section, protecting the know-how within the textile industry is explained in the third section.

It should be noted that studying available protections for textile carpets-can also be based on distinguishing between hand-made and machine-made carpets.

However, after scrutinizing a number of lawsuits and research related to textiles by the author, it was illuminated that from an IPR perspective, manufacturing carpets by hand or machine cannot determine the type of IPR that can be employed to protect this product.

Rather, the quantity of production (mass production or limited and customized production) and the function of carpet (a mere decorative function or decorative with flooring function) together determine the type of IPRs protection, especially for the external appearance of carpets.

Section 1: Protecting Reputation and Distinctiveness of Carpets

Reputation—in the textile carpet industry stems from a variety of features, such as the quality, design, origin and many other factors, which can determine whether consumers purchase a product.

To illustrate, some geographical regions have a reputation for weaving carpets with specific designs and qualities. Therefore, consumers need to be assured about the authenticity and the origin of these rugs. To assure the latter qualities, intellectual property rights come to the aid of this industry and provide consumers with the ability to distinguish authentic carpets from similar counterfeits.

In this regard, the current section is dedicated to introducing intellectual property rights that can be employed to protect the reputation and distinctiveness of products within the carpet industry. Accordingly, geographical indications, trademarks and laws against unfair competition are elaborated in the following subsections.

1.1. Geographical Indications (GIs)

In the carpet industry, protecting the reputation of the geographical origin of carpets is a salient issue. This issue is particularly influential in the purchasing of handwoven carpets, since the geographical origin of this type of rug can be influential in consumers' choice. For instance, Armenian and Turkman rugs are well known for their motifs and high quality; Persian rugs

have a reputation for their beauty, dyeing methods and durability; and Indian carpets are famous for their patterns and thickness. Therefore, such qualities are expected of rugs originating in these respective regions, otherwise they will lose their popularity.

However, when other regions decide to imitate the design of such carpets or sell their products decisively as rugs originating from a specific region, they will denigrate the popularity of the authentic rugs.

Besides, making carpets within these countries constitutes an important source of income for the indigenous people living in those regions. Therefore, the reduced popularity of carpets originating from such regions can damage the local economy.

Furthermore, in such regions, carpets and rugs are considered valuable cultural and social assets entangled in their history and therefore to be an expression of traditional culture and knowledge that have been practiced and developed for a long time.

To illustrate, the patterns and motifs in the Persian carpets are considered as traditional cultural expressions (hereafter called TCEs) and are made according to traditional knowledge (hereafter called TK) for spinning, dyeing and weaving rugs that has been transmitted from generation to generation.

Thus, in order to prevent imitation and illicit exploitation of rugs originating from such regions, which undermine sales and quality reputation of the genuine carpets, governments employ various types of IPRs. Among IP rubrics, geographical indications serve an important role in preserving the

traditional legacy of the carpet industry.

A geographical indication is “a sign that can be used on goods with a specific geographical origin and possessing qualities, reputation or characteristics that are essentially attributed to that place of origin”.¹⁸ This field of intellectual property law-offers protection at both national and international levels.

At the international level, a number of multinational treaties contain provisions for protecting geographical indications: the Paris Convention for the Protection of Industrial Property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (hereinafter referred to as the Madrid Agreement), the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as the Lisbon Agreement) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPS).¹⁹

Remarkably, the Paris convention and the Madrid agreement do not explicitly refer to the term “geographical indication” and instead refer to the “appellation of origin” and “indication of source”, which entail similar concepts to the “geographical indications”.²⁰

¹⁸ *Intellectual property and traditional handicrafts*.

¹⁹ *WIPO Intellectual Property Handbook*, 2004, available at The World Intellectual Property Organization. p.124.

²⁰ “The difference between “geographical indications” as used in the TRIPS Agreement and “appellation of origin” as used in the Paris Convention, on the one hand, and “indication of source”, is that the former require a quality link between the product and its area of production, the latter not”. *WIPO Report on fact-finding missions on*

1.1.1. Registering appellation of origin under the Lisbon Agreement

If there is a quality link between a carpet and its area of production, it should be registered as appellation of origin under the Lisbon Agreement, provided that the country be a member of the Lisbon Union Assembly.

Currently there are 29 regions which have registered their produced carpets as an appellation of origin under the Lisbon Agreement. All of these regions are located in Iran and are *products of hand* with specific motifs and designs.

("global brand database,")²¹

However, the Lisbon Union comprises only 27 member states and therefore does not provide pervasive protection for Iranian carpets. However, the main countries which produce counterfeit versions of hand-made carpets such as India, Pakistan and Nepal are not party to the Lisbon Agreement. ²²

1.1.2. Protecting indication of source under Madrid agreement

In addition to the latter agreement, if the intention is to prevent false or deceptive indication of source on carpets that originated in a region, it is possible to register it as an indication of source under the Madrid Agreement,

intellectual property and traditional knowledge (1998–1991), 2001, available at The World Intellectual Property organization.

²¹ Carpet, Date, Lisbon system database).

²²Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958).

which is a special agreement within the framework of the Paris Union.²³

The Madrid system, with 97 contracting parties, including a number of multinational organizations, makes it possible to protect a mark in a large number of countries “by obtaining an international registration that has effect in each of the designated contracting parties”.

Article 1(1) of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods provides that “all goods bearing a false or deceptive indication by which one of the countries to which this agreement applies or a place situated therein is directly or indirectly indicated as being the country or place of origin, must be seized on importation into any of the said countries”²⁴. However, the registration offices do not usually carry out research as to the issue of the origin of names requested to be registered and the possibility of deception by marketing under that mark.

Furthermore, article 4 of the agreement provides that “the courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this agreement”²⁵. Accordingly, in the carpet industry, the latter reservation right may occlude regions with reputation in producing carpets with certain features from registering a collective mark when the name of that character is considered a generic term in designated countries for registration.

²³ Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891).

²⁴ Ibid. article 4.

²⁵ WIPO Intellectual Property Handbook, No. 489 (E), Second Edition, page 126, 2004.

To illustrate, if a country such as Iran decides to register “Persian carpet” as a collective mark for indication of source in countries which import such carpets to prevent sales of those carpets as Persian carpet, it is up to the courts of those designated countries to determine whether “Persian carpet” is considered there as a generic term for carpets having certain designs or whether it refers to carpets which are produced in Iran.

1.1. 3. Concluding Bilateral Agreements for Protecting Geographical Indications

Another possibility for the international protection of geographical indications in the carpet industry is the conclusion of bilateral agreements between two countries. These agreements “consist of lists of geographical indications which were drawn up by the contracting parties and an undertaking to protect the geographical indications of the respective contracting parties”.²⁶

1.1.4. Protecting GIs under TRIPS agreement

The World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights is dedicated to geographical indications.

At the national level, geographical indications can be protected by different means, such as passing legislative provisions regarding the protection of GIs,

²⁶ Ibid, 129

registering GIs as collective or certification marks and decision-making by the competent government authority establishing the protection. ²⁷

In protecting the carpet and rug industry as a geographical indication, Iran uses the first and third method to protect the reputation of handwoven carpets that originated in this country. According to the act of carpet identification ratified by the Islamic council assembly of Iran in 1992, the ministry of mining and industry is bound to issue identifying certification for handwoven carpets which are 30 wales²⁸ or more, upon request by the exporter.²⁹

Besides, the national carpet company of Iran has provided that all Iranian handwoven carpets which have been produced according to the standards of Iranian handwoven carpets should have a hand-tufted label on their backside, which contains information on the type of rug, name of its design, weaving location and name of weaver(s).³⁰ By intercalating this information on the carpets, domestic and foreign customers can be assured of the authenticity of rugs that originated in Iran.

²⁷ *Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members, 2007, available at* Commission of the European Communities. P.6.

²⁸ A “wale” is one of a series of even ribs in a fabric. HORNBY, Oxford Advanced Learner's Dictionary of Current English. 2015.

²⁹ The Act of Carpet Identification (Islamic consultant assembly of Iran ed., 1992).

³⁰ BAYEGANI, Selected documents on Iran’s carpet industry from 1913 to 1978. 2002.

1.2. Trademarks

Trademark is a form of intellectual property right that “can be composed of distinctive words, letters, numerals, drawings, pictures, shapes, colours or advertising slogans, among others, which individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors³¹”.

Trade marks have three basic functions: a function which indicates the origin of the product or service, a quality assurance function and an advertising function to assist with the marketing of the product.³²

Trademarks are legally protectable upon registration. By using trademarks, entities which provide goods and services related to rugs and carpets can distinguish their products from identical or similar products and increase consumer recognition of authentic carpets. Furthermore, by using trademarks, carpet producers can add to the commercial value of their products.

In most countries, trademark law forbids registration of marks which falsely imply that a good and service has an indigenous origin to prevent deceptive trademarks. However, under the Madrid system, some trademarks related to the production of carpets have been registered which falsely imply that *the carpet in case of carpets*, it appears that trademark offices either were not aware of the origin of the carpets or consider some terms as generic. For

³¹ Intellectual property and traditional handicrafts, World Intellectual Property Organization, No.5, p2, 2016.

³² William Cornish, et al., *Intellectual property: patents, copyright, trade marks & allied rights*, (2013). .p. 612.

example, a number of trademarks have been registered as “Persian” under the Madrid system³³, the majority of which do not originate from Persia (Iran).³⁴ This can render the fact that the word “Persian” has become a generic term for different types of products, including carpets, and is not a geographically descriptive term.

However, within the EU community trademark sphere, such trademarks which render a descriptive link between the goods covered by the application and the geographic origin of the name-are refused registration³⁵. Therefore, applications to register trademarks for flooring carpets that falsely imply a link between the carpets and a geographical origin, such as Nepalese, Indian or Persian rugs, are less likely to be approved for the registration.

Another example is the registration of a trademark called “Tabriz”, which originated in Indonesia, which produces carpets with Islamic patterns.³⁶

³³ For example, under the WIPO Global Brand Database, 9 trademarks with the term “Persian” originating from Korea, 42 trademarks originating from the United States have been registered under the Madrid system for more information on carpets registered as “Persian”: WIPO Global Brand Database, text: Persian, class:25. global brand database, Date.

³⁴ Persia is the old name of Iran, however, Persia included a larger territory and contained Armenia, Azerbaijan and Turkmenistan. However, carpets originating from those territories now are not known as Persian carpets now and the term “Persian carpets” refers to carpets originating from Iran.

³⁵ HIMALAYA Anti Piling. The case relates to the registration of trade mark “HIMALAYA Anti Piling” for a business related to producing and marketing yarns from Turkey. However, the EUIPO refused the registration of such trademark by stating that “the mark is descriptive of the geographical origin of the goods”. At p.4.

