

## Legal Protection of Trade Secrets as stipulated within Jordanian Laws

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### Abstract

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Commercially precious information that gives a corporation a competitive edge like customer lists, production methods, advertising strategies, pricing data, and chemical formulae is what is known as a trade secret. Safeguarding these secrets is thus essential for corporations. Three different aspects are associated with trade secrets: one comprising their essence; their business value; and keeping reasonable efforts to maintain secrecy. Such terms are essential in attaining actual protection in addition to offering proof of secret existence upon request through judicial protection. This study considers the various approaches and techniques used to safeguard trade secrets by giving an individual lawful charge of filing a complaint where court needs attending to any abuses contravening his/her rights to these secrets. Therefore, the present study offers a detailed analysis of the kind of litigation considered when seeking civil legal actions involving trade secrets; the offended, by considering immediate complaint or civil action against the individual who legally caused the damage to as to have his/her trade secret protected.

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**Keywords:** Trade Secrets, Legal Protection Measures, Jordanian Laws.

### 1. Introduction

The expression “intellectual property” is often associated with patents granted to pioneering creators, renowned trademarks and copyrights covering grand works of art, music, and literature. However, intellectual assets are not exclusively restricted to these three well-renowned types; definite subject matter is equally under “trade secret” protection.

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Trade secrets serve as a shield for inventions and other sensitive information that can grant a competitive edge within the market. Nevertheless, the expanding growth of computer technology and Internet accessibility pose new threats within the area of trade confidentiality law

Effectively increasing the chances of misappropriating trade secrets. As a result, intellectual property owners should identify potential threats and take proper precautions that deal with those threats. Every commercial action is closely linked with rivalry and acquisition of essential data. Without information concerning activities of players, it becomes increasingly difficult to sustain competitive edge on the marketplace. There is the need to see to it that competent and even trade secret protection is offered at universal level besides national level in accordance with the universal requirements.

The aim of this study is to further evaluate trade secrets, judicial safeguards, as well as trade secrets safeguards related to the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)<sup>3</sup>. This study will also discuss civil protection methods and judicial defenses that are in place for protecting trade secrets within the Jordanian legislations. Analytical-descriptive method will be employed throughout this study that clarify the Jordanian legislations as lawful texts a TRIPS agreement.

## **2. History of Trade Secrets**

History shows no intercontinental agreements relating to trade secrets protection. Nevertheless, one of the treaties arrived at in the Uruguay Round of Multilateral Trade Negotiations (that finished with the Marrakesh Agreement signing Establishing the World Trade Organization (WTO) was the TRIPS Agreement.<sup>4</sup> TRIPS created minimum protection standards for patents, trademarks, copyrights, and trade secrets that every WTO signatory nation should provide to the intellectual assets of fellow members of WTO.<sup>5</sup>

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<sup>3</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994 [Hereafter TRIPS Agreement].

<sup>4</sup> Marrakech Agreement Establishing the World Trade Organisation [Hereafter WTO Agreement], [1994] Annex 1C, Legal Instruments-Results of The Uruguay Round volume 31; 33 I.L.M. 81.

<sup>5</sup> Understanding the WTO -Intellectual Property: Protection and Enforcement, at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm) accessed on 1<sup>st</sup> January, 2017.

Conformity with TRIPS is a qualification for membership of WTO. TRIPS does not overtly denote "trade secrets." Nevertheless, so as to "ensur[e] effective protection against unfair competition,"<sup>6</sup> TRIPS does denote "protection of undisclosed information"<sup>7</sup> and employs a description that is comparable to that of the conventional trade secret definition explained above. Article 39 of TRIPS compels members of WTO to defend persons and companies<sup>8</sup> who possess or manage "undisclosed information" from illegal revelation, possession, or utilize without their approval in a way divergent to truthful commercial exercises."<sup>9</sup>

What 'Undisclosed information consists of is not specifically defined within article 39 (2) of the TRIPS Agreement. It simply denotes the principles that the information requires to satisfy so as to be considered a trade covert. The criteria are:<sup>10</sup>

- The secrecy of information is perceived in such a manner as a body or within the exact configuration and assemblage of its elements, normally recognized among or gladly reachable to individuals within the circles that usually handle the sort of information in question;
- creation has commercial value since it is secret
- Information has been conditional on judicious procedures under the situations, by the individual legally in charge of the information, to uphold its secrecy.

Therefore, information should gratify all aforementioned criteria to be deemed a trade secret.<sup>11</sup> Through describing " a manner contrary to honest commercial practices ", TRIPS gives cases of grounds of action for trade secrets embezzlement practices, for instance violation of contract, violation of confidence and enticement to contravene, or possession of secret data by third parties.

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<sup>6</sup> TRIPS Agreement, Article 39 (1), available at <[http://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_04d\\_e.htm#7](http://www.wto.org/english/docs_e/legal_e/27-trips_04d_e.htm#7)> accessed on 1<sup>st</sup> January, 2017.

<sup>7</sup> Ibid.

<sup>8</sup> The TRIPS Agreement refers to "individuals and corporations" as "natural and legal persons."

<sup>9</sup> TRIPS Agreement, Article 39 (2).

<sup>10</sup> Ibid.

<sup>11</sup> E.I.Klayman, J.W.Bagby and N.S.Ellis, *Irwin's Business Law: Concepts Analysis Perspectives*, (Burr Ridge, Irwin, 1994) P.1047.

