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Intellectual property rights in Turkey





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Intellectual property rights

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

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

IP rights in Turkey are divided into two categories: unregistered and registered rights. Unregistered rights arise automatically without fulfilling any procedures upon the creation whereas registered rights should be applied before the relevant authority to benefit from the protection. Registered intellectual property rights can be protected by *lex specialis*. According to the Turkish Law, protection is also possible by general provisions such as unfair competition.

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 an exclusive right. For example, if you have 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 industrial application. An invention is new, if it is not anticipated by the prior art.

The requirements for acquiring a utility model are less stringent than for patents. To be eligible for a patent the invention must involve an “inventive step”, which means it should not be obvious to a person skilled in the art. Inventive step criterion is 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 simpler and faster than for patents, and the application for utility models takes on average 12 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. Furthermore, distinctive sound, motion and colour marks can also be registered as a trade mark.

Industrial designs

You can protect the appearance of a product entirely or partially with design registration. It is stated in the law that the appearance is generated by various features such as line, colours, texture, shape, form and materials.

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.

Unregistered design right

Unregistered design protection is introduced in the new Industrial Property Law. To benefit from unregistered design protection, the designs must be new and have an individual character. The protection is for a period of 3 years from the date on which the design was first made available to the public.

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 and Trade mark Office (TURKPATENT).

Turkish Intellectual Property Law is based mainly on Industrial Property Law No. 6769 and Law on Intellectual and Artistic Works No. 5846 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 several 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 several 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 for protection of an invention in several 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 degree of 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 which could be recorded to the registry, such as words. These may be stylised, 3D 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. TURKPATENT also accepts sound, motion and colour 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 to conduct a trade mark search. This will help confirming whether 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 TURKPATENT (www.turkpatent.gov.tr). The form is in Turkish and if you are based in UK, you must use a trade mark attorney authorised in Turkey in order to act before TURKPATENT.

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

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 that they are a member of the Paris Convention. You must file the subsequent application within 6 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, TURKPATENT will check whether it complies with the formal requirements. If requirements are met, your application will then be examined. Your trade mark application may be refused based on 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 2 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 regarding fees at <http://www.turkpatent.gov.tr/TurkPatent/fees/informationDetail?id=101>.

Refusal and opposition

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

With the enactment of the new Industrial Property Law 6769, when you face with an opposition during the opposition period, you are entitled to request proof of use from the opponent if 5 years or more have elapsed from the registration date of opponent's trade mark. If the opponent does not provide such proof before the time limit expires, the Office will reject the opposition.

Cancellation

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

- Non-use action: TURKPATENT 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 a non-use action. Non-use actions must be initiated before the courts. However, by the acceptance of Industrial Property Law of 6769, it will be initiated before TURKPATENT starting from January 10, 2024.
- Cancellation action: Any third party which claims a prior right may initiate a cancellation action before the courts. After 5 years from the registration or use of the trade mark, the forfeiture of rights applies. However, if there is a claim based on bad faith, there will be no such term.

Copyright in Turkey

Copyright is a form of IP protection that protects written, dramatic, musical or artistic works. You do not need to file an application to gain this protection, it arises automatically upon the creation.

If the work bears the characteristic of its author, as well as carrying individuality and originality; it could be protected under copyright. It must also be fixed in some material form. 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 non-obligatory registration/time stamp on 3 ways:

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

Registration before 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 and sealed by a notary public. You need to submit your work content to the authorized notary and get a legalised approval seal which indicates date and time as well.

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 inventions 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, which means not anticipated by the prior art.
- involve an inventive step
- be capable of industrial application

Patents provide 20 years of protection.

Registration

You can file a national patent application for Turkey directly with TURKPATENT. Alternatively, you may file an international application using the Patent Cooperation Treaty (PCT) or European Patent Office, and designate 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 that you apply within 12 months from the first filing date.

If you file a national patent application, you will receive an official filing receipt within 2 months. With application or within 12 months of the application date, or priority date, you should file a search request 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.

Patent examination procedure

Once you have received the search report or acknowledgement from TURKPATENT that a previous search report has been accepted, you have 3 months to request examination before Office.

If the invention is found not patentable in all three examinations, the application will be rejected. In that case, you have the option to appeal to the Re-examination and Evaluation Department of TURKPATENT.

Opposition

Following the publication of the patent grant decision, third parties will have 6 months' time to file an opposition against the granted patent. These oppositions will be evaluated by Re-examination and Evaluation Department of TURKPATENT and it is possible to invalidate a patent in the absence of the patentability criteria.

Annuities

You should pay annuity fees every year to maintain the application, starting from the third year of the application or international filing date.