³⁶ IDM000299537-Tabriz, *global brand database*.

However, Tabriz is a city in Iran which has worldwide fame in weaving rugs with certain designs and qualities. It is clear that the trademark offices in designated countries have failed to do enough research and inadvertently approved the registration of such a trademark.

Regarding the foregoing facts, it can be conceived that trademark offices in different countries have different approaches regarding the registration of trademarks which have a quality link with a geographical region and therefore there's no certain approach regarding to this matter.

1.2.1. Certification Marks

Sometimes the reputation of rugs stems from having certain features, such as being made of specific materials (e.g. wool, silk, natural yarns, or anti-allergic yarns). Thus, in order to guarantee the existence of such features, there is a need for a mark in the product that verifies such facts.

A certification mark is a mark which certifies certain characteristics in goods and services. (Belson, 2002) (Belson, 2002)³⁷ For example, in order to guarantee the authenticity of indigenous products, authenticity labels are used to ensure the originality of arts and crafts.³⁸ These authenticity labels are in fact certification marks which can also be employed to certify the authenticity of rugs as well. For instance, the “NSF/ANSI 140”³⁹, which

³⁷ JEFFREY BELSON, CERTIFICATION MARKS (Sweet & Maxwell, 2002). P.1.

³⁸ WIPO Report on fact-finding missions on intellectual property and traditional knowledge (1998-1991), p139, Geneva, 2001.

³⁹ NSF/ANSI 140 or “Sustainability Assessment for Carpet” is a certification mark which was developed by the NSF National Center

guarantees social and environmental sustainability of carpets, or the “GoodWeave”, which certifies rugs are not made by child labour, are some examples of certification marks in the carpet industry.

It should be noted that although certification marks or authenticity labels cannot prevent the sale of imitations, they can discourage them by distinguishing the genuine traditional handicrafts.

1.2.2. Collective marks

Collective marks, which have been addressed in article 7bis of the Paris Convention, are signs used by members of an association to distinguish their products from similar goods in the course of trade⁴⁰. By using collective marks, the members can represent their products as having certain specifications, such as belonging to a geographical zone or other characteristics.

In the carpet industry, geographical indications can be superseded by collective marks, since trademarks provide broader protection under the Madrid Agreement than the Lisbon Agreement.^{41&42}

for Sustainability Standards (NCSS) and is a standard for sustainability evaluation and certification of carpet products across their entire life cycle. This Mark is granted upon the registration and the fulfilment of requirements set by the NSF National Center.

⁴⁰ *COLLECTIVE MARKS* Work Manual. Intellectual Property Office of Singapore, p. 3.

⁴¹ Dev Gangjee, *Protecting geographical indications as collective trademarks: the prospects and pitfalls*, (2006).

⁴² Since the Lisbon Union Assembly is comprised of only 27 member states, it cannot provide a pervasive international protection for the protection of geographical indications. However, the Madrid system is comprised of 98 members and therefore it can provide a broader

Accordingly, among the countries which produce handmade carpets, Nepal employs a collective trademark to present the origin of carpets originated from this country. However, this trademark has not been internationally registered under the Madrid system since Nepal is not a member of this agreement⁴³. It should be noted that the use of a collective mark does not promise a certain quality in the carpet, but it merely is an indication of association.⁴⁴

Moreover, the difference between collective marks and certification marks is that “collective marks may only be used by members of the organization, while certification marks may be used by anyone who complies with the relevant standards”⁴⁵.

1.3. Protecting Against Unfair Competition

One of the main challenges of the carpet industry is to prevent the unfair competition of intellectual properties.⁴⁶ Unfair competition law, which is employed to bridle false or deceptive practices in the market, is an

protection for the protection of GIs.

⁴³ Central Carpet Industries Association. 2016. Central Carpet Industries Association. Available at: <http://nepalcarpet.org/>. [Accessed 02 October 2016].

⁴⁴ Paris Convention for the Protection of Industrial Property (1883).article 10 bis.

⁴⁵ WIPO Report on fact-finding missions on intellectual property and traditional knowledge (1998–1991), p38, Geneva, 2001.

⁴⁶ *Marketing Crafts and Visual Arts: The Role of Intellectual Property practical guide*, 2003, available at International Trade Centre N C T A D / W T O. .P.101.

influential tool for combating misleading claims as to the origin of carpets.⁴⁷ The first international agreement that recognized protections against unfair competition was the Paris convention for industrial property in 1900 during the Brussels diplomatic conference. Article 10bis of this convention defines unfair competition as “any act of competition contrary to honest practices in industrial or commercial matters”.⁴⁸

According to this convention, acts that may cause confusion between the carpets of one enterprise and another enterprise, false allegations which may discredit carpets manufactured or marketed by an enterprise, false allegations about the characteristics of the carpets and other unlawful acts which can damage the distinctive power of a mark are prohibited.⁴⁹

An example of case law related to unfair competition practices in the carpet industry within the United States was in *Carpet City v. Carpet Land*.⁵⁰ In this case the plaintiff was alleging that the adaptation of “Carpet Land” by the defendant was a fraud against his business, since both of the businesses were located in the city of Tulsa and the plaintiff’s business was established before the defendant’s. Besides, since Mr. Alverson, the owner of Carpet Land Inc. was employed for several years by Carpet City Inc., the plaintiff was claiming that the defendant’s business name misleads the consumer about the origin of the carpet.

⁴⁷ WIPO Intellectual Property Handbook, No. 489 (E), Second Edition, page 131, 2004.

⁴⁸ WIPO Report on fact-finding missions on intellectual property and traditional knowledge (1998-1991), p40, Geneva, 2001.

⁴⁹ Ibid.

⁵⁰ *Carpet City v. Carpet Land*, 335 355, (Okla: Supreme Court).

However, the court held that “a designation which relates only to the name quality such as ‘carpet’ or describes the place where the thing is produced or the business is carried on cannot exclusively be appropriated by a person.”⁵¹

Accordingly, the court found that “the term ‘Carpet’ is a generic term applicable to all in the same business”.⁵²

However, the question is whether the terms such as “Persian”, “Indian”, “Armenian”, or “Turkman”, which usually are combined with the terms “rug” or “carpet” in trademarks, are considered as descriptive and generic terms for designation of a geographical origin or can be exclusively used by a person or firm. As it was mentioned under the trademarks section, within the European Union Intellectual Property Office, such terms cannot be registered as such marks can mislead the consumers about the geographical origin of the goods unless there is a descriptive link between the goods covered by the application and the geographic origin of the name.⁵³

However, within the United States, trademarks of such a nature may be refused to be registered, not due to the possibility of deceptive indication of origin, but because they can be considered generic. To illustrate, in *GMT Productions, L.P. v. Cablevision of New York City, Inc.*⁵⁴ the plaintiff failed to obtain protection for the trademark “Arabic Channel”, as the court found that the term “Arabic” is generic in relation to the channel and refused to

⁵¹ OK Bus & Baggage Co. v. OK Transfer & Storage Co, 165 136.

⁵² Carpet City v. Carpet Land.

⁵³ HIMALAYA Anti Piling.,2015.

⁵⁴ GMT PRODUCTIONS v. Cablevision of New York City, 816 207, (Dist. Court, SD New York).

grant protection for this trademark. By taking the latter approach to the term “Persian” in relation to carpets, and in view of trademarks such as “Persian Weavers”⁵⁵ or “Prime wool a Persian rug wool quality”⁵⁶, which have been registered in the United States for carpet and floorcoverings, it can be perceived that, unlike the term “Arabic”, terms such “ Persian” are not considered “generic” within this territory. Similarly, in the UK, trademarks with the same nature, such as “Persian Rug Bazaar”⁵⁷, are registered as national UK Trade marks.

To sum up, unlike the EU, in the United states and the United Kingdom, terms such as “Persian” or “Indian” combined with other terms are repeatedly used and registered as trademarks without addressing the possibility of deceptive indication of origin. However, such words might be considered “generic” terms in relation to other terms, which should be determined and analyzed on a case-by-case basis.

Section 2: Protecting The External Appearance of Carpets (design)

Design in carpets refers to the visual aspect or outward appearance of the product, such as the shape and configuration, patterns, lines or colours.⁵⁸

⁵⁵ USPTO, Reg. No. 4001370, Persian weavers.

⁵⁶ USPTO, Reg. No.4053478, Prime wool a Persian wool quality.

⁵⁷ The United Kingdom Intellectual Property Office, Reg. NO. UK00002292658, Persian Rug Bazaar.

⁵⁸ Intellectual Property and Traditional Handicrafts, background brief, No. 5, The World Intellectual Property Organization, Geneva,

Design is a dispensable feature of textile carpets and influences customers' preference of one carpet over another. Accordingly, when the technical features of the various carpets offered by different manufacturers are comparatively the same, the external appearance, along with price, will determine consumer choice⁵⁹. Therefore, providing effective protection for designs within this industry can help carpet manufacturers to achieve market success.⁶⁰

Design can be expressed either two- or three-dimensionally. Accordingly, the three-dimensional designs are generally considered to form the shape and configuration of an article, while two-dimensional designs are printed, engraved or placed upon an article for the purpose of decoration.

However, the outer decoration of a carpet is not printed on it, but rather is the result of thousands of piles which together create both its functional and artistic features. Therefore, the overall look of a carpet as it appears two dimensionally is the result of using piles with specific colors, while piles themselves form the shape and configuration of a carpet.

2016.

⁵⁹ WIPO Intellectual Property Handbook, No. 489 (E), Second Edition, page 112, 2004.

⁶⁰ Ibid.



The external design on textile carpets is not printed on them and mostly is the result of thousands of woven piles which together create a work of art on the carpets. Therefore, decorative designs in carpets are expressed three-dimensionally and have functional characteristics at the same time.

As described in the first chapter, article 25.2 of the TRIPs agreement has authorized the member states to choose the type of IPRs protection for textile designs. Therefore, each legal system takes its own specific approach to protect design rights. These protections can be through design law, copyright law, patent law or laws against unfair competition.

In this section, after presenting a general overview of design protection under industrial design rights and copyrights, the IP law systems of the United States and the United Kingdom for protecting textile designs, with special focus on lawsuits related to infringements on carpet design, are to be examined.