Trade secrets within Jordan are modern raised subject; in fact, there was not any particular law to emphasize this matter separately. However, some phrases cited within the Jordanian Civil Law<sup>12</sup> specifying that labor is bound by non-disclosure of company's secrets. The article 814/5 of Civil Law specifies: "protect the business and employers 'commercial secrets, even following the conclusion of employment agreement, in line with the prerequisites of the contract or customs."

Article 19/B of Employment Law<sup>13</sup> declares that "the worker shall: B-safeguard the industrial and business secrets of the boss and not revealing them in any mode even following the termination of the work agreement, in line with the prerequisites of the contract and customs." These articles reveal a pattern that was succeeded by Jordanian legislation to defend the trade secrets established by the agreement even after termination of the contract. Therefore, it is a requirement that the trade secrets be protected in condition of contractual relationship portrayed in job contract. Nevertheless, there weren't any safeguard for third parties – actors that are not bound by or do not appear to be part of the agreement.

Nonetheless, when Jordan contacted the WTO during 1994 in addition to the law No. 4 of 2000 deals with the compliance of Jordan to the WTO, the WTO approved Jordan to become has been a member of WTO on April 11, 2000.<sup>14</sup> The legislature arm in Jordan was obliged to amend several laws while introducing additional laws within the commercial laws of Jordan so as to abide by the WTO conditions. This led to the instigation of "Law No. 15 of 2000 on Unfair Competition and Trade Secrets"<sup>15</sup> which offered the trade secret commendation in both articles 4 and 8, with the intent of bringing forth a trade secrets' special law besides labor and civil laws in Jordan.

### **3. Trade Secrets - Definition**

A trade secret comprises any sensitive, valuable business knowledge that, if recognized by a rival, would give that rival some advantage or benefit.

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<sup>12</sup> Jordan Civil Code from 1st January 1977, Law No. 43/1976 of May 23rd, 1976.

<sup>13</sup> *Jordan Labour Law and its Amendments No. 8 of the Year 1996.*

<sup>14</sup> Al-Khashroom, Abdullah, "The Impact of Jordan's Accession to the World Trade Organization on Industrial Property Legislation" [2002], *Kuwait University, Journal of Law*. Vol. 26, No. 2.

<sup>15</sup> Trade Secrets and Unfair Competition Law No. 15 for the Year 2000.

There is no boundary to the kind of information that can be secured as trade secrets; marketing plans, recipes, financial projections, and techniques of doing business can entirely comprise a trade secret. In agreement with Jordanian legislation, the definition of trade secrets was not properly articulated by article (4) of Law No. 15 of 2000 on Unfair Competition and Trade Secrets, but secrets circumstances were declared to offer lawful defense as follows:

- a. For this law's objectives, any information is considered secret when typified by:
  1. Secrecy in that it is undisclosed in its eventual state or being readily available to individuals within the circles dealing with this information type
  2. Has profitable value since it is undisclosed; as well as
  3. Being dependent on rational stages under the conditions, by individual legally manning the content so as to maintain the involved secrecy.
- b. No application of the requirements of this law shall be considered on trade secrets contrary to the public ethics or general system.

This description is in agreement with trade associated factors with trading, such as TRIPS contract intellectual property law that added undisclosed information defense system that is known as non-disclosure data with its provisions found in article 39. The laws applicable to Jordanian trade secrets, unfair competition, as well as TRIPS agreement regard trade secrets as the information to be facilitated with definite information since they are regarded to as trade secrets. Therefore, the word 'information' is complete without description, giving the scale since both Jordanian law and TRIPS did not stipulate a certain description to the idea of trade secrets. Lastly, the Jordanian legislation was correct for non-specifying the description of data that can be deemed trade secret but set circumstances in this respect since describing knowledge that can be termed trade secrets by rule is not suggested. While the term 'trade secrets' has seen increasing evolution, the Jordanian legislators were compelled to intervene and adjust the legal laws to suit these evolutions.

#### **4. Trade Secret and Patent**

Patent is considered as government-issued documentation given to the inventor whereby he/she sustains the invention to be utilized and exploited or allocated within limited duration with explicit circumstances.<sup>16</sup>

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<sup>16</sup> Al-Maliki, Mejbil Muslim, Patents and the Significance of its Investment as a Source of Technical and Scientific Information, (1<sup>st</sup> edn. Dar Al-Waraq For Publishing, Amman, 2006) P.7. Samawy,

Another definitional version is as an invention letter or certificate offering a description of it besides granting the bearer an ideal legal protection.<sup>17</sup> In Jordan, patent was signed into law with the 1952's Patents of Invention and Industrial Designs No. 22, later amended in 1999 with the Patents of Invention Law No. 32 for the Year 1999. According to the Article (2) of the Jordan Patents of Invention Law, invention has been delineated as "any innovative idea, in any of the fields of technology, which relates to a product or a manufacturing process or both and practically solves a specific problem in any of those fields."

The Jordanian high court of justice equally describes invention as an "innovative concept," whereby exceeding the establishment and progress of the prevailing industrial art resulting in production growth or economic and technical benefits to the sector, fail to be attained by normal technical skill or experience.<sup>18</sup> Alternatively, Article (27) sets patent and subsequently of TRIPS consent provisions.<sup>19</sup> Nonetheless, this agreement never offered an apt definition of patent. This, however, let the members to establish definitions respective of their provisions. On the other hand, Article (2) of the Jordanian patent law offers a definition of patent as "granted certificate to protect invention." Based on the above delineation, patent cannot be termed as the originator of exploring or invention.

