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Intellectual Property in Turkey





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Contents

INTELLECTUAL PROPERTY RIGHTS.....	3
Registered Rights.....	3
Patents/Utility Models	3
Differences between utility models and patents:	3
Trade Marks.....	3
Industrial Designs.....	3
Geographical Indications	3
Unregistered Rights.....	4
Copyright.....	4
LAWS, TREATIES AND RECIPROCAL AGREEMENTS.....	4
PROTECTING YOUR TRADE MARK IN TURKEY	5
Introduction	5
Trade Marks explained	5
Registration	5
Examination.....	5
Refusal and Opposition.....	5
Cancellation.....	6
COPYRIGHT IN TURKEY.....	6
PROTECTING YOUR INVENTION IN TURKEY.....	7
Introduction	7
Registration	7
Patent with Examination.....	7
Patent without Examination	7
Opposition.....	8
Annuities.....	8
Utility Model Protection.....	8
Cancellation	8
PROTECTING DESIGNS IN TURKEY.....	9
Introduction	9
Registration	9
Examination.....	9
Refusal and Opposition.....	9
Cancellation	10
TRADE SECRETS AND NON-DISCLOSURE AGREEMENTS.....	10
Trade Secrets	10
Non-Disclosure Agreements	10
IP ENFORCEMENT AND DISPUTE RESOLUTION IN TURKEY.....	11
Procedural Format and Timing of Court Procedures	11
Alternative Dispute Resolution	11
USEFUL CONTACTS/LINKS FOR BUSINESSES.....	11



Intellectual Property Rights

Intellectual Property (IP) relates to new creations, such as an invention, a brand name, or a literary or artistic work.

IP rights in Turkey are divided into two categories: unregistered and registered rights. Unregistered rights exist automatically when you create a piece of eligible work, whereas you must apply for registered rights from the relevant authority.

The following IP rights are recognised in Turkey:

- industrial property rights relating to inventions (patents and utility models)
- trade marks
- industrial designs
- geographical indications
- integrated circuit topographies
- copyright
- trade secrets

Registered Rights

Patents/Utility Models

Patents and utility models protect new inventions. You may apply for a patent or a utility model in order to obtain the exclusive right to your invention. For example, if you have a new product that offers a new technical solution to a problem, patents or utility models allow you to prevent others from using your invention without your permission for a fixed period of time.

Differences between utility models and patents:

Both patents and utility models require the invention to be new and capable of practical application. This means an invention should not already be known anywhere in the world, nor should it be purely theoretical.

The requirements for acquiring a utility model are less stringent than for patents. To apply for a patent the invention must have an “inventive step”. It should not be obvious to a person skilled in the field of the invention. These criteria are not necessary for utility models.

The length of protection is also different for patents and utility models. You may protect your invention for 10 years with a utility model, whereas protection is for 20 years with a patent. The registration process for utility models is significantly simpler and faster than for patents - the application for utility models takes on average six months.

Trade Marks

You can register a trade mark for your product or service. A trade mark is a sign which distinguishes your goods and services from those of your competitors. Graphical or written trade marks can include personal names, designs, logos, letters, and numerals. They can also include the shape of the goods or their packaging and similarly descriptive means capable of being published and reproduced by printing.

Industrial Designs

You can register the appearance of the whole or a part of a product as a design. Designs can also protect the ornamentation and ornamental or aesthetic aspect of a product. This includes features such as the product's lines, colour, texture, shape and decoration.

Geographical Indications

You can register signs indicating the origin of a product. These may be sought for products which have a specific quality, reputation or characteristic attributable to that place, area, region or country.

Unregistered Rights

Copyright

This is a type of automatic protection for any intellectual or artistic work bearing the characteristic of its author. This could be a scientific paper, literary or musical work, or work of fine art or cinematography.

Laws, Treaties and Reciprocal Agreements

Processes for the registration and renewal of patents, utility models, trade marks, industrial designs and geographical indications are under the authorisation of Turkish Patent Institute.

Turkish Intellectual Property Law is based on Laws and Decree Laws alongside international agreements. IP rights in Turkey are generally harmonized with European implementations.

Turkey is signatory to the following key treaties and conventions:

- Paris Convention

This allows applicants the right to claim priority in Turkey from an earlier application elsewhere. It also lays out certain minimum rights for IP holders.

- Berne Convention

This provides automatic minimum copyright protection for literary and artistic works.

- Madrid Protocol

The international system for registration of trade marks. This can be an effective way to secure trade mark protection in a number of countries through a single application.

- Hague Agreement

The international system for registration of industrial designs. This can be an effective way to secure design protection in a number of countries through a single application.