2.1. *Industrial designs*

An industrial design is the ornamental aspect of a useful article. The ornamental elements may be three-dimensional (the shape and configuration of the carpets) or two-dimensional (patterns, motifs and colors of carpets). However, carpet designs must not be dictated solely or essentially by technical or functional considerations, otherwise it cannot obtain the protection of industrial design rights.⁶¹ Although, “mass production” is another condition that is occasionally noted for obtaining protection of industrial design rights.⁶²

In order to obtain protections under the industrial design rights, registration is usually required in most countries. However, in some jurisdictions, such as the UK and within the European Union, some industrial designs can be protected for a short period of time without being registered.⁶³

Moreover, registering a design is often expensive and not affordable for designs which need a short period of protection. Therefore, within the carpet industry sphere, for manufacturers who wish to test the market for their new design and decide whether it is affordable to register their design,

⁶¹ Intellectual property needs and expectations of traditional knowledge holders, WIPO report on fact-finding missions on intellectual property and traditional knowledge (1998–1999), p 41, Geneva, 2000.

⁶² WIPO Intellectual Property Handbook, No. 489 (E), Second Edition, page 112, 2004.

⁶³ Ibid.

unregistered design right is a more affordable option.

Currently, in Iran, the external appearance of carpets, whether two or three dimensional, is protected under industrial design rights and is required to be registered in order to obtain protection. However, within the United Kingdom, generally, shape and configuration of carpets are protected under design rights while the surface decoration is protected under copyright law. In the United States, three dimensional designs are protected by patent designs, which is comparable with the industrial designs in Iran and registered design rights within the UK.

In the current section, chapters three and four, protecting textile carpets by industrial design rights within the United States, United Kingdom and Iran shall be further illustrated.

2.2. *Copyrights*

Copyright protects the decorative surface of carpets by granting a bundle of rights to the designer or the owner of a design, provided that the work is original, developed independently and fixed in a “tangible form”.

However, derivative designs may also be protected by copyright if they are “different enough” from the borrowed works to be considered new works. Therefore, if carpet designers adapt, reform, or alter other carpet designs to create a new design, they can be entitled for copyright protection, provided that they have the permission of all those copyright owners whose works have been used in creating the new design, unless those works belong to the

public domain.

A created design is automatically protected by copyright as soon as it exists, without any special registration, and is usually protected for the length of the author's life plus a minimum of another 50 years. Therefore, it provides a more convenient and longer protection than the industrial design rights.

Although designs of carpets cannot be internationally protected by copyright, there are various international treaties that cover this issue. The most important among those treaties is the Berne Convention for the Protection of Literary and Artistic Works.

According to this Convention, artistic works are protected without any formalities in all the countries party to the Convention.⁶⁴ This means that if the designer is a national or resident of a country party to this Convention, or has offered or exhibited the carpet in the market of one of the member countries for the first time or at least simultaneously, his copyright will be automatically protected in all other countries that are party to the Berne Convention. Same rule is applied to Member the TRIPS Agreement.

Among the three countries which are subject of this study, Iran is not a member to the Berne Convention and therefore cannot enjoy the broad protection which this treaty provides for the member states. Nevertheless, the Act of Protecting the Rights of Authors provides a similar bundle of rights for protecting artistic and literary works, which is only applicable within Iranian Jurisdiction. Yet, designs in this country (including carpet

⁶⁴Latest Text of the Berne Convention for the Protection of Literary and Artistic Works (1971 Paris Act plus Appendix), Article 5.

designs) are only protected by industrial design rights.

However, the UK and the United States protect the surface decoration of carpets by copyright law and enjoy the pervasive protection of the Berne Convention which shall subsequently be illuminated.

2.3. Protecting the External Appearance of Carpets under the United States Legal System

The protection of designs in the United States case law stems from article 1 of section 8 clause 8 of the United States constitutional law which grants exclusive rights to inventors for a limited period of time.

Although congress provided for carrying into effect the provisions of article 1 of section 8 in 1790, it excluded, by implication, any new or original design for ornamentations. However, in 1842 congress enacted a law which specifically included design inventions or productions as a subject matter for which letter patent could be granted.

This act introduced four general subjects for design patents, which consisted of (1) “any new or original design for a manufacture of any materials (2) design of silk, cotton, or other fabrics (3) any new and original impression or ornament (4) any new and original shape or configuration of any article of manufacture.”⁶⁵

Furthermore, this act was providing a seven-year period for protection of

⁶⁵ Act of August 29, 1842 (The United States Congress ed., 1842).Sect.3, 5 Stat.at Large, 543.

design patents, which was half the period of other types of patents. However, the act of 1867 changed the duration of design patents to (1) three and half years, (2) seven years, or (3) fourteen years, which were granted by the power of the commissioner.⁶⁶ Both of these acts (1842 and 1861) were providing for grant of patent designs which were not known or used by others. Nonetheless, the two latter acts were repealed and entirely superseded by the consolidated Patent Act of July 1870.

The subject matter for which the patent could be issued remained the same under the Patent Act of 1870. Nevertheless, differentiating between design patents and patents for inventions or discoveries in the U.S. case law began under this act.⁶⁷

An example of design patent granted for ornamental design for carpets under the latter act was in the letter patent No.11, 047, issued in 1879, for a duration of three and half years. ⁶⁸

Unlike the contemporary approach, in the classical approach, design patent covered the design of the entire product from the shape and configuration to surface decoration. Therefore, both decorative and functional aspects of carpets were protected upon the granting of a letter patent.

Moreover, in order to calculate damages in a design infringement suit, the assumption of courts in that time was that “it is the design that sells an

⁶⁶The Patent Act of 1861 extended the term of patents for inventions to 17 years, and prohibited any extension there of; but expressly authorized a seven-year extension of design patents issued under that act.

⁶⁷ *Theberath v. Rubber & Celluloid Harness Trimming Co*, 15 246.

⁶⁸ *Dobson v. Hartford Carpet Co*, 114 439, (Supreme Court).

article.”⁶⁹ Nevertheless, the contemporary approach does not follow the same path and it is clear that while this approach could be true about carpets, it is surely not true about all designs.⁷⁰

Currently, under the United States law, any “new, original, and ornamental design” that would not be obvious to an “ordinary designer” skilled in the art is protectable under design patent.⁷¹ However, a design patent should not be functional, otherwise it can be found invalid.⁷²

Remarkably, sometimes functional and decorative features in a carpet may overlap. However, in such conditions, “there is a way to get protection from both types of patents”.⁷³

Nonetheless, in order to pursue protection for textile designs under United States IP law, it is necessary to distinguish between the shape or configuration of a carpet that contains aesthetic value and the combination of pattern, motifs and colors on a carpet. Under United States case law, designs under the first category obtain protection of design patents, while the second group is protected under copyright law.

⁶⁹ Mark A Lemley, *A Rational System of Design Patent Remedies*, (2014).

⁷⁰ Apple Inc. v. Samsung Electronics Co., Ltd, 786 F.3d 983, (Court of Appeals, Federal Circuit).

⁷¹ 35 U.S. Code § 171.

⁷² G. Oake, Robert, design patent perspective: design patent case law updates, intellectual property today, march 2013.

⁷³ Hages, Michael, The Design of Design Patents: What Every Designer Should Know About Protecting Your Work, Core77,2016.

2.3.1. Copyright law in the United States

The Copyright Act of 1976 introduced a new type of intellectual property right to the U.S. legal system. Under this act, “original works of authorship fixed in a tangible medium of expression” are protected under the copyright law.⁷⁴ However, “useful” articles with an intrinsic utilitarian function are not covered by this act. Therefore, a carpet design can obtain copyright protection only if it meets the originality and non-functionality standards.

2.3.1.1. Originality

Originality in the carpet design context refers to the independent creation of a design without copying another work⁷⁵ or at least a minimal degree of creativity in the design.⁷⁶ Besides, even if the designer creates a design by arranging or combining motifs which are not copyrightable, the arrangement and combination itself can still be “sufficiently” original to obtain the copyright protection.⁷⁷

For example, in *Tufenkian Import/Export Ventures, Inc. v. Einstein Moomjy, Inc.*⁷⁸, the plaintiff adapted two public domain design for rugs and combined them by adding borders to create a carpet design named as “Floral Heriz”.

⁷⁴ 17 U.S. Code § 102 – Subject matter of copyright.

⁷⁵ *Folio Impressions, Inc. v. Byer California*, 937 F.2d 759, (Court of Appeals, 2nd Circuit).at 764–65.

⁷⁶ *PAN-AMERICAN PRODUCTS v. RTG Furniture Corp*, 825 F.2d 664, (Dist. Court, MD North Carolina).

⁷⁷ *Knitwaves, Inc. v. Lollytogs Ltd.(Inc.)*, 71 F.3d 996, (Court of Appeals, 2nd Circuit).

⁷⁸ *Tufenkian Import/Export v. v. EINSTEIN MOOMJY*, 338 F.3d 127 (2d Cir. 2003).

Despite the decision of a district court about the derivative nature of the Flora Heriz design, the Court of Appeal found that the design “contained sufficient originality” and therefore could obtain narrow-scope copyright protection.⁷⁹

Therefore, the issue of originality in carpet design does not require absolute creativity in the new design, since combining different motifs and arranging patterns in a new way can entitle the design owner to copyright protection for the “minimal level of originality” in the design without granting protection for derivative materials in the design. However, the designer needs to obtain the consent of the copyright owner of the prior work or use a prior work which is in public domain.⁸⁰

2.3.1.2. Establishing Copyright Infringement in Carpet Design

In order to establish copyright infringement in the carpet design, the plaintiff should establish that he is the owner of a valid copyright and the defendant has actually copied the substantial elements of the design.⁸¹

2.3.1.2.1. Validity

⁷⁹ Tufenkian Import/Export v. v. EINSTEIN MOOMJY, 338 127, (Court of Appeals, 2nd Circuit).

⁸⁰ MH Segan Ltd. Partnership v. Hasbro, Inc, 924 512, (Dist. Court, SD New York).

⁸¹ Odegard, Inc. v. Costikyan Classic Carpets, 963 1328, (Dist. Court, SD New York).

Validity and ownership of design are entangled matters in the copyright context and can be proven by registration of the original work. Otherwise, the owner has the burden of proving validity and ownership of a carpet design. Therefore, even though the copyright is automatically granted to an original design fixed in a tangible form, “the certificates of registrations provide the plaintiffs with a rebuttable presumption of ownership of valid copyrights”.⁸²

The issue of validity in copyright protection for carpet designs and the importance of registering the design in the U.S. copyright office have been addressed in the majority of cases related to copyright infringement in carpet designs.

For example, in *Odegard, Inc. v. Costikyan Classic Carpets* (963 F. Supp. 1328 (S.D.N.Y. 1997)), the plaintiff simply demonstrated the issue of ownership of two valid copyrights for two carpet designs called “Chaklo” and “Belak Ripyun”.⁸³

With regard to the latter lawsuit and examining several cases related to carpet designs, it is observed that due to the economic value of the carpet designs and to prove the validity of their design, carpet design owners register their new carpet design within the US Copyright Office and by doing so they provide an authentic certificate of ownership for their designs.