But it exhibits its effects on that invention via facilitating the inventor with unique right opposable to all, and where patent issuance was not achieved then the verification of property was not achieved.<sup>20</sup> The rights of an individual will be upheld as recognized by law up to where the patent is given and verification of the exclusive invention right is achieved.<sup>21</sup>

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Reem Soud, Patents in Pharmaceutical Industry, Legal Regulations for Licensing in the Light of World Trade Organization, (1<sup>st</sup> edn. Dar Al Thaqafa For Publishing & Distributing Amman, 2008) P.84.

<sup>17</sup>Roger E. Schechter & John R. Thomas, Intellectual Property: the Law of Copyrights, Patents, and Trademarks (Paul, MN : Thomson/West, 2003) P. 387.

<sup>18</sup> Case 219/91 [1991] Lawyers' Association Journal, P 1038.

<sup>19</sup> Wiewiorka, Emily, Boyd's Solicitors/Data Protection Act 1998, (W. Green/Sweet & Maxwell, Edinburgh, 2002) P.78.

<sup>20</sup> Issa, Husam Mohamad, Technology Transfer, Study in Legal mechanisms for international dependency, (1<sup>st</sup> edn., Dar al-Mustaqbal al-Arabi, Cairo, 1987) P.114.

<sup>21</sup> Al-Kalyoubi, Samiha, Introduction to Industrial Legislation, (1<sup>st</sup> edn. Modern Library of Cairo, Cairo, 1967)P.61.

The owner's exclusive right authorized by patent guarantees the avoidance of others from making use of the invention. Patent holders are able to stop the manufacturing, sale offers, patent's item import or selling from others, since it avoids the manufacture of the item by others by engaging secure industrial technique for industrial approach patent. It is important to realize that patent owner is capable of issuing sale among other licenses for disposal and utilization in various behavioral aspects, since the patent holds monetary value, thereby being traded, mortgaged or licensed to use.<sup>22</sup>

Article (3) of the Jordanian patent law describes the provision that defends the invention; particular requirements are considered in acquiring the patent, primarily invention novelty, with novelty here indicating the need for the invention to be new besides not being accessible to the general public prior the patent's application date. Inventor's patent acquisition and protection should be offered when an individual comes up with something novel that has never been previously invented by anyone else, where the invention was novel and was known, therefore no need for protection.<sup>23</sup> Additionally, there is the need for the innovativeness and creativity of the invention; it should signify an ideal creation for the industrial art to become an inventive phase in the perception of specialized individual experienced in the art.<sup>24</sup> Lastly, there is the need for this invention to be industrial usable and relevant in any of the manufactured sectors.

Signifying how its applicability is succeeded by an industrial outcome which is appropriate for industrial application, if the invention was unusable or industrially inapplicable meaning not fit for commercial purposes, therefore, the need to compensate the inventor for his attempts and resources.<sup>25</sup> These terms are to be accomplished fully; else this invention will not be able to acquire the patent.

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<sup>22</sup> Al-Nahi, Salah Al-Din, Introduction to Trade and Industrial Property, (1<sup>st</sup> edn. Dar Alfurqaan, Amman, 1983) P.114.

<sup>23</sup>Khater, Nouri Hamad, Interpretation of Intellectual Property Regulations (Industrial Property) (Comparative Study between Jordanian, Emirati and French Laws), (1<sup>st</sup> edn., Dar Wael For Publishing, Amman, 2005)P.32 .

<sup>24</sup> Torremans, Paul & Holyoak, Jon, Holyoak and Torremans: Intellectual Property Law, (6<sup>th</sup> edition, Oxford University Press;) P.66.

<sup>25</sup>Al-Kalyoubi, *Samiha*, Industrial Property , (5th edn., Dar Alnhda, Cairo, 2005 ) P.386.

The patents' protection system is at odds with that for trade secrets in diverse aspects, the trade secrets protection is not restricted in time thereby lasting indeterminately provided the secret is not exposed to the general public.<sup>26</sup> Furthermore, upon revealing a trade secret, it's quite hard to have it retrieved, while on the other hand, exploiting patent through granting rights is restricted in time while and all rights reverts to the patent owner.<sup>27</sup>

No legal protections on trade secrets as it is for other intellectual rights to properties, the individual legally in control has no exclusive right, with no definite right or ideal location for shielding it since it might be traded anywhere in the globe. Patent protection only holds where registration is concerned. An individual who legally controls a trade secret holds no exclusive privileges to avert any party from legally accessing it at will. For instance, the Jordanian "Unfair Competition and Trade Secrets law" states that, "Individual access to trade secret or through reverse engineering shall not be deemed violation of the honest commercial practices."<sup>28</sup>

It is highly important to comprehend the dissimilarity between independent access to trade secrets and via reverse engineering.<sup>29</sup> The former is done through experiments or research by other people by not quoting any information, products or items comprising this trade secret.<sup>30</sup> Nonetheless, the latter means that other people were able to access it via experiments or researches particularly the items, information or products comprising the trade secret not considering the patent system offering owner's exclusive rights regardless of being legally obtained by others. via experiments and research devoid of obtaining the patent's protected invention.<sup>31</sup> Furthermore, the trade secrets' legal protection is larger than patent regarding place.

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<sup>26</sup> Samawy, Reem Soud, note 14 above, P. 90.

