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**Jurisprudential and Legal Foundations of Patent Rights
in View of Imam Khomeini¹**

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Detailed abstract:

Research Paper

In the past, creative ideas and designs presented by humans were published in the direction of companionship and cooperation with other humans and mostly in a very small range, and the creators of a new and innovative work, design or idea sought to gain a special benefit and attract interests.

With the expansion of communities and the specialization of activities, especially with the industrialization of societies and the expansion of the role of ideas and creative innovations in the development of industries and the proliferation of production and manufacturing of goods and the acquisition of material benefits for the owners of industries, the issue of monopolizing the right to enjoy ideas and initiatives It was brought up and the acquisition of material benefits from presenting them to others was gradually formed in the minds of the creators of such works and became stronger day by day.

In such a way that the issue of intellectual property rights and its included examples also emerged in this direction along with other material and tangible traditional rights and properties, and the legal systems of the world have developed regulations regarding the scope, conditions and effects. They paid for it and in addition, they tried to protect these rights by establishing performance guarantees.

Intellectual property, is born and created by the genius and talent of a creative and visionary person who presents new designs, ideas and styles or combines and integrates previously emerged processes. leads to the creation of a new work and product or a new process, which in this way, in addition to personal benefit from this innovation, also causes the growth and development of society, especially in the economic and commercial fields, in such a way that today Intellectual property rights is considered a very basic category in international economy and trade and

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is considered as a reward that is paid to a person in exchange for new creative ideas and thoughts in various scientific, technical and industrial fields and the like. While supporting thought, thinking and reasoning, which includes supporting elites, innovators, researchers and scientists, it will increase their mobility and motivation for more attempt and effort with the aim of presenting newer designs and ideas, and as a result to strengthen the process of growth and development of societies in various fields, especially in scientific, artistic, economic, commercial and industrial fields.

Intellectual property rights, usually divided into two branches. First, literary and artistic property rights, which are also called copyright.

The second branch includes industrial property rights, which itself is divided into two major parts: rights related to signs, such as trademarks and geographical indications, and rights related to inventions and industrial designs, such as patents, designs, and industrial models.

Of course, the legal history of some countries, whether in the Roman Germanic legal system, such as the regulations of France, or in the Islamic legal system, such as the laws of Egypt, despite the existence of some differences and conflicts in these two branches of intellectual property rights and considering the wide range The commonalities of these two areas, including in principle supportability, temporary nature, transferability, etc., favor the integration of these two branches of law and the formulation and approval of comprehensive regulations under the title of intellectual property rights.

Due to the lack of history of the subject in jurisprudence discussions and especially among the predecessors of jurists, the jurisprudential foundations confirming this branch of law and also the positive legal foundations of this right usually have supporters and opponents among jurists and lawyer, and every One of this group has presented reasons for confirming or rejecting the validity of this branch of law.

In relation to the basics of protecting industrial property rights and its obvious example, patent rights, there have been disagreements between jurists and lawyer for a long time. The main reason for this difference in views is due to the new nature of this branch of law. The views of the opponents are mainly based on the contradiction of this branch of the right with the rule of subordination, its invalidity from the Shariah and the belonging of all property, including intellectual property, to the Islamic government. Sharia and reason, the rule of harmlessness, the principle of correctness, the necessity of respecting the acquired rights of individuals, and especially the way of reason, have been adhered to.

The legal basis of recognizing this right is mainly based on theories such as natural or innate rights, personality rights and social contract.

Of course, regardless of the jurisprudence and legal bases of the proponents and

opponents, in the legal system of our country and in the field of intellectual property rights, especially industrial property, there is a long-standing legislative history of more than eighty years in our country, which includes He pointed out that the Law of Registration of Trademarks and Inventions approved in 1310 has more history than even laws such as Civil Law and Trade Law. With regard to the investigations carried out regarding the legal and jurisprudential foundations of patent rights and with regard to the expanding role of this right in the economic development of societies and with regard to the dynamism of jurisprudence and in sync with other societies and in order to create a double motivation in people for Increasing efforts to discover, invent and create new intellectual works, in addition to the legislative history of the subject in regional and international treaties and conventions, as well as in the internal laws and regulations of our country, including the patent law, industrial designs and Trademarks 2007 and industrial property protection plan approved 2015 by the Judicial and Legal Commission of the Islamic Council and the need to comply with the aforementioned provisions with Sharia standards, according to the provisions of the fourth and ninety-fourth principles of the Constitution, it seems that the jurisprudential and legal foundations of the subject are based on generality Arguments such as the necessity of faithfulness to one's promise and the way of the wise can be defended and accepted.

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