⁸² Ibid.

⁸³ 17 U.S.C. § 410(c)

2.3.1.2.2. Actual Copying and Substantial Similarities

In order to prove a copyright infringement, the plaintiffs must show that the defendant has actually copied their works, by showing substantial similarities between the defendant's carpet design and the elements of the plaintiff's carpet design.⁸⁴

The "actual copying" can be shown either by direct evidence⁸⁵ or by demonstrating the defendant's access to the copyrighted carpet design. However, in either way, the plaintiff must prove a substantial similarity between the protectable materials of his design and the defendant's work.⁸⁶ Nevertheless, the defendant can rebut circumstantial evidence by showing that his work has been created independently.⁸⁷ However, "the defendant may not avoid liability for infringing by pointing out minor differences between the designs".⁸⁸

Notably, the courts employ the "ordinary observer test" to determine the issue of substantial similarities. Accordingly, in order to determine the issue of substantial similarities, the court considers whether the aesthetic appeal of the plaintiff's carpet design and the defendant's design appear substantially similar to an ordinary observer.⁸⁹

⁸⁴ Fisher-Price, Inc. v. Well-Made Toy Mfg. Corp, 25 119, (Court of Appeals, 2nd Circuit).

⁸⁵ Ibid, at 123.

⁸⁶ Williams v. Crichton, 84 581, (Court of Appeals, 2nd Circuit).

⁸⁷ Tienshan, Inc. v. CCA INTERN.(NJ), INC, 895 651, (Dist. Court, SD New York).

⁸⁸ Williams v. Crichton, 84 F. 3d 581 (1996) at 588.

⁸⁹ Odegard, Inc. v. Costikyan Classic Carpets. at 1337.

2.3.1.2.3. Access

In the absence of direct evidence, the plaintiff must demonstrate the issue of access by showing the defendant's opportunity to access to the copyrighted carpet design before designing its own work.⁹⁰

The issue of access to the plaintiff's carpet design was in particular addressed in the decision from the supreme court in *Peel & Company, Inc. v. The Rug Market*⁹¹, in which direct evidence of copying was not available. To determine the "reasonable opportunity" of the defendant to access the copyrighted carpet design before creating its own design⁹², the plaintiff relied on the broad sale of its design and the display of the design in exhibitions and catalogs within the United States.⁹³

However, the defendant argued that although its employees had access to the plaintiff's design, they did not provide any input or images to their supplier (based in India), which manufactured the alleged infringing carpet design. Nevertheless, the court of appeal found that the wide dissemination of the plaintiff's carpet design within the United States had provided both the defendant and its supplier with a reasonable opportunity to access to the copyrighted design,⁹⁴ although the defendant's supplier was located outside of the United States.

⁹⁰ Judith Ripka Designs, Ltd. v. Preville, 935 237, (Dist. Court, SD New York).

⁹¹Peel & Co. v. The Rug Market, 238 391, (Court of Appeals, 5th Circuit).

⁹² Ferguson v. National Broadcasting Co., Inc, 584 111, (Court of Appeals, 5th Circuit).

⁹³ *Peel & Co. v. The Rug Market*, 238 F. 3d 391 (2001).

⁹⁴ Ibid, at 397.

However, despite the possibility of establishing independent creation of a carpet design by the defendant, if the copyrighted design and the alleged infringing design are “so strikingly similar that preclude the possibility of the independent creation” of the design, the issue of actual copying can be proved without requiring the establishment of access.⁹⁵

Regarding the foregoing facts, currently surface decoration of carpet designs, within the United States, are protected under the copyright law, and since registration provides a rebuttable certificate for the validity of the work, design owners usually register their work within the United States copyright office. Besides, shape and configuration of carpets (three-dimensional designs) are protected by design patents, which are granted upon registration in the United States Patent and Trademark Office.

2.4. Protecting the External Appearance of Carpets Under the United Kingdom’s Law

The Designing and Printing of Linens, Cotton, Calicoes and Muslins Act of 1787 was the first regulation within the United Kingdom which provided protection for textile design for a period of two months from the day of the first publication.⁹⁶

⁹⁵ Peel & Co. v. The Rug Market. 238 F.3d 391 (5th Cir. 2001).

⁹⁶ RICHARD GODSON, A PRACTICAL TREATISE ON THE LAW OF PATENTS FOR INVENTIONS AND OF COPYRIGHT (Saunders & Benning. 1832). At p. 406.

Subsequent to the Designs Act of 1842, the Registered Designs Act of 1949 was enacted to protect designs in all sectors. According to the definition of design in this act, both two- and three-dimensional features that constitute the appearance of a product can seek protection under the registered design rights.⁹⁷ However, according to this act, designs that are contrary to public policy or morality, are solely dictated by the product's technical function or incorporate prohibited signs such as the Olympic symbol are refused to be registered.⁹⁸ This act was substantially amended in 2001 to harmonize UK law with law across the EU.^{99 100}

The Copyright, Designs and Patents Act of 1988 introduced a new type of protection for three-dimensional designs, referred to as "unregistered design rights".¹⁰¹ Therefore, patterns, motif and colors in a carpet design cannot enjoy the protection of UK unregistered design rights.

However, features of shape or configuration of carpets, which are protectable under this right, should not have a functional purpose¹⁰² or be "dependent on the appearance of another article of which it is intended to form an integral part".¹⁰³

In contrast to UK unregistered design rights, copyright law protects two-

⁹⁷ The Registered Designs Act of 1949 (1949). 1(2).

⁹⁸ Ibid, s D1, s C1, s 1B (4).

⁹⁹ Patents, trademarks and design rights: groundless threats. P.28.

¹⁰⁰ Directive 98/71/EC.

¹⁰¹ Copyright, Designs and Patents Act (The Parliament of the United Kingdom ed., 1988). s 213(2).

¹⁰² Ibid, s 213(b) (I).

¹⁰³ Patents, trademarks and design rights: groundless threats.

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dimensional designs, namely surface decoration and the composition of colours and patterns in a carpet design, as artistic works¹⁰⁴.

2.4.1. Protecting Textile Designs by Copyrights

Despite the possibility of protecting the two-dimensional features of carpet designs under UK and EU registered design rights, the surface decoration of carpets is protected commonly under UK copyright law in the contemporary approach.

In spite of the automatic protection of surface decoration of textile designs by copyrights, in a copyright infringement claim, the claimant must initially prove the originality of its design, the ownership of the design and that the copyright subsists in regards to the provisions of the copyright.¹⁰⁵

In addition to the foregoing issues, the court must examine the following elements in order to find a copyright infringement in a textile design.

2.4.1.2. Substantial Copying

According to UK law, a work is considered to infringe on the copyright of another work when a substantial part of a copyrighted work has been used in the creation of the infringing work.

Section 16(3) of the Copyright, Designs & Patents Act 1988 determines two

¹⁰⁴ Copyright, Designs and Patents Act 1988. chapter 1, s4 (1&2).

¹⁰⁵ Stoddard International Plc. v. William Lomas Carpets Limited, (Chancery Division 19 January 2001). HC 99-04371 High Court of Justice Chancery Division, 2001.

circumstances in which copying is considered substantial: (1) where an identifiable part of the whole, but not the whole, has been copied;¹⁰⁶ and (2) where the copying is a copy with modifications, known as “altered copying”.¹⁰⁷

Designer Guild Limited v. Russell Williams (Textiles) Limited is a leading House of Lords case related to textile designs which clarifies what constitutes copyright infringement. In this case, the claimant appealed the decision of the Court of Appeal, overturning the judge’s decision that the Williams’ fabric, Marguerite, had infringed on Designer Guild’s fabric, Ixia.¹⁰⁸

The Court of Appeal had found that while the Ixia design had indeed been copied, the copying was not substantial and therefore did not warrant claims of infringement. The Court of Appeal had further held that: (1) the design incorporated features that, in and of themselves, were not original; and (2) the present case was a case of altered copying.

In altered copying cases, and especially those in which the finding of copying is, in the absence of direct evidence, dependent upon inferences drawn from the degree and nature of the two works’ similarities, the similarities would determine not only whether copying has occurred but also the issue of substantiality.

This court further stated that a useful test to determine whether an altered

¹⁰⁶ *Ladbroke (Football) Ltd v. William Hill (Football) Ltd*, 1964 273.

¹⁰⁷ Prescott Laddie, Vitoria, *The Modern Law of Copyright* (Sweet & Maxwell 1995).

¹⁰⁸ *Designers Guild Ltd v. Russell Williams (Textiles) Ltd*, 2000 2416.

copy constitutes infringement is to determine whether the infringer utilized a substantial part of the original creator's independent skill, labour, etc. This test was based on an underlying principle of copyright law: that a copier is not at liberty to appropriate the benefit of another's skill and labour.

However, in altered copying cases, determining where the permissible borrowing of an artistic, literary, or musical idea of another becomes impermissible is a difficult task. In setting this limit, the degree and nature of the similarities between the altered copy and the original work must play a critical and often determinative role.

In the latter case, the similarities between *Ixia* and *Marguerite* played a determinative role. If the similarities were so extensive and of such a nature as to justify a finding that, in the absence of acceptable evidence of an independent provenance for *Marguerite*, *Marguerite* was copied from *Ixia*, it ought to follow that the *Marguerite* design incorporated a substantial part of the *Ixia* design.

Eventually, the House of Lords found that: (1) the approach whereby the constituent features of the rival designs were isolated from the whole and compared with one another was, in a case where copying had been established and the finding was not challenged, wrong in principle; and (2) in designing the *Marguerite* design, the designers incorporated a substantial part of the skill and labour of the *Ixia*'s designer, and therefore the *Marguerite* design had infringed on *Ixia*'s copyright.

2.4.1.3. Causal Connection Between the Two Works

Resemblance may be prima facie evidence of copying, but the inference may be rebutted due to evidence of independent design; such evidence negates the causal connection between the claimant's work and the alleged infringement. The concept of copying has two aspects: first, the alleged infringement must sufficiently resemble the copyright work; second, there must be a causal connection between the two works. These aspects are linked from the point of view of evidence.

An example of independent design can be found in *Stoddard International Plc. v. William Lomas Carpets Limited*.¹⁰⁹ This action was brought to the High Court of Justice Chancery Division for copyright infringement in a carpet design. The claimant, Stoddard International PLC, claimed to be entitled to the copyright in a graphic work for the carpet.

In this action, the work in question was a graphic work said to have been made by six authors on a computer-aided design (CAD) machine in March 1996; a carpet based on the design was first sold in the same year. The design was assigned to Stoddard by the employers of the six authors in March 1999. The defendant accepted that copyright subsisted in the particular graphic work on which they relied, Stoddard's design number GS94B401. However, the defendant alleged that its designer, Haley, did not copy "Chamonix"

¹⁰⁹ *Stoddard International Plc. v. William Lomas Carpets Limited*. [2001]FSR 848.

when he designed Georgiana, but was inspired in part by various jewels he had seen at Chatsworth.