<sup>27</sup> Hussni, Mohammad abbas, *Industrial Property and Commercial Shop*, ( 1<sup>st</sup> edn., Dar Al Nahda, Cairo, 1971) P.8.

<sup>28</sup> Mahafzah, Qais , "The Legal Effectiveness of Protecting Trade Secrets and Inventions – Comparative Study", [2011] *Dirasat Journal*, The University of Jordan, Vol. 38, No. 1.

<sup>29</sup> Cheeseman, Henry R., *Business Law*, (5<sup>th</sup> Edn., Pearson Education, Inc. 2004), pp. 323-324.

<sup>30</sup> Alfwarah, Khaled, "Civil Protection for Patents (Comparative Study)", [2011] *Mater's Theses*, Al Albayt University, Jordan, P. 70.

<sup>31</sup> Cheeseman, Henry R., note 29 above.



Nonetheless, the information regarded as secret necessitates essential terms so as to offer patent; innovative step, novelty as well as industrial relevance, when information is protected and sufficient enough to safeguard the trade secrets, and holds economic significance as a result of the conditional confidentiality, the owner subjects is to rational processes to consider it a secret.<sup>32</sup>

## 5. Trade Secret Criterion

It is advisable not to reveal the initial principle of trade secrets regarding the easy accessibility or recognition of information as well as the trade secret's contents. What is meant by not easily accessible is that other individuals have no chances of obtaining the information easily by engaging proper methods. Proper methods may range from the utilization of reverse engineering or independent invention. On the other hand, improper means range from bribery, theft, industrial spying, to breach of duty to uphold secrecy.<sup>33</sup>

Informational confidentiality is ideally relative conditional matter. Other than the owner, this information is leaked to other individuals, with this highly occurring within relation contexts defined by trust. When the information related to business activities is disclosed the staff staff or lawyers, this does not take away the legal status from the secrets information, regardless of it being recognized in various projects, thereby it preserves secrecy provided the public not in identical field do not access it via creating several projects with an attempt of establishing equal information through searching research and development.<sup>34</sup>

The level of any secret is determined through engaging a trial judge- as an ideal matter-founded on the case's facts and conditions, while being reliant on several factors in establishing the secret contained in an information. Such as determining information from premises, the employee's knowledge level as well as their number, the methods considered by the owner to uphold them, its economic worth, fiscal payments to access them and the capacity of the competitive projects to obtain it via legal systems.

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<sup>32</sup> Galal, Wafaa, The Idea of Technical Knowledge and the Legal Basis for their Protection American Law, (Dar Al-Jamaah Al-Jadidah, Alexandria) P.25.

<sup>33</sup> Case 320/2005 [2008] Lawyers' Association Journal, P430.

<sup>34</sup> J.Cohen, A.S. Gutterman, Trade Secrets Protection and Exploitation. (BNA Books, Washington, 1998) p.69.

Revealing secret information in a method enabling public accessibility through one of the media or public channels is a proof of publicizing this information, while "Amman Court of First Instance adjudged" through a verdict argues that having the trade secrets' information posted on claimer website may term it apprehensive besides eliminating it from trade secrets. This would mean not being under legal protection.<sup>35</sup>

The other benchmark for considering information as a trade secret is the verity that information should hold commercial worth. There is a close connection between a trade secret's commercial worth and secrecy issue.<sup>36</sup> The proprietors of trade secrets will achieve commercial values by attaining competitive advantages that add in enhancing productivity, proficiency and efficiency of his commercial project and enhancing quality in addition or reducing loss, drawing regulars as well as competitive advantages in return, which would be the main factor that facilitates its owner to administer another projects within the area of occupation or competitive initiatives.<sup>37</sup> The commercial significance of information is impacted by several aspects that comprise: confidential aspect, once the information is regarded being highly secret, then its commercial value rises, for instance, the secret concerning the ingredients of Coca-Cola Company going over a hundred years. An additional aspect is the access to clandestine information price, commercial value relies on the costs of accessing to the data or the price for maintaining the information secret, and the chances to access this data through lawful means, if the third party/parties contacted this secret knowledge by chance or trial is not a crime.<sup>38</sup>

The effortless access to the knowledge by the public is making weak the competitive statue and reduces its business value also. Out of the aspects that play a major responsibility in detecting the business value of the knowledge is the amount of running projects at the similar commercial action.<sup>38</sup>

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<sup>35</sup> Note 33above.

<sup>36</sup> J.Cohen, A.S. Gutterman, note 34 above.

<sup>37</sup> Habib, Adil, *The Extent of Civil Liability about Default on Vocational or Career Secrets Obligations with displaying cases in which raise secrets commitments (comparative study , (1<sup>st</sup> edn., Dar Al fikr Al jamiey, Alexandria, 2005) P. 75. Antar, Abdul Rahim Abdul Rahman, Intellectual Property Rights and their Economic Influence, (1<sup>st</sup> edn. Dar Al Fikr Al Jamiey, Alexandria, 2009).P. 45. Obeidat, Radwan, "The Protection of Trade Secrets in Comparative and Jordanian Legislation", *Dirasat Journal*, [2003] The University of Jordan,Vol. 30, No 1. P.22.*

<sup>38</sup> Obeidat, Mahmoud, "Civil protection for Trade Secrets, comparative study", [ 2009] Master Theses, Al Albay University, Jordan, P.25.

