

Is There “Patent” in Islam?

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Major sources of law in Islam do not address and regulate patent protection per se, but can “patent” be implied? Is there a conceptual, doctrinal, economic, theological, and theoretical construct of “patent” that can be implied through human interpretation of divine, immutable law in Islam? This Article asserts that “patent” magnifies tensions in the ideological debates among Muslim jurists, scholars, and theologians about the degree of permissible intangible property in Islam. It justifies a positive, normative theory for “patent” through analysis and clarification of property-centric justification of usufructs. In doing so, it argues that the normative and theoretical analysis for “patent” in Islam should be based on permissible commerce, labor, and profit.

The interpretation of the construct of “patent” creates tensions for the reach of patent protection according to a Muslim country’s predominance of a school of jurisprudence and the degree of common, civil, and Sharia source(s) of law. As a result, this Article argues that accordance with the requirements of TRIPS creates differing patent eligibility exclusions depending on the degree of primacy of Sharia in a Muslim country’s constitution. As Saudi Arabia, Oman, and Qatar embark on innovation initiatives to transform from depending on oil and gas towards creating knowledge-based economies, this Article concludes that clarification of the construct of “patent” in Islam and scope of patent eligibility is paramount for incentives towards life sciences and software innovation. It proposes patent eligibility be assessed by a Sharia Board in Muslim countries by drawing parallels to Islamic finance theoretical justifications.