In this case, Stoddard produced a list of 21 detailed similarities. Haley responded to Stoddard's list of similarities and was cross-examined at length on the similarities between his design and Chamonix. All of many detailed similarities were put to him, of which he accepted many and rejected others.

In the witness box Haley accepted similarities where they existed, and did not exaggerate differences. His responses therefore played a vital part in forming the judge's opinion of him. Moreover, Haley accepted his failure to do any research on the market place generally and his resultant ignorance of Chamonix.

In this case, if Lomas could convincingly argue for the independent origin of the design, the infringement allegation could fail. To do so, the defendant stated that the designer, Haley, had received a brief which could reasonably be expected to cover something resembling the copyright work. The court found that if the brief sufficiently constrains the designer, he becomes a mere amanuensis of the person writing the brief, who in turn becomes nothing more than a means of communicating the design.

In this case, the judge found that the brief received by Haley was what he described it to be, and could not reasonably have pushed him towards a Chamonix-like design. It gave him more than enough freedom, as the pre- and post- Chatsworth designs demonstrate.

The court concluded that Haley, without knowledge of the copyright work, had produced a number of designs, one of which was similar to the

Chamonix design, and that the claimant had failed to show that the design was dependently conceived. As a result, the court dismissed the action for the copyright infringement.

In conclusion, two conditions must be met to justify a decision of copying in the United Kingdom: firstly, the alleged infringement must sufficiently resemble the copying work; and secondly, there must be a causal connection between the two works to detect dependent creation.

Section 3: Know-how

The term “know-how” refers to the skills and knowledge used to create and make textile products. Similar to the other components of textile products that potentially can be protected by a distinct form of IP, the know-how is protectable under patents, trade-secrets or laws against unfair competition.

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3.1. Patents

A patent is an exclusive right granted for an invented product or process, for a limited time (generally twenty years). Patents can provide indirect protection for carpets by protecting the tools or the processes used to make them¹¹¹. Patents give exclusive rights to their owners to stop direct or indirect copying or accidental infringement on an invention.

In the carpet industry, patents can assist producers to attain technical superiority and boost certain qualities in their products. To illustrate, a technical innovation such as a new method of tating that uses a shuttle, which enables the tatter to use more than two colors or textures, qualifies for a patent¹¹².

Moreover, enterprises in the textile industry can license a patented technology to gain a competitive advantage or form a strategic partnership

¹¹⁰ Intellectual property and traditional handicrafts. 2016.WIPO, 2016.

¹¹¹ Ibid. p2

¹¹² This invention is protected by a patent in the United States.

with a company to gain access to its technology.¹¹³

Eventually, in order to establish patent infringement, the patent owner must establish the following matters;

- (1) The act of infringing claim/s of the patent and;
- (2) To prove that the act of infringement has been carried out after the publication or issuance of the patent and;
- (3) That the infringement has taken place in the country where the patent has been granted.

¹¹³ *A stitch in time smart use of intellectual property by textile companies.* p 7& 9.

Chapter III. Protecting Carpets Under the Iranian Intellectual Property System

Section 1. The History of IP Infringements in Iran's Carpet Industry

In Iran, protection of textile designs by the means of IPRs began much later than in the United States and the UK. Along with the late industrialization of the textile sector in this country, frequent wars and the recurrent rise of different dynasties occluded the path for developing unified legislation concerning the protection of the textile sector.

Therefore, the traditional textile sector in Iran, which has existed since ancient times, did not find a stable environment in which to develop, apart from the sixteenth and seventeenth centuries.¹¹⁴ During the sixteenth and seventeenth centuries, the kings of the Safavid dynasty, who were ruling over Persia, provided notable aid in developing indigenous textile production in their territory.¹¹⁵

One of the industries which significantly bloomed due to the kings' support

¹¹⁴ KhT-Qazi Ahmad Qumi, *Khulasat al-Tavarikh*, ed, HANS MULLER.

¹¹⁵ RONALD W FERRIER, *A JOURNEY TO PERSIA: JEAN CHARDIN'S PORTRAIT OF A SEVENTEENTH-CENTURY EMPIRE* (New Age International. 1996).

was the textile sector, especially silk and carpet weaving.¹¹⁶ & ¹¹⁷

Accordingly, with King Abbas the Great's order, the carpet workshops in each region had to produce carpets with their local design to preserve the indigenous motifs and develop new designs for carpets within the country.¹¹⁸

Although the king's directive was not followed after his death, the order was likely the first directive for the protection of textile designs in Iran.

However, it is undeniable that copying carpet designs was a prevalent matter during and after the Safavid dynasty and that weavers were not concerned with the geographical origin of the copied designs as long as they could sell their woven carpets.

Apart from ignoring the geographical origin of designs by the weavers, there were other factors which mitigated the need for protecting new textile designs in Iran. One of the main factors was that the patterns and motifs used in the design of carpets were generally considered traditional cultural expressions of all of Persia and therefore the carpet entities did not hesitate to use the motifs and patterns belonging to other cities or regions. Nevertheless, the compositions of these patterns and motifs could create new designs which had to be preserved by the owners.

By the 19th century, Iranian merchants and political ambassadors who had

¹¹⁶ Jean Baptiste Tavernier, *The Six Travels of John Baptista Tavernier... Through Turkey and Persia to the Indies* (Second Part (London 1678)).

¹¹⁷ MOAYED SABETI, *HISTORIC LETTERS AND DOCUMENTS FROM THE BEGINNING OF ISLAM TO END OF SAFAVID DYNASTY* (1967).

¹¹⁸ HASSAN AZARPAD, ET AL, *THE BOOK OF IRANIAN CARPET* (Institute for cultural studies and research. 1993).

settled in most European countries were slowly becoming aware of the trade of fake, low-quality Persian rugs, which was destructive for the reputation of Persian carpets in Europe. ¹¹⁹

For instance, according to a document issued by the Ministry of Agriculture and Commerce of Iran published in 1922, the central custom office of Iran had received various verified reports, mostly from Switzerland, that in most cities in this country, especially Geneva, Berne and Zurich, some commercial firms were selling their low-quality carpets from the Caucasus, the Ottoman Empire and Central Asia as Iranian (Persian) carpets. Moreover, they were advertising these rugs in newspapers as “carpets directly imported from Iran” and they had hung Iranian flags in their stores.¹²⁰

There are many reports similar to the latter report from Iranian embassies in different countries, especially from Italy, the UK and the US, which revealed the stream of counterfeit Persian rugs from 1920 onwards.¹²¹

The most important report came from the Iranian embassy in Washington D.C. It was about selling carpets and rugs manufactured in the United States as “Persian carpets” by carpet manufacturers within the United States, which led to serious objections by Iran to the U.S. government in 1929. That year, apart from ignoring objections by the Iranian government regarding the counterfeiting of Persian carpets by US manufacturers, the tariff bill imposed on imported products in the US had worsened the market for

¹¹⁹ BAYEGANI, Selected documents on Iran’s carpet industry from 1913 to 1978. 2002.

¹²⁰ Ibid, p 37.

¹²¹ Ibid 51, 53, 54.

authentic Persian carpets within the United States.¹²²

Section 2: Contemporary Provisions for the Protection of IPRs in the Carpet Industry

In 1926, the Iranian National Parliament ratified the Act of Commercial and Industrial Marks and Chapter Eleven of the Public Criminal Code regarding the protection of intellectual property rights.

Although the Act of Commercial and Industrial Marks, which provided regulation on registering trademarks, did not address the issue of protecting other types of IPRs, provisions of Chapter Eleven of the Public Criminal Code of 1926 filled the gap by providing pecuniary penalties for unauthorized or fraudulent production, use, sale and export of all types of intellectual properties. According to the latter act, barring trademarks, other types of IP, such as designs, inventions, publications and artistic works, did not need to be registered to obtain protection. Therefore, the owner could sue any infringer as long as he could show that he owned the IP and that the copying had been substantial.¹²³

Furthermore, in order to certify the geographical origin of Persian rugs,

¹²² Ibid. 102, 104, 105.

¹²³ Public Criminal Code of Iran (Iran National Assembly ed., 1926,). Article 245.

according to an order from the Assembly of the Ministers in 1929, a label reading “made in Persia” had to be attached to all Persian rugs that were going to be exported from Iran.¹²⁴

Moreover, the Act of Registering Inventions and Marks, which was enacted in 1931, provided protection for inventions and discoveries for the maximum period of twenty years upon registration.¹²⁵

At the present time, protecting the carpet industry in Iran by utilizing intellectual property rights is crucial, due to carpets’ cultural and economic importance.

Accordingly, more than 90% of Iranian handwoven carpets are exported, and carpets are the second biggest export after petroleum products.¹²⁶

For the purpose of analysing the role of intellectual property rights in the contemporary Iranian handwoven carpet industry, the following issues should be taken into consideration.

1. Each geographical region in Iran manufactures handwoven carpets with specific patterns and features, which are named after the region of production. However, apart from the issue of imitating these carpets outside of the country, which are commonly known as Persian rugs, domestic producers in Iran imitate the designs of carpets belonging to other regions sell them with an untrue

¹²⁴ HESHMATI RAZAVI FAZLOLLAH, THE CODIX OF IRANIAN HANDWOVEN CARPET (Sahoori publication. 2002).

¹²⁵ The Act of Registering Inventions and Marks (National Consultant Assembly of Iran ed., 1931). Article 33

¹²⁶ AZARPAD, The book of Iranian carpet. 1993.

indication of source. Therefore, there is a tremendous need for IP protection related to handwoven carpets in Iran at both the domestic and international levels.¹²⁷

2. Iran is not a member of the Berne Convention nor the WIPO Copyright Treaty. Therefore, Iranian carpet designs cannot enjoy the protection of copyrights under the Berne Convention in Iran. Furthermore, protection of such carpet designs in the other contracting states of the Berne Convention is not possible unless the design has first published in such a state, or the designer has his habitual residence in one of the contracting states.¹²⁸
3. Iran is not a member of The Hague Agreement Concerning the International Deposit of Industrial designs. Therefore, Iranian carpet producers cannot use the provisions of this agreement for registering their designs in other countries by using a single application in Iran. However, if the carpet designer or the design owner has “habitual residence or a real and effective industrial or commercial establishment” in one the member states of this agreement, he can file an international application for the protection of his carpet design as an industrial design in such a state.¹²⁹

¹²⁷ Fariborz Noor panah, Mohammadi, Mohammad Hasan, (Vahideh Hekmat ed., 2015).