- PCT (Patent Cooperation Treaty)

The international patent system. By filing one international patent application under the PCT, applicants can simultaneously seek protection for protection of an invention in a number countries throughout the world.

- European Patent Convention

A Convention established to create a single procedure for the grant of patents in 38 European contracting states.

Protecting Your Trade Mark in Turkey

Introduction

In Turkey, you have some protection for unregistered trade marks under the unfair competition provisions of the Commercial Code. However, registering your trade mark can provide additional benefits. For example, it can be easier to enforce your rights if you register your trade mark. Once registered, a trade mark is valid for 10 years from the date of application. You can renew it indefinitely, for a further 10 years each time.

Trade Marks explained

A trade mark is a sign which distinguishes your goods and services from those of your competitors. You may file a trade mark application for signs that are represented graphically, such as words. These may be stylised or plain text. Examples include personal names, designs, and letters or numerals. Trade marks may also include the shape of the goods or their packaging. The Turkish Patent Institute (TPI) also accepts sound trade mark applications.

For a trade mark to be acceptable, it must be distinctive. Therefore it should not purely describe the goods and services to which it relates. Before filing an application, we also highly recommend you or your trade mark attorney conducts a trade mark search. This will help confirm if the trade mark is available or whether anyone has already registered an identical or similar mark.

Registration

To apply, you can file a national trade mark application form with the TPI (www.tpe.gov.tr). The form is in Turkish and applicants based in the UK must use a trade mark attorney authorised to act before the TPI.

Alternatively, as Turkey is a member of the Madrid Protocol, you can file an international application from the UK and designate Turkey using this method.

You do not have to declare any proof of use or declaration of use when filing a trade mark application.

You can claim priority from an earlier application filed in another country provided they are a member of the Paris Convention. You must file the subsequent application within six months of the original application. This means your later application will be treated as if you applied on the same date as the original application.

Examination

When you file a trade mark application, the Turkish Patent Institute will check it complies with the formal requirements. If these are met, your application will then be examined. Your trade mark application may be refused on the basis of an earlier trade mark or if it is too descriptive. After examination, your application will be published for opposition.

The time limit for filing oppositions is 3 months from the publication date. If the examination raises no objections and no oppositions are filed, your trade mark will be registered after the payment of registration fees. The trade mark registration process typically takes just under 9 months, provided there are no objections or opposition. You can find information on fees at www.tpe.gov.tr/TurkPatentEnstitusu/fees/informationDetail?id=101.

Refusal and Opposition

If your application is refused or opposed during the publication period, you will have 2 months to reply. The Re-examination and Evaluation Board (REEB) will examine your reply and deliver its decision. The decision of the REEB is the final decision of the TPI. To contest this decision, a court action can be initiated within 2 months of the notification of the decision.

Cancellation

There are two different methods to cancel or invalidate a registered trade mark:

- Non-use action: The TPI does not examine the use of a trade mark. However, if within a period of 5 years following the registration, your trade mark has not been genuinely used without a justifiable reason, or if the use has been suspended for an uninterrupted period of 5 years, your trade mark might be subject to the non-use action. Non-use actions must be initiated before the courts.
- Cancellation action: Any third party which claims a prior right may initiate a cancellation action before the courts. The prescription period for such a lawsuit is 5 years as of the registration or use of the trade mark. If there is a claim based on bad faith, there will be no prescription period.

Copyright in Turkey

Copyright is a form of IP protection that protects written, dramatic or artistic works. It prevents work being copied or used without the authorisation of the copyright owner. You do not need to file a particular application to gain this protection, it exists automatically when the work is created.

For copyright to apply, the work must be original and not copied from another source. It must also be fixed, eg written down or recorded. It cannot simply be an idea for a piece of work. To prevent any loss of rights, a time stamp can help prove the time of creation.

In Turkey, you can acquire a time stamp from 3 different places:

1. Ministry of Culture
2. Notary Public
3. Companies offering electronic sealing or stamping services

Registration with the Ministry of Culture provides proof to help identify ownership and creation date for a piece of work. You need to submit your work and details such as the creation and disclosure time to the Ministry of Culture.

Work can be certified by a notary public. You need to submit your work content before the authorized notary to get a legalised approval seal, including time of creation.

You can also acquire a time stamp through e-sealing applications. These systems add a time stamp to each document. This time stamp has legal grounding and validity through the Electronic Signature Law (No: 5070). You can use this procedure to help prove that a document has not changed.

Protecting Your Invention in Turkey

Introduction

A patent protects a new invention for a fixed period of time. It gives you the right to take legal action against anyone who makes, uses, sells or imports the invention without your permission.