Through increasing those initiatives, the secret's worth, that is incorporated in one of those projects in rivalry with other undertakings will be augmented, that grants it a powerful competitive benefit, and as well in case of the revealing the secret to several others will contain a small influence on the secret custodian with small amount of projects. Revealing the secret to the running projects weakens the business significance of the secret.<sup>39</sup>

The third decisive factor for data to be a trade secret is that it should be safeguarded through definite means. For instance, owners of trade secrets (or intellectual property) must develop and employ diverse protection mechanisms so as to protect the knowledge from third parties. For the purposes of upholding the secrecy of trade information, it is important to engage the following measures:<sup>40</sup>

- 1) Recognizing the allowable people to access or check the files or information in line with the need to recognize this knowledge within the business area.
- 2) Labeling files or data as being "confidential" and allow only authorized personnel to have access.
- 3) Making the data copy-protected that would prevent it from being leaked.
- 4) The individual legally in charge of the information needs to brief his workers not to reveal the company's information that is considered as being secret.
- 5) The individual legally in charge of the information needs, upon hiring his workers, to not work for rival firms for restricted period following termination of their work agreements.
- 6) Storing files or information inside protected places, like safes that are hard to be accessed by outsiders.

When the individual legally in charge of the confidential information does not assume the appropriate steps to protect his information or he abandoned it, that denotes weaving the right of safeguard created by trade secrets rule, in addition to if they are accessed devoid of taking any processes against the lawbreaker.

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<sup>39</sup> J.Cohen, A.S. Gutterman, note 34 above.

<sup>40</sup> Mahafzah, Qais, "Trade Secrets under Jordanian Law", the WIPO National Conference held at the Faculty of Law / University of Jordan - in cooperation with the World Intellectual Property Organization (WIPO), (April 6-8, 2004). P.3<[www.wipo.int](http://www.wipo.int)> accessed on 3<sup>rd</sup> January, 2017.

Approximating the rational steps assumed by the individual legally in charge of the information to protect it will be underneath trial judge evaluation. He might employ prevailed traditions at business or commercial area within such cases. In case of disagreement connected to offending trade secrets, the advocate might claim that this knowledge is not secret. Here, the claimer should confirm the privacy of information within all ways and it is not for community, as well as all rational stages that have been assumed to protect them and the actions the defender has taken to access these processes.<sup>41</sup>

## **6. Trade Secret Legal Protection Measures**

This part will be clarified by concentrating on civil defense for trade secrets depending on civil law. After that, it will be concentrated on the defense of trade secrets depending on unjust rivalry regulations and lastly judicial defense processes. In case the trade secret has been harmed by revealing, using or obtaining it through unlawful ways devoid of the person lawfully in control's authorization. The query is: "what might the person legally in charge of trade secrets need by jurisdiction?"

### **6.1 Civil Protection of Trade Secret**

The civil law is the legislation of the independent law within the nation, it symbolizes the civic law to be consulted in case of various case has not been mentioned within private law. Jordanian legislator has ordered the general requirements of civil liabilities (tort liability) by Jordanian public law within article 256 of Jordanian civil code on condition that "[e]very harmful action shall make the individual who commits it answerable for compensation albeit he is a non-discerning individual" the law offers the privilege to any injured in spite of the injury sort in claiming the wrongdoer who made the damage.

Civil liability is separated into tort and contractual liabilities, if the responsibility that infringement happened was the contract, its basis it will be contractual charge. However, if the obligation's basis was unlawful performance and the act lead to harm, the law will use tort liability.

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<sup>41</sup>Al-Sagheer, Hossam El-Din, Protection of Undisclosed Information and the Challenges Facing the Pharmaceutical Industry in Developing Countries, (Dar Al Fikr Al Jamiey, Alexandria. 2003) P.33. Obeidat, Mahmoud, note 39 above, P.31.

It can be stated that contractual liability is the case wherein the contract is the basis of legislation between parties to keep the trade secrets that comprise two major elements; non-disclosure of trade secrets and conversely stopping them from applying it.<sup>42</sup> That needs some processes to be assumed by person legally in charge of the information versus either his personnel or when permitting it to change through including special contractual conditions obliging the licensee and the consumer to maintain it secret through (non-discloser or non-competition contracts) those stipulations may be incorporated within one article or discovered within contract phrases. Nevertheless, the contract to privacy may be an autonomous accord appendix to the treaty.

Contracts are just dependent on parties; the contractual liability cannot be an option for the other civil liabilities that approved trade secret defending, if we understand concerning some criminal trade secrets matters committed by individuals who hold not contractual dealings with the individual legally in charge of trade secret. Like previously discussed, the contract just protects broadly in parties' conflict. The civil law might give rules whose issue could be dependent on in case trade secret is offended, for example tort liability; it serves a major role in defending others in case they were not parties within contract of defense.<sup>43</sup> Tort liability is a contravention of duty obliged by law. Three components must be accessible to fulfill tort liability of revelation trade secrets: damaging act, harm and Causation.<sup>44</sup> Absolutely, harmful act caused by the revelation of trade secret by third party or employed without authorization by right holder is considered damaging act; since those trade secrets are deemed as insubstantial property with financial worth.<sup>45</sup> The damage is the subsequent element of tort liability stipulations. The wrongdoer's liability toward sustaining trade secrets merely is done if determined.

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<sup>42</sup> Al-Adawy, Jalal Ali, *The Principles of Liabilities (liabilities sources)*, (1<sup>st</sup> edn. Al Maaref Establishment, Alexandria 1997) P. 239.