¹²⁸ the Berne Convention for the Protection of Literary and Artistic Works (1886). Appendix 1, Article 3, 1 (b) & 2.

¹²⁹ Geneva Act of The Hague Agreement Concerning the International Registration of Industrial Designs (1999). chapter 1, article 3.

4. Iran is not a member of the WTO and the TRIPs agreement. Therefore, in the case of unfair competition in the carpet industry, Iran cannot employ the provisions of this agreement for preventing unfair acts related to the Iranian carpets in the other countries.

Currently, the Act of Registering Inventions, Industrial Designs and Trademarks¹³⁰ and The Act on Protecting Geographical Indications¹³¹ are the two main regulations that can be employed to protect the intellectual property aspect of the carpet industry in Iran.

Industrial designs, patents and trademarks are protected under The Act of Registering Inventions, Industrial Designs and Trademarks of 2007. Accordingly, at the national level, the Provisions of this act, which are consistent with the provisions of the Paris Convention for protection of industrial property, are the main legal source for the protection of carpet industry in Iran.

Articles 1 to 19 of this act provide provisions for protecting inventions by granting patents. According to the article 2 of this act, patents are granted for those inventions that contain innovative steps and have an industrial function. This article defines industry in a broad sense and indicates that the industry in this article also refers to agriculture, handicrafts and services.

The patents are granted by the Industrial Property Office of Iran for a period

¹³⁰ Act of Registering Inventions, Industrial Designs and Trademarks (Islamic Consultative Assembly of Iran ed., 2007).

¹³¹ The Act on Protecting Geographical indications (Islamic Consultative Assembly of Iran ed., 2005).

of twenty years.¹³²

Accordingly, in Iran's carpet industry, a considerable number of patents have been granted under the latter act. For instance, a new method for dyeing yarns with nanocomposites,¹³³ design and manufacture of luminescent handwoven rugs by using lasers and optical fibres,¹³⁴ or making antibacterial carpets¹³⁵ are some examples of patents that have been registered in Iran and have practical functions in the carpet industry.

In addition to national legislation and domestic regulations for the protection of Intellectual property rights in Iran, at the international level, this country is a member to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT), the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. As a result, Iran can use the provisions of the latter agreements to protect Iranian carpets at the international level.

In the following sections, the available IP protections in Iran for goods and

¹³² Act of Registering Inventions, Industrial Designs and Trademarks 2007. Article 16.

¹³³ Patent No.1891955, international classification No. B90, C B82, B Y82B, Iranian industrial property office, invention division. Valid until 2021.

¹³⁴ Patent No. 1797131, international classification D02, D04, Iranian industrial property office, invention division. Valid until 2023.

¹³⁵ Patent No. 940708647752664, international classification No. A61P 04/31, Iranian industrial property office, invention division. Valid until 2024.

services belonging to the carpet industry shall be represented.

Section 3: Protecting the external appearance of rugs in Iran

Although the issue of unauthorised copying of carpet designs in Iran is not a new dilemma, the ability to protect innovative and original carpet designs from unauthorised copying by domestic manufacturers was increased after the enactment of the Registering Inventions, Industrial Designs and Trademarks Act of 2007.

However, the lack of information about available legal means for protecting carpet designs along with the uncertainty about the effectiveness of the legal solutions led many manufacturers of handwoven carpets to hide their newly designed rugs in storerooms.¹³⁶ For the same reason, many carpet producers hesitated to lend their high-quality and newly designed rugs to museums, carpet exhibitions and art galleries.¹³⁷ However, it is undeniable that solutions as such are ineffective and cannot prevent unlawful copying of carpet designs.

In pursuing an effective solution, carpet syndicates in Iran have initiated two parallel programs to combat unlawful copying of carpets at domestic level. In the first program, carpet syndicates issue identification certificates for

¹³⁶ , *Fraud in the rug industry*, TASNIM NEWS, 26 September 2015. News code. 871067.

¹³⁷ Ibid.

carpets to avoid unlawful copying of designs belonging to their members,¹³⁸ and the second program, which is also carried out by the syndicates, requires the members to report duplicate designs to the syndicates to identify infringing entities.¹³⁹

Currently, the external appearance of carpets in Iran, either two or three dimensional, is generally protected under the industrial design rights governed by the Act of Registering Inventions, Industrial Designs and Trademarks of 2007. The registration of design in the Industrial Property Bureau of Iran is necessary for obtaining legal protections under the industrial design rights.

According to this Act, industrial designs are “any composition of lines or colors, and any three-dimensional figure, with or without lines and colors, so that it can change the shape or configuration of industrial products or handicrafts”¹⁴⁰.

This article further excludes those designs that have functional and technical features.

According to this act, a design which has not been disclosed in any part of the world before the registration date is considered ‘new’ and ‘original’ and therefore is qualified for the industrial design rights protection.¹⁴¹ Moreover, the duration of an industrial design right is five years from the registration

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ The Act of Registering Inventions, Industrial Designs and Trademarks, article 20.

¹⁴¹ Ibid, article 21.

date, with the possibility of renewal for two further five-year periods.¹⁴²

In addition to the provisions of the Act of Registering Inventions, Industrial Designs and Trademarks for the protection of carpets with industrial design rights, the Act of Protecting Rights of Authors and Artists provides a form of IP protection for literary and artistic works which is comparable to the copyright concept.¹⁴³

According to this act, innovative works related to design of carpets and kilims can enjoy the protections provided under this act.¹⁴⁴ The duration of protection is fifty years after death of the designer,¹⁴⁵ or thirty years for commissioned works, or thirty years after the assignment of ownership.¹⁴⁶ Besides, the registration is not mandatory for obtaining protection.¹⁴⁷ However, the designer can register the design through one of the Departments of the Ministry of Culture Islamic Guidance in Iran¹⁴⁸ to use as evidence in the infringement lawsuit.

Nonetheless, despite the explicit provisions of the Act of Protecting Rights

¹⁴² Ibid, at article 28 D.

¹⁴³ The Act of Protecting Rights of Authors and Artists, national consultant assembly of Iran (national consultant assembly of Iran ed., 1969).

¹⁴⁴ Ibid, article 2 (9).

¹⁴⁵ The act of amending article 12 of the Act of Protecting Rights of Authors and Artists (Islamic Consultative Assembly of Iran ed., 2010). Article 1.

¹⁴⁶ The Act of Protecting Rights of Authors and Artists, national Consultative Assembly of Iran, article 13 & 14.

¹⁴⁷ Regulations on implementing Article 21 of the act of protecting the rights of authors and artists (The Panel of Ministers of Iran ed., 1971).

¹⁴⁸ Ibid, article 4.

of Authors and Artists regarding protecting innovative carpet designs, carpet manufacturers in Iran mainly protect their designs by industrial design rights.

Section 4: Protecting the Reputation of Iranian Carpets

As discussed in the second chapter, trademarks, collective marks and geographical indications are the main fields of IP for protecting the reputation and distinctiveness of carpets.

Protecting the reputation of Iranian carpets—also known as Persian carpets—in the course of international and domestic trade is crucial. Otherwise, the propagation of counterfeit Persian carpets will undermine the sales and reputation for quality of the genuine carpets.

From the international perspective, registering trademarks under the Madrid System can provide more pervasive protection for Iranian carpets due to the possibility of registering trademarks in any of the ninety-seven members of this agreement, whereas registration under the Lisbon Agreement can provide protection in twenty-seven countries that are members of this agreement.

Besides, at the domestic level, provisions of the Registration of Inventions, Industrial Designs and Trademarks Act and the Act of Protecting Geographical Indications are applied to protect the reputation and distinctiveness of carpets.

Chapter three of the Registration of Inventions, Industrial Designs and

Trademarks Act, assigns to the protections IPs under collective marks and trademarks. According to this act, a trademark is any visible sign which can distinguish goods or services of natural or legal persons from each other.¹⁴⁹

Under this act, a trademark or a collective is any visible sign which distinguishes the origin of the product or any other qualification in goods or services.¹⁵⁰

By using provisions of this act, geographical regions in Iran, carpet entities or merchandises can register their mark inside the country and enjoy the provisions of the Madrid Agreement for the protection of their marks in other countries.

Another provision of this act that can be employed for protecting carpets from false appellation of origin is article 32, which prohibits the registration of trademarks that mislead the public about the geographical origin of a product.

Article 61 of the latter act determines available remedies and punishments for infringing trademarks, patents, or industrial designs. According to this article, in case of finding wilful infringement of any of the latter intellectual property rights by the court, other than paying damages to the plaintiff, the infringer will be convicted to pay between ten and fifty million Rials compensation to the government or, to be imprisoned from 91 days to 6 months, or both of the latter punishments. Therefore, unlike many other

¹⁴⁹ The Registration of Inventions, Industrial Designs and Trademarks Act, article 30.

¹⁵⁰ Ibid, at B.

legal systems, the legislators in Iran have provided criminal punishments for infringing an intellectual property right.

4.1. Protecting Carpets Under Geographical Indications in Iran

Geographical indications in Iran are protected under the provisions of the Act on Protecting Geographical Indications that are in consistent with provisions of the Paris Convention for the Protection of Industrial Property.

¹⁵¹

Many cities and provinces in Iran have registered their geographical indications for their manufacturing carpets under this act, to assure the consumers about authenticity and quality of their products.

Article 1 of the latter act defines a geographical indication as “a sign which correlates with the origin of a product to a territory or a region of the country, provided that the quality, reputation, or other features of the product be attributable to that geographical region”. Registration of geographical indications takes place in the Register Organization of Iran.¹⁵²

The punishments provided in this act are similar to the punishments provided in the Act of Registering Inventions, Industrial Designs and Trademarks and provides the plaintiff with the possibility of stopping the

¹⁵¹ The Act of Protecting Geographical Indications, Islamic Consultative Assembly of Iran, 2005, articles 1 C, 2 B.

¹⁵² Ibid, article 7.

infringer from using the GI and claim for reimbursement of damages.

Furthermore, under the Lisbon agreement, twenty-nine geographical regions in Iran have registered appellation of origin for handwoven rugs in the World Intellectual Property Organisation to provide more pervasive protection for the manufactured carpets in other countries.

Section 5: Discussion

Despite the regulated provisions in the Acts of Registering Inventions, Industrial Designs and Trademarks, Protecting the Rights of Authors and Artists, and the Act of Protecting Geographical Indication for protecting intellectual properties, the carpet industry in Iran has not efficiently enjoyed the provisions of the latter acts yet.