For your invention to be patentable it must:

- be novel, in that it is not already known anywhere in the world
- involve an inventive step and not be an obvious variation on known technology
- be capable of industrial application

In Turkey, patents may be registered with or without examination. Patents with examination provide 20 years of protection, and patents without examination provide 7 years of protection.

Registration

You can file a national patent application for Turkey directly with the TPI. Alternatively you may file an international application using the Patent Cooperation Treaty (PCT) or European Patent Office, designating Turkey. As Turkey is a member state of the Paris Convention, you are also able to use the first filing date of an existing patent application as the effective filing date in Turkey, provided you apply within 12 months from the first filing.

If you file a national patent application, you will receive an official filing receipt within 2 months. Within 15 months of the application date, or priority date, you should file a request for conducting the search on the State-of-the-Art (also known as a Prior Art Search). Failing to do so will cause the application to be deemed withdrawn. You must pay the search fee within 3 months of filing the request. That is to say, you should pay the search fee before the end of 18-month period after the date of filing or priority.

The TPI cannot perform searches for all technological fields. If an invention cannot be searched by the TPI, you may select one of the offices accepted as searching authority for the search on the State-of-the-Art. These include:

- Austrian Patent Office
- European Patent Office
- Danish Patent Office
- Russian Patent Office
- Swedish Patent Office

The Swedish and Austrian Patent Offices have an express search option. If you have a search report, which has already been issued by a Patent Office acknowledged as a PCT Searching Authority for the application, priority of which was claimed in the Turkish Patent application, then this report is accepted by the Turkish Patent Institute.

Patent with Examination

Once you have received the search report or acknowledgement from the TPI that a previous search report has been accepted, you have three months to decide whether to proceed through the patent system with or without examination. If you opt for the system with examination, then you must submit a request for examination before the TPI. You will have 3 chances to apply for examination in this system.

If the invention is found not patentable in all three examinations, the application will be rejected. After this you have the option to appeal to the Re-examination and Evaluation Board.

Patent without Examination

If you opt for the system without examination, then a patent will be granted for 7 years from the date of application. However, before the end of that 7 year period, you may request the examination to be conducted. The same process for the system with examination would then be applied. If successful, the term of protection will be 20 years from the date of application.

Opposition

Following the receipt of the search report and after selection of the system, the search report is published in the Official Patent Bulletin. At this point, a six month opposition and observation period will begin. If a third party submits an opposition or observation, the documents will be sent to you and the examining authority to be evaluated. The opposition will not directly affect the patentability.

Annuities

You have to pay annuity fees every year to maintain the application. These begin from the application or international filing date.

Utility Model Protection

If an invention is considered novel and capable of industrial application, it may be protected by a utility model. You can file a national application directly with the TPI or file a PCT or European Patent application designating Turkey. The term of protection for a utility model is 10 years from the filing date.

When you file a national application, the TPI checks that it meets their formalities and issues an official filing receipt. No search or examination procedure is applied. The application is published within 18 months, after which a three month opposition period begins. If an opposition is received, you have an option to disregard this opposition and continue to request the grant decision or you can file a response to the opposition. Any oppositions do not affect the patentability directly. A utility model can be cancelled only through an invalidity action.

Cancellation

The court shall declare a registered patent or utility model invalid in the following circumstances:

- where proved that the patent/utility model does not involve the requested criteria
- where proved that the entitlement to the right actually belongs to another person or persons

Declaration of invalidity may be requested during the period of protection or within 5 years following the termination of the protection.

Protecting Designs in Turkey

Introduction

Unregistered industrial designs are protected under unfair competition and copyright provisions in Turkey.

Industrial designs are also protected by Decree-Law No.554 relating to the Protection of Industrial Designs. To benefit from the protection of Decree Law, you should register your design in Turkey. Protection by registration can be achieved if your design is new and has individual character.

A design is deemed new providing it has not been made publicly available anywhere in the world prior to the application date or the priority date. However you can apply to register a design in Turkey up to 12 months after first disclosure of the design.

Registration

The registration process for industrial designs in Turkey is comprised of 5 main stages:

- formal examination
- registration
- publication
- opposition
- certification

The TPI does not examine to confirm a design is new or has individual character, therefore you may wish to conduct a design search before filing the application.

When filing the application you can defer publication for up to 30 months from the application date.

You may file a multiple application claiming protection for more than one design in a single application but the products should belong to the same sub-class, or belong to the same set, or composition of items.

A registered design is protected for 5 years from the date of filing the application and renewable in 5 year periods up to a total term of 25 years.

Examination

The TPI shall refuse a design application in the absence of an application form, drawings, written description or application fee.

If the TPI concludes that there are no deficiencies, the application is accorded the filing date as the date, hour and minute on which the application was originally filed.