<sup>43</sup> AL-Swadah, Omar, *Legal Basics to Protect Trade Secrets (Comparative Study)*, (1<sup>st</sup> edn., Dar Hamid, Amman, 2009) P.83.

<sup>44</sup> Jordanian Civil Code, article 257 states that: 1) the injurious act may be direct or causative 2) And if it is direct, the damages shall be due unconditionally and if it is causative, it shall be subject to the proof of trespass or intent or that the act led to the direct injury even if it's not intended.

<sup>45</sup> El-Sanhuri, Abd el-Razzak, *The Mediator to Explain Civil Law, Part One, Theory of General Commitment*, revised by Ahmad Almaraghy, ( Al Maaref Establishment jalal hazy and partners, Alexandria, 2003) P.643.

Definitely, damage by revealing or employing other's secrets lead to damages for the individual legally in charge of secrets causes prohibition of the individual legally in charge of secret if the secret is revealed.<sup>46</sup>

Causation is the third component of tort liability. It denotes the direct affiliation between damaging act and harm committed by the accountable; the harm that wound the offended, absence of that rapport is case of cause of strange and action of wounded. Cause of foreign is the link that connects contravene of secret with harm toward the individual legally in charge of trade secrets. In case we connect the cause with the outcome, the damage is caused by the breach.<sup>47</sup> Definitely, it is complex to confirm that virtually that there is the necessity for tort liability to defend trade secrets simply within the nations that do not hold legislations to defend trade secrets. Nevertheless, unjust rivalry claims are the finest ways to defend trade secrets underneath the defense legislations, like it will be observed later.

## **6.2 Protection of Trade Secrets through Unfair Competition Law**

From the angle of commercial sector, biased competition is considered among the key principles, dubbed excellent manners owing to its purpose in industrial growth besides achieving profits. From an angle of unfair competition, every action contrary to due transactions procedure and customs and consistence with relevant legal rules and privilege guidelines in commercial perspective, comes with an offence against the non-trade secrets besides catalyzing the employees' disclosure of the same, where there is lack of integrity or unfairness on the measures engaged by the competitors concerning trade secret, then one may seek for justice through compensation via unfair claiming.<sup>48</sup>

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<sup>46</sup> Al-Adawy, Jalal Ali, note 43 above, P. 429.

<sup>47</sup> Jordanian Civil Code, Article 261 states that : (If the person proves that the damage resulted from an extraneous cause with which he had nothing to do like the act of God, sudden accident, force majeure, acts of others or the act of the person injured, he shall not be liable for damages unless the law or contract otherwise provides).

<sup>48</sup> Lotfi, Mohamed Hossam, Information Services Contract (comparative study between Egyptian and French Laws), (1<sup>st</sup> edn., Cairo, 1994) P.94.

The above explanation composed the early laws of "Paris Convention for the Protection of Industrial Property"<sup>49</sup> via article 10 compelling that "the nations are expected to ascertain against unfair competition", while the convention's clause 3 equally gave a clear stipulation regarding some actions which never appeared unfair competition besides simply announcing it, therefore, in case of any unclear indication of the trade secrets by Paris convention's article 10, then the idea of any offense against trade secrets is regarded as unfair competitive actions.<sup>50</sup> TRIPS accord being subject to Paris convention's article 10 (2) that comprises of valid protection from biased competition, shouldn't be used or accessed by non-owners devoid of acquiring express authorization from an individual who legally owns it. This is indicative that any technique is in agreement with fair commercial processes; therefore TRIPS accord suggested evidently a universal obligation to safeguard trade secrets on unfair grounds, since it established the theme of the infringing trade secret being a biased competition based on TRIPS treaty. Lawmakers in Jordan passed into law an independent bill known as "Trade Secrets and Unfair Competition Law. Law No. 15 for the Year 2000." This law's second article exemplified consistency with TRIPS treaty concerning acts an unfair competition, expressing three aspects that should be met while issuing a claim on unfair competition:<sup>51</sup>

1. The claim for unfair competition is only valid in case the competition occurred between identical field trades, exhibiting unfair performances engaged by one party with the intent of exploiting the customer base of the other party. Nonetheless, this comparison should not essentially be entirely between such two processes, relative correlation is reasonable enough in case the perpetrator affects the victim, who is the individual legally holding the rights to trade secrets.
2. Such unfair actions of the perpetrator are capable of bringing harm to the legal holder of the trade secrets besides being his/her project or rights. Nonetheless, this action holds no prerequisites of injury terms, regardless of the damage being sufficient enough to enact an unfair competition. Only damage capacity regardless of the perpetrator's biased competition could not result in harm.

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<sup>49</sup> The Paris Convention has been revised several times after its signature in 1883. Revision Conferences were held in Rome in 1886, in Madrid in 1890 and 1891, in Brussels in 1897 and 1900, in Washington in 1911, in The Hague in 1925, in London in 1934, in Lisbon in 1958, and in Stockholm in 1967.

<sup>50</sup> Coleman, Allison, "legal protection of trade secret", [ 1995] International Review of Intellectual Property and Competition Law , Vol. (2) , No (4) , p 590.

<sup>51</sup> Al-bayaida, Ahmad, "Unfair Competition and Legal Protection for Injured in Jordanian Legislation", available at <<http://www.jc.jo/node/>> . P.56. accessed on 5<sup>th</sup> January, 2017.

3. Lastly, the final condition is the direct measure affecting the action of unfair competition as well as the damage sustained by the individual legally controlling the trade secrets as a result of the competitor's actions. There is the need to prove the causing agent where compensation is demanded.