Law scholars in Iran attribute much of the deficient protection of IPRs in the carpet industry to insufficient enforcement of regulations.¹⁵³

In Iran, intellectual property litigations are costly, and the Act of Civil Judicial Proceedings does not provide methods of proving infringement of IPRs or calculating damages in the intellectual property lawsuits.¹⁵⁴

Moreover, other than industrial design infringement lawsuits which have to be filed in specific tribunals in Iran, other IPRs infringement claims are brought before inexperienced tribunals which increase the duration of litigation and errors.¹⁵⁵ For the same reasons, within the carpet industry,

¹⁵³ IRNA, *The hit market of copying in the carpet industry*. No. 80127721.

¹⁵⁴ Mahmoud Hekmatniya, (Islamic Republic News Agency ed., 2012).

¹⁵⁵ , *4% of intellectual property lawsuits are about authorship rights*,

design owners choose to seek the protection of industrial design rights, although obtaining such protection demands registration and requires more formalities than the copyrights under the Act of Protecting the Rights of Authors and Artists. Accordingly, to overcome such deficiencies in the enforcement of IPRs and ambiguous issues in the IP litigations, the Islamic Consultative Assembly of Iran is examining the Comprehensive Bill on Protecting Intellectual Properties.

Another issue that should be considered in Iran's Carpet industry is the enforcement of regulations on geographical indications at the domestic level. Despite the national registration of appellation of origin for most of carpet-manufacturing zones in Iran, many rug manufacturers in Iran use designs that belong to other geographical zones in Iran and represent such manufactured carpets under the designation of design's origin.¹⁵⁶

In order to avoid such issues within the country, informing carpet entities about the importance of preserving the designs of each region for enhancing the quality and reputation of origin seems to be crucial. Furthermore, due to cultural negligence about unauthorized copying of carpet designs in Iran, the executive authorities along with the regional carpet syndicates have to deal resolutely with such misleading claims on the manufacturing origin of carpets.

However, the major concerns regard the unauthorised use of Persian carpet

MEHR BIWEEKLY MAGAZINE 2010 Jan 05.

¹⁵⁶Noor panah. 2015.

designs or the misleading designation of carpets as “Persian” outside Iran and at the international level.

Remarkably, there are a few countries where carpets are considered cultural assets and need to be preserved by the indigenous people as a form of “traditional cultural expression”. For the same reason, Iran has already registered twenty-nine geographical designations as ‘appellation of origin’ under the Lisbon Agreement. However, as previously cited, this agreement does not cover a wide range of countries and, by having only twenty-seven members, provides a narrow scope of protection geographically.

Moreover, the main countries which copy designs of Persian carpets and decisively export and sell such counterfeits as “Persian rugs” with lower prices are: India, Pakistan and Nepal, none of which is the member of the latter agreement.¹⁵⁷ Therefore, Iran cannot stop the manufacture of fake Persian rugs by the provisions of this agreement. However, they can stop the exportation to or sale of such counterfeit rugs within the members of the Lisbon Agreement.

However, the most pervasive solution to such unlawful exploitation of reputation and design of Persian carpets can take place with Iran joining to the World Trade Organization and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). By this means, the dilemma of unauthorized use of design and the reputation of Persian carpets by

¹⁵⁷ NIMA SAEEDI ABBAS HEYDARI, SAEED ZENDEBAD DEVELOPING CARPET INDUSTRY IN IRAN, OBSTACLES AND SOLUTIONS (Zand science and research institute. 2013).

manufacturers in other countries can be greatly reduced.¹⁵⁸

Another issue is about putting carpet designs that originated in Persia in the public domain of other countries.

As illustrated earlier, countries such as the UK and the US, mostly, employ copyright for the protection of their innovative and original carpet designs.

However, in the copyright context, protected materials will become a part of public domain after a certain period of time.

However, Persian carpet designs are considered as traditional cultural expressions of Iran. Accordingly, each region of Iran has developed its own patterns and motifs during centuries which have to be preserved for the indigenous people. Therefore, putting such carpet designs into the public domain of other countries violates indigenous communities' rights. An example of this issue was in *Tufenkian Import/Export v. Einstein Moomjy*, in which the plaintiff used a Persian carpet design already in the public domain of the United states in creating his new carpet design. ("Tufenkian Import/Export v. v. EINSTEIN MOOMJY," 2003) (2003b)¹⁵⁹ Therefore, it can be maintained that in the carpet industry indigenous motifs and patterns are not treated as traditional cultural expressions, and therefore there is a need to reconsider the nature of indigenous patterns and motifs in the intellectual property rights arena.

However, in the absence of comprehensive international provisions on the

¹⁵⁸ intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore. (2010).

¹⁵⁹ *Tufenkian Import/Export v. v. EINSTEIN MOOMJY*.

latter issue, the best solution for a country which originally holds TCEs and aims to preserve them is concluding multilateral or bilateral IP agreements with the countries that exploit their TKs or TCEs as the materials belonging to the public domain.

Chapter IV: Comparative Analysis of Protecting Carpets in the UK, US and Iran from the Intellectual Property Rights Perspective

Section 1: The classic approach

From the comparative perspective, IPRs to protect carpets in the United States and the United Kingdom were provided much earlier than in Iran and date back to 174 and 229 years ago, respectively. In Iran, however, the late industrialization of the textile sector did not raise the need for legal protection until 1926.¹⁶⁰

In fact, the need to provide legal means for the protection of textile designs was directly linked to the industrialization of the textile sector in the latter territories. Evidently, this need arose in the UK with the industrial developments in the textile sector¹⁶¹ and led to the provision of the Designing and Printing of Linens, Cotton, Calicoes and Muslins Act of 1787.¹⁶²

Likewise, in the U.S the need for effective legal protection for designs was

¹⁶⁰ The act of Commercial and Industrial Marks, The National Consultative Assembly of Iran, 1926. & The Public Criminal Code of Iran, Chapter 11, The National Consultative Assembly of Iran, 1926.

¹⁶¹ EDWARD BAINES, HISTORY OF THE COTTON MANUFACTURE IN GREAT BRITAIN (Cambridge University Press. 2015). At p. 281.

¹⁶² The Designing and Printing of Linens, Cotton, Calicoes and Muslins Act (The British Parliament ed., 1787).

felt in 1842 with industrial developments and, similar to the UK, this act explicitly addressed the patentability of designs for silk, cotton or other fabrics.¹⁶³ & ¹⁶⁴

However, in Iran the first acts concerning the protection of intellectual properties did not directly address the issue of protecting textile designs and instead provided general protection of IPRs in all industries. ¹⁶⁵

In the classical approach, the duration for protection of textile designs within the UK and the US was less than the current term for the protection of designs in these countries. To illustrate, the duration of exclusive rights granted to the owner of a textile design in the UK was only two months from the first day of publishing, which was much shorter than the current duration granted for the protection of designs under the UK registered and unregistered design rights.¹⁶⁶

Likewise, in the US, the initial period for protecting designs was three and half years¹⁶⁷ (which later extended to the maximum of fourteen years in the amendment^{168& 169}) was one year less than the current period of protecting

¹⁶³ Act of August 29, 1842, Sect.3, 5 Stat.at Large, 543.

¹⁶⁴ EMANUEL MAGUIRE UNDERDOWN, LAW OF ART COPYRIGHT (Theclassics Us. 2013). At p. 85.

¹⁶⁵ The act of Commercial and Industrial Marks (The National Consultative Assembly of Iran ed., 1926).

¹⁶⁶ GODSON, A Practical Treatise on the Law of Patents for Inventions and of Copyright. 1832. At p. 406

¹⁶⁷ Act of August 29, 1842, Sect.3, 5 Stat.at Large, 543.

¹⁶⁸ The Patent Act (The United States Congress ed., 1861). Section 11.

¹⁶⁹ United States P, Trademark O. Patent laws: 1861, März: US GovernmentPrint.Office; 1861. At p. 25.

design patents.¹⁷⁰

In contrast, in Iran, the duration for protecting designs under the Public Criminal Code was unlimited. ¹⁷¹

Furthermore, in the US, in order to obtain legal protection for designs, registration was required, while in Iran and the UK there was no need for the registration. Therefore, the classical approaches in Iran and the UK are comparable with the modern copyright protection system.

Section 2: The current approach for protecting textile designs

The contemporary approach for protecting textile designs in each of these three countries differs significantly from the classical approach.

Currently, designs are divided into two categories. The first category of the textile designs is related to the composition of patterns, colors and motifs, while the second category covers the shape and configuration of textile products.

Apart from UK unregistered design rights, which only protects designs in the second category,¹⁷² design patents in the US,¹⁷³ UK registered design

¹⁷⁰ U.S. Code, Title 35, Part II, Chapter 16, § 173.

¹⁷¹ Public Criminal Code of Iran. 1926, . Chapter 11, The National Consultative Assembly of Iran, 1926.

¹⁷² Copyright, Designs and Patents Act 1988, s 213(2).

¹⁷³ U.S. Code, Title 35, Part II, Chapter 16, § 171.

rights¹⁷⁴ and Iran industrial design rights¹⁷⁵ protect designs in both categories.

However, the current trend in the UK¹⁷⁶ and the US¹⁷⁷ is to protect designs covered under the first category—namely, the composition of colors patterns and motifs—with copyrights. However, despite the existence of The Act of Protecting Rights of Authors And Artists in Iran, design owners choose to use the protection of industrial design rights for all aspects of carpet designs,¹⁷⁸ from the surface decoration and composition of colors to the shape and configuration of articles.

Furthermore, whereas the shape and configuration of carpets is protected under both registered and unregistered design rights in the UK, in the United States this type of design is protected only under design patents.

2.1. Comparative Analysis on Protecting Composition of Patterns, Colors and Motifs in Textile Products

As stated previously, the surface decoration of textile designs, including the composition of patterns, motifs and colors, are primarily protected under

¹⁷⁴ The Registered Designs Act of 1949, unofficial consolidated version, 1(2).

¹⁷⁵ The Act of Registering Inventions, Industrial Designs and Trademarks, Islamic Consultative Assembly of Iran, article 20.

¹⁷⁶ Copyright, Designs and Patents Act 1988, the UK Parliament, chapter 1,4.

¹⁷⁷ U.S. Code › Title 17 › Chapter 1 › § 102.