Refusal and Opposition

Third parties may file an opposition against registration at the Turkish Patent Institute within six months of the publication date. Oppositions must fulfil the requirements stipulated in the regulations and the grounds for opposition must be clearly described. The opposition, together with its justification, is then communicated to the person claiming design rights to enable them to submit views and observations.

The Re-examination and Evaluation Board examines the submitted opposition documents, to verify the right holder or the novelty and individual character. If an opposition is made within 6 months or any opposition is refused, the certificate of design registration is forwarded to the applicant. Where the opposition period of 6 months has expired, the matter can be referred to the courts for cancellation or invalidity of the design registration.

Cancellation

The court shall declare a registered design invalid in following circumstances:

- where proved that the design is not eligible for protection under the provisions of the Decree-Law No. 554;
- where proved that the entitlement to the design right actually belongs to another person or persons.

Declaration of invalidity may be requested during the period of protection or within 5 years of the termination of the right.

Trade Secrets and Non-Disclosure Agreements

Trade Secrets

Trade secrets are defined as any non-disclosed information, which creates a competitive advantage to your company. You can protect any information which has a commercial value as a trade secret. This information should be “secret”, in other words you should not disclose it and should take necessary measures in order to keep it secret. Your trade secrets can be protected under the Unfair Competition Provisions.

Non-Disclosure Agreements

Non-disclosure terms can either be included as an article in an agreement or can be drafted as a separate agreement.

In respect of rules of procedure, the principle of “freedom of contract” is valid under the Turkish Law of Obligations. Therefore, there is no particular procedure required as a condition for validity for such agreements/terms. In respect of content, the main rule is to be consistent with the purpose of the agreement, and to keep the balance between the conditions and public interest.

IP Enforcement and Dispute Resolution in Turkey

You may monitor for infringements through Customs, by filing a form based on registered trade marks, patents or industrial designs. This procedure is for monitoring both imported and exported goods.

There is not an official mechanism to monitor the internal market; right holders usually monitor their IP rights themselves or with the assistance of an investigation firm.

After detecting a possible infringement or piracy, you may initiate an infringement or unfair competition action in order to prohibit use and to request compensation.

Additionally, unfair competition is a general concept that correlates to all IP rights. As a general rule, any commercial/industrial practice carried out contrary to fair/honest acts constitutes an act of unfair competition. Therefore, for an infringement of a non-registered right in Turkey, the right owner may initiate a lawsuit before the courts based on unfair competition. Unfair competition can also be claimed as an additional argument in a lawsuit based on registered IP rights.

It is possible to file a civil or criminal action against an infringement. However, it is not possible to base a criminal action on a patent, utility model and industrial design right. A criminal action would need to be based on unfair competition, if the conditions and the evidence are sufficient.

Procedural Format and Timing of Court Procedures

A plaintiff initiates an action before the court by filing a writ of claims with a petition. After the action is filed, the assigned judge may seek to have an expert examination for the clarification of particularly technical matters.

Once the judge has given their decision, the parties who are adversely affected by the decision of the court have the opportunity to file an appeal before the Supreme Court.

If an appeal against the decision of the court of first instance is filed, the Supreme Court fixes a hearing date where both parties' attorneys have the opportunity to clarify the merits of their appeal. The Supreme Court then decides upon the appeal's approximate time period, usually between six months and one year. At the end, the Supreme Court may annul or uphold the court of first instance's decision.

The above procedure is followed for criminal proceedings, however unlike the civil procedure the complainant is not a party during the criminal action but involved in the procedure as an intervener. A criminal trial proceeding takes approximately two to three years, including the appeal proceeding.

Alternative Dispute Resolution

The Code on Mediation in Legal Disputes on Certain Aspects of Civil Matters entered into force on 7 June 2012. The Code is enforceable for non-criminal IP matters. According to the Code, both parties may decide to resolve the dispute before a registered mediator. Official Registry of Mediators can be reached on the website of Ministry of Justice. <http://www.adb.adalet.gov.tr>

Important Notice: A draft of a sole Industrial Property Code is currently in preparation stage before Turkish Grand National Assembly but there is currently no predicted enactment date.

Useful Contacts/Links for Businesses

- [Turkish Patent Institute](#) – Official IP Office of Turkey
- [Ministry of Culture and Tourism](#) – For Copyright Related issues in Turkey.
- [Middle East Technical University DNS working Group](#) – For .tr domain names
- [WIPO \(World Intellectual Property Organization\)](#)
- [EPO \(European Patent Office\)](#)
- [AIPPI Turkey \(Turkey Section of International Association for the Protection of Intellectual Property\)](#) – For the English translation of Group Reports click [here](#)
- [ICC Turkey](#)



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