### **6.3 Judicial Protection Measures**

Where any disclosure offends the trade secrets, where illegally obtained or utilized devoid of getting consent from the legal owner, then the individual with the legal control of trade secrets holds the right to seek justice as a measure of seeking the following actions:

1. Urgent case or appeal to stop offending trade secrets.
  2. Penal action
  3. Civil compensation demand
- i. Urgent case or appeal to stop offending trade secrets.

The individual who holds the trade secrets' legal control in the condition that the secret is misused, therefore he/she may consider to forward grievances to a temporary judge asking for halting of trade secrets misuse or avoiding the material attachments making up the trade secrets. The individual with legal possession of trade secrets is allowed to get the services of an urgent case prior the main demands to be granted with a court order to avowing the misuse of trade secrets or avoid the attachment of materials comprising the trade secrets or to safeguard the concerned evidences from getting lost. In case the concerned party does not file and pursue a complaint case within 8 days of the approval by court, then all processes put in place for this measure shall be considered void and null. Equal appeal rights are held by the respondent also; the respondent is allowed to appeal against the decision by the court to implement the defensive actions to the court of appeal before the end of 8 days from the notification date. The individual with the legal possession of trade secrets can seek the following from the court upon seeking a civil claim for misuse of trade secrets, given that his claim goes along with cash or bank security recognized by the court, as stipulated within article 7 (B) of the unfair competition law.



The respondent is entitled to issuing a compensation claim for the associated harm, in confirming that the accuser was wrong in his/her appeal to adopt the protective actions, or having failed to forward his complaint during the 8-day time span as stipulated under "Article 3 C D E of Unfair Competition Law."

## ii. Compensation on Civil action

The individual legally possessing the trade secrets retains the legal right to file a compensation lawsuit for the damages emanating from misuse as stipulated under article 7 of trade secrets and unfair competition upholding that "The person lawfully in control of trade secrets may claim compensation for the damages caused to him as a result of misusing such secret". The individual with the legal mandates is expected to sanction the aspects of tort liability; damage, harmful measures, as well as causation in resent condition there is lack of an appropriate recommendation associated with compensation. Which might be attained by the individual legally controlling trade secrets, besides lack of special guidelines by the competitive law on compensation and damage measures due to unfair competition. Therefore, compensations estimations are accomplished respective of the overall civil law rules. The application of general compensation rules as mentioned in article 256 stipulates that [e]very injurious act shall render the person who commits it liable for damages even if he is a non-discerning person" while that provided in article 266 of Jordanian Civil Law mentions that " Damages shall in all cases be estimated by the amount of the damage inflicted on the injured person and his loss of profit provided that the same shall be the natural result of the injurious act." Compensations based on the misused trade secrets against the legal holders, the accuser, due to abusing trade secrets plus the benefits loss is found on the grounds of what the defendant achieved as profits upon using the mentioned secrets.<sup>52</sup>

## iii. Penal action

Biased trade secrets and competition law holds no criminal defense against all the procedures of misusing the trade secrets while the sole punishment mentioned include materials, products and considered tools expropriation.

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<sup>52</sup> Obeidat, Radwan, note 38 above .

It is evident that the Jordanian law never incorporated criminal punishments to safeguard trade secrets besides avoiding being offended; these punishments ought to be prohibitory since they do not comprise of conditions stipulating the perpetrator's custody or having criminal fines imposed against him.

## **7. Conclusion:**

Secret information is made up of industrial, technical, structural or administrative information. No definite description of trade secrets has been offered in Jordanian law. Definitely this is a positive issue, as a result of the swift creation of the trade secret concept stipulating the need of having this concept amended by the legislature so as to integrate a definite meaning of the same. The present study offers clarity that both trade secrets and invention, in need of protection, ought to possess objective provisions specified by law.

Trade secrets are in need of conditions targeting ideal protection, while invention requirements seek to offer rights and lawful monopolies, upon request of judicial protection. The second part of this study centered on the establishment of the appropriate appeal type filled in courts upon an offensive case via urgent appeal then ordinary civil appeal which ought to be via compensation as well as criminal appeal currently not defined by Jordanian law, meaning it's only through stipulation that crime and punishment are dealt with. There is the need to amend the Jordanian law on trade secrets so as to fortify the safety of trade secrets from offensive actions. The last part of this study offers a recommendation of intensive care concerning Jordanian trade secrets via further researches, studies, conferences and seminars to guarantee its worth, besides offering support to scholars and researchers involved in development measures in order to encourage merging with big commercial firms for fruitful growth in Jordan.

## **Bibliography**

- Al-Adawy, Jalal Ali, *The Principles of Liabilities (liabilities sources)*, (1st edn. Al Maaref Establishment, Alexandria 1997).
- Al-bayaida, Ahmad, "Unfair Competition and Legal Protection for Injured in Jordanian Legislation", available at <<http://www.jc.jo/node/>> accessed on 5<sup>th</sup> January, 2017.