¹⁷⁸ The Act of Registering Inventions, Industrial Designs and Trademarks, Islamic Consultative Assembly of Iran, article 20.

copyrights in the United States and United Kingdom, whereas in Iran, this type of design is protected under industrial designs rights¹⁷⁹ or copyrights under the Act of Protecting Rights of Authors and Artists.¹⁸⁰

Accordingly, in each of the latter territories, surface decorations should hold specific requirements to enjoy legal protections provided by the latter IP rights.¹⁸¹

2.1.1. Requirements for Obtaining Legal Protection

1. **Originality:** “Originality”, which refers to the independent creation of a work, is required for protecting textile designs either under the copyright law of the UK and the US or the industrial design rights in Iran.
2. **Ownership:** In a copyright infringement claim or for registering a copyright or an industrial design right, the claimant/s or the applicant/s should prove ownership of textile design. The owner of a textile design can be the creator of it, an employer under whose supervision the design has been created, or an assignee to whom the design has been transferred. In should be noted that this requirement in the United States Copyright

¹⁷⁹ The Act of Registering Inventions, Industrial Designs and Trademarks, Islamic Consultative Assembly of Iran, article 20.

¹⁸⁰ The Act of Protecting Rights of Authors and Artists, national Consultative Assembly of Iran, 1969. Article 20.

¹⁸¹ “Textile designs” in this section refers to the designs in the first category, namely, the composition of patterns motifs and colors in a textile product.

Act, is referred to as "validity" and it can be proved upon registration of the work in the US copyright office.

3. **Fixation:** In a copyright context, an idea must be fixed in a tangible medium in the US¹⁸² or, as referred to in the Copyright Act of 1911, should be in any material form in the UK¹⁸³ in order to qualify for copyright protection. The same rule applies to industrial designs in Iran, with the difference that a fixed version of the design should be submitted to the Industrial Properties Bureau before the dissemination or public disclosure of a textile design.
4. **Registration:** Copyrights are granted automatically to textile designs in the UK and the US. However, it is common for the owners to register their textile designs in the copyright office of their countries in order to get a certificate to demonstrate ownership and validity of the copyrights.

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Nonetheless, in the industrial design scheme of Iran, registration is mandatory for obtaining protection.

The duration of protecting textile designs under the copyright law is much longer than the industrial design rights. In the UK and the US, copyrights on artistic works last for seventy years from the death of the author. However, if the design is a “work for hire”, this period extends to 120 years after

¹⁸² U.S. Code › Title 17 › Chapter 1 › § 102.

¹⁸³ The Copyright Act of 1911 (Parliament of the United Kingdom ed., 1911). 1(2).

¹⁸⁴ *Durham Industries, Inc. v. Tomy Corp*, 630 905, (Court of Appeals, 2nd Circuit).

creation or to ninety-five years after publication in the United States.¹⁸⁵

From the other side, in Iran, the duration granted for the protection of industrial designs is only five years, which can be renewed twice for a total period of fifteen years, which is at least about fifty-five years less than the UK and the US.

Another important issue is protecting this type of textile design at the international level. Since the United States and the UK are a party to the Berne convention, copyrighted works originating from these countries can automatically obtain protection in the other member states of the Berne convention. Therefore, composition of patterns, motifs and colors in textile products can be protected in 172 countries and in case of infringement in any of the member countries of the Berne convention, the owner can raise a lawsuit to claim his right to the copyrighted work.

Conversely, textile designs in Iran are not protected under the Berne Convention, since Iran is not party to this agreement. Furthermore, Iran cannot use the mechanism provided under The Hague Agreement Concerning the International Deposit of Industrial Designs to register an industrial design in several countries by means of a single application, as Iran is not a member to this agreement, either.

Consequently, the only possible way to protect Iranian textile designs in other territories is to directly seek available protections within the designated countries.

¹⁸⁵ U.S. Code › Title 17 › Chapter 3 › § 302.

2.2. Protecting the Shape and Configuration of Textile

Products

Other than UK unregistered design rights, which do not need registration, the shape and configuration of textile designs under our respective legal systems are required to be registered.¹⁸⁶

Originality, novelty and non-functionality are common requirements for obtaining legal protection for textile designs under each of the latter design rights. Furthermore, the design should have a connection to these countries. However, there is an additional requirement to UK-registered designs, which is the existence of individual character in the design. Another distinct requirement among these design rights belongs to the subject matter of UK unregistered design rights. This rubric of the UK IP law provides protection only for the shape or configuration of an article¹⁸⁷ and according to *Lambretta Clothing Limited v Teddy Smith* it does not extend to combinations of colors¹⁸⁸ and therefore protects only three-dimensional designs.

In order to prove the invalidity of a design right, design owners in the UK and the United States can employ certain tests to establish the issue of infringement before the court.

In the United States, the “ordinary observer test” follows as such: If in the

¹⁸⁶ Ibid, 11.

¹⁸⁷ Ibid, 11.

¹⁸⁸ *Lambretta Clothing Co Ltd v. Teddy Smith (UK) Ltd*, 2004 886.

eye of an ordinary observer, giving such attention as a purchaser usually gives, a patented design and an accused article's design are substantially the same and such resemblance is such as to deceive such an observer, the accused design infringes on the patented design.¹⁸⁹

A similar test applies in the UK, which is called the "informed user" test. This test determines the issue of validity of a registered design by assessing whether the overall impression that the design produces on the informed user is different from the overall impression produced on such a user by any design that has previously been made available to the public.¹⁹⁰

The difference between these two tests is that the ordinary observer test is used by the owner of a design patent to establish the issue of infringement before the court, while the informed user test is used by the defendant or a third party to establish the issue of invalidity of a registered design in the UK.

Although the duration of design patents in the US and industrial designs in Iran is fifteen years, in England this duration only applies to the unregistered designs if "the creation of design" was first recorded in a design document. Otherwise this duration reduces to ten years after the first marketing. Furthermore, UK registered design rights can last for up to twenty-five years, conditional upon renewal every five years. Therefore, among the latter rights,

¹⁸⁹ Peter Pan Fabrics, Inc. v. Martin Weiner Corp, 274 487, (Court of Appeals, 2nd Circuit).

¹⁹⁰ Grupo Promer Mon Graphic v. Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (The Board of Appeal of OHIM).

registered design rights in the UK provide the longest period of protection for the shape and configuration of textile products among these countries. As illustrated before, the laws protecting designs in different countries differ significantly. Therefore, the need for an international registry that would enable textile design owners to bundle national design registrations is essential.

In doing so, The Hague agreement offers a system for obtaining protection of a design in several countries by simply filing one application with WIPO. However, the applicants must designate the countries in which they seek protection for their textile designs, and of the three foregoing countries, only the United States is a member to this agreement.

Nevertheless, designs originating from the United Kingdom can enjoy the protection of EU registered and unregistered design rights within the European Union. But, in the absence of such regional or international agreements, textile design owners in Iran should consider where they would like to protect their designs and obtain local legal advice in each country or territory of concern.

Chapter V: Conclusion and Discussion

There are various obstacles regarding IP protection in the carpet industry. These problems can either be related to the protection of distinctiveness and reputation or to the protection of the external appearance of carpets. Nevertheless, in order to provide effective legal protection for any of the latter features, required measures should be carried out in three areas, namely: in the country of origin, within the exporting destinations and also within the areas where counterfeit rugs are produced.

With regard to the issue of the reputations and distinctiveness of carpets, there are two main obstacles that can undermine the protections that intellectual property law provides for the carpet industry.

1. As described in the second chapter, geographical indications (GIs) carry out an important role in preserving the reputation of regions that produce carpets with specific features. Despite this importance, only 27 countries are members to the Lisbon Agreement, and therefore the latter agreement cannot provide protection in the majority of countries. Therefore, within the carpet industry, geographical indications are better if superseded by collective marks, as they can provide broader protection at the international level. Another solution is using certification marks, especially authenticity labels on carpets. Using such certification marks is a

useful means to discourage sale and purchase of imitation rugs and to guarantee a rug was produced in a specific region.

2. Although the Madrid system provides broad scope of protection for trademarks due to the great number of members compared to the Lisbon agreement, the second obstacle that might arise is related to the provisions of this agreement. Article 4 of the Madrid agreement provides that the courts of each country have to decide what appellations, on account of their generic character, do not fall within the provisions of the Madrid Agreement.

This reserved right, if applied to the case of carpet products, can enfeeble the IP rights related to the appellation of origin. To illustrate, India produces handwoven carpets with Persian rug designs and export them to western countries as Persian carpets. If Iran decided to register “Persian carpet” as a collective mark for indication of source in countries party to the Madrid agreement, it would be up to the courts of designated countries to determine whether “Persian carpet” is considered as a generic term for carpets having certain designs or whether it is used to refer to carpets produced in Iran.

Obstacles regarding the protection of external appearance

3. As discussed in the previous chapters, countries such as the UK and the US employ copyrights for the protection of innovative and original carpet designs. However, in the copyright context, protected materials will become public domain after a certain period of time.

On the other hand, designs and motifs of carpets in countries that have a

long history of weaving carpets, such as Iran, Armenia and Turkmenistan, are considered traditional cultural expressions. TCEs may superficially resemble public domain material, as sharing within a community is common.¹⁹¹ Yet there are often social restrictions on who, if anyone, can use certain knowledge, and under what circumstances.¹⁹²

Therefore, putting carpet designs originating from such regions into the public domain would violate the character of many intangible elements which belong to the living heritage and would accentuate the deterioration and illicit appropriation of cultural values.¹⁹³ Furthermore, indigenous people and local communities argue that their cultural expressions are protected by indigenous and customary laws and are not therefore in the public domain.¹⁹⁴

Despite the latter fact, in the carpet industry, indigenous motifs and patterns are not treated as traditional cultural expressions. For instance, indigenous motifs and designs that originated in Persia, Nepal and India are considered to be works belonging to the public domain in the United States.¹⁹⁵

In the absence of a comprehensive international agreement to deal with the latter issue, the best solution to overcome such an impediment is to conclude

¹⁹¹ Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Seventeenth Session, Geneva, p.2, 2010.

¹⁹² Ibid.

¹⁹³ intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore, Fifth Session, Geneva, para. 80, 2003.

¹⁹⁵ See *Tufenkian Import/Export v. EINSTEIN MOOMJY*, F. 3d, 338, 127, 2003, Court of Appeals, 2nd Circuit.

multilateral IP agreements between countries that hold TCEs on the one hand and the countries that exploit their TKs and TCEs as belonging to the public domain on the other hand.

Furthermore, an alternative solution is to determine the scope of fair use regarding the exploitation of patterns and designs considered traditional cultural expressions.

To sum up, owners of IPRs in the carpet industry should seek to simultaneously protect the reputation and the external appearance of carpets. Moreover, since carpet producers who lend their works to museums, art galleries or art publishing houses will have to deal with some practical copyright issues, it is better that they look for practical and legal advice before granting permission for such acts; otherwise they may lose control over part of the bundle of rights available to them under copyright law.

Ultimately, when there is more than one rubric of IP law to protect the external appearance of carpets, the owner should consider different factors, such as the minimum duration of protection required and the costs of employing each IP right, to choose the most efficient rubric of IP for protecting his innovative carpet design.

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