- Alfwarah, Khaled, "Civil Protection for Patents (Comparative Study)", [2011] Mater's Theses, Al Albayt University, Jordan.
- Al-Kalyoubi, Samiha, *Industrial Property*, (5<sup>th</sup> edn., Dar Alnhda, Cairo, 2005).
- Al-Kalyoubi, Samiha, *Introduction to Industrial Legislation*, (1<sup>st</sup> edn. Modern Library of Cairo, Cairo 1967).
- Al-Khashroom, Abdullah, "The Impact of Jordan's Accession to the World Trade Organization on Industrial Property Legislation" [2002], Kuwait University, Journal of Law, Vol. 26, No. 2.
- Al-Maliki, Mejbil Muslim, *Patents and the Significance of its Investment as a Source of Technical and Scientific Information*, (1<sup>st</sup> edn. Dar Al-Waraq For Publishing, Amman 2006).
- Al-Nahi, Salah Al-Din, *Introduction to Trade and Industrial Property*, (1<sup>st</sup> edn. Dar Alfurqaan, Amman, 1983).
- Al-Sagheer, Hossam El-Din, *Protection of Undisclosed Information and the Challenges Facing the Pharmaceutical Industry in Developing Countries*, (Dar Al Fikr Al Jamiey, Alexandria. 2003).
- El-Sanhuri, Abd el-Razzak, *The Mediator to Explain Civil Law, Part One, Theory of General Commitment, revised by Ahmad Almaraghy*, ( Al Maaref Establishment jalal hazy and partners, Alexandria, 2003).
- AL-Swadah, Omar, *Legal Basics to Protect Trade Secrets (Comparative Study)*, (1<sup>st</sup> edn., Dar Hamid, Amman, 2009).
- Antar, Abdul Rahim Abdul Rahman, *Intellectual Property Rights and their Economic Influence*, (1<sup>st</sup> edn. Dar Al Fikr Al Jamiey, Alexandria, 2009).
- Cheeseman, Henry R., *Business Law*, (5<sup>th</sup> Edn., Pearson Education, Inc. 2004).
- Coleman, Allison, "legal protection of trade secret", [1995] International Review of Intellectual Property and Competition Law , Vol. 2 , No 4.
- E.I.Klayman, J.W.Bagby and N.S.Ellis, *Irwin's Business Law: Concepts Analysis Perspectives*, (Burr Ridge, Irwin, 1994).
- Galal, Wafaa, *The Idea of Technical Knowledge and the Legal Basis for their Protection American Law*, (Dar Al-Jamaah Al-Jadidah, Alexandria ).
- Habib, Adil, *The Extent of Civil Liability about Default on Vocational or Career Secrets Obligations with Displaying Cases in which Raise Secrets Commitments Comparative Study*, (1<sup>st</sup> edn., Dar Al fikr Al jamiey, Alexandria, 2005).
- Hussni, Mohammad abbas, *Industrial Property and Commercial Shop*, (1<sup>st</sup> edn., Dar Al Nahda, Cairo, 1971).
- Issa, Husam Mohamad, *Technology Transfer, Study in Legal mechanisms for international dependency*, (1<sup>st</sup> edn., Dar al-Mustaqbal al-Arabi, Cairo, 1987).

- J.Cohen, A.S. Gutterman, *Trade Secrets Protection and Exploitation*. (BNA Books, Washington, 1998).
- Khater, Nouri Hamad, *Interpretation of Intellectual Property Regulations (Industrial Property) (Comparative Study between Jordanian, Emirati and French Laws)*, (1<sup>st</sup> edn., Dar Wael For Publishing, Amman, 2005).
- Lotfi, Mohamed Hossam, *Information Services Contract (comparative study between Egyptian and French Laws)*, (1<sup>st</sup> edn., Cairo, 1994).
- Mahafzah, Qais, "The Legal Effectiveness of Protecting Trade Secrets and Inventions – Comparative Study", [2011] *Dirasat Journal*, The University of Jordan, Vol. 38, No.1.
- Mahafzah, Qais, "Trade Secrets under Jordanian Law", the WIPO National Conference held at the Faculty of Law / University of Jordan - in cooperation with the World Intellectual Property Organization (WIPO), (April 6-8, 2004). P.3<[www.wipo.int](http://www.wipo.int)> accessed on 3<sup>rd</sup> January, 2017.
- Obeidat, Mahmoud, "Civil protection for Trade Secrets, Comparative Study", [2009] Master Theses, Al Albayt University, Jordan.
- Obeidat, Radwan, "The Protection of Trade Secrets in Comparative and Jordanian Legislation", [2003] *Dirasat Journal*, the University of Jordan, Vol. 30, No 1.
- Roger E. Schechter & John R. Thomas, *Intellectual Property: the Law of Copyrights, Patents, and Trademarks* (Paul, MN : Thomson/West, 2003).
- Samawy, Reem Soud, *Patents in Pharmaceutical Industry, legal regulations for licensing in the light of World Trade Organization*, (1<sup>st</sup> edn. Dar Al Thaqafa For Publishing & Distributing Amman, 2008).
- Torremans, Paul & Holyoak, Jon, *Holyoak and Torremans: Intellectual Property Law*, (6<sup>th</sup> edition, Oxford University Press).
- Wiewiorka, Emily, *Boyd's Solicitors/Data Protection Act 1998*, (W. Green/Sweet & Maxwell, Edinburgh, 2002).

## Treaties and Legislation

- Agreement on Trade Related Aspects of Intellectual Property Rights (1994) (TRIPS).
- Paris Convention for the Protection of Industrial Property (1883).
- Trade Secrets and Unfair Competition Law No. 15 for the Year 2000.
- Jordan Civil Code from 1st January 1977, Law No. 43/1976 of May 23rd, 1976.
- Jordan Labour Law and its Amendments No. 8 of the Year 1996