Utility model protection

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

When you file a national application, TURKPATENT checks whether it meets their formalities and issues an official filing receipt. With application or within 12 months from the application date, or priority date, you should file a search request 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. The search report will be published in the bulletin. You may file an opposition to the conducted search report and also third parties have opportunity to notify a review to the search report. These oppositions and reviews will be evaluated by Re-examination and Evaluation Department of TURKPATENT.

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 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

Registered designs are protected by Industrial Property Law. Protection by registration can be achieved if your design is new and has individual character.

A design is deemed new providing that 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. A novelty search will also be carried out in addition to formal examination.

Unregistered design protection is also introduced in Industrial Property Law. To benefit from unregistered design protection, the design must be new and have an individual character. The protection is for a period of 3 years from the date on which the design was first made available to the public.

You may also protect your designs by means of Unfair Competition Law, Copyright Law and Trade mark Registration.

Registration

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

- formal examination
- registration
- novelty search
- publication
- opposition
- certification

Since TURKPATENT performs a novelty search, we recommend you to request a design search service from your attorney before filing the application.

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. Additionally, publication can be delayed for 30 months from the application date.

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

Examination

TURKPATENT shall refuse a design application in the absence of an application form, drawings, written description and application fee. TURKPATENT also may reject the application due to lack of novelty after performing novelty search.

If TURKPATENT concludes that there are no deficiencies, the application's filing date is recorded 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 TURKPATENT within 3 months of the publication date. Oppositions must fulfil the requirements specified 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 REED examines the submitted opposition documents, in order to verify the right holder or evaluate if the novelty and individual character criterion are met or not. If an opposition is made within 3 months or any opposition is refused, the certificate of design registration is forwarded to the applicant. Where the opposition period of 3 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 Industrial Property Law;
- 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 following 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 terms of rules of procedures, principle of “Freedom of contract” is valid regarding the Turkish Law of Obligations. Therefore, there is no particular procedure as a condition for validity for such agreements/terms.

In terms of content, main rule is to be consistent with the purpose of the agreement and to keep the balance of interest among the conditions 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

An infringement action before the Court is initiated by filing the writ of claims of the plaintiff with a petition. Once notified, the defendant should submit his/her responses within two weeks. It is also possible to request an extension of time if an additional time is needed to prepare the responses. It is also possible to submit replication and rejoinder petitions within two weeks of the notification. After the submission of replication and rejoinder, exchange of petitions phase is concluded.

During the investigation phase, which is the second phase of trial, the court investigates the dispute in the light of parties' submissions. Court may also seek an expert examination for clarification of particularly technical matters. It is at the court's sole discretion to choose not to seek an expert examination for cases that can be adequately concluded using their own knowledge. However, a technical evaluation is deemed compulsory in most patent and design cases as the judges do not have any technical background, so an expert examination is a standard practice in patent/design cases.

Upon receiving the experts' reports, the court may grant its decision. Yet, there may be some cases where the reports of the experts are not considered to be sufficient for rendering the final decision in the light of the objections of both parties as well as in the sole discretion of the court. In this case, the court may request from the expert to issue supplementary report or request another expert to issue a report on the subject matter in question. The court necessarily seeks to obtain an expert report by which a decision can be built upon and a final decision may be granted.

On the last stage, the court holds an oral hearing and render its decision.

Industrial Property Code does not cover specific provision for discovery matters, therefore the general provisions apply. In accordance with the Turkish Civil Procedure Law, either upon the request of the parties or ex officio decision of the court, discovery may be decided where necessary. "Live testimony" is also possible in infringement actions by virtue of the Turkish Civil Procedure Law.

The parties who are adversely affected by the decision of the court have the right to file an appeal before the Regional Courts (İstinaf Mahkemeleri) and the regional Courts' decision can be appealed before the Court of Cassation (Yargıtay). If the Court of Cassation upholds the decision, parties have the right to further appeal to the Court of Cassation for the rectification of the decision. If the said appeal of rectification dismissed, the decision is final and cannot be appealed against further.

For trial level, it takes between 18 and 24 months to receive the decision of the first-instance court.

As for the notification of the court decision, the parties have the right to appeal the decision before second instance courts namely, Regional Courts (İstinaf Mahkemeleri), within 2 weeks and it takes 4 to 8 months to receive the decision.

Court of Cassation is the third instance court, which the decision of second instance can be appealed. It takes 10 to 18 months to receive the decision. Moreover, it is possible to ask for the revision of the Court of Cassation's decision within 2 weeks and it takes approximately 6 to 8 months to receive a result in this matter.

As for the criminal proceedings, the complainant is not a party during the criminal action but involved in the procedure as an intervener unlike the civil lawsuit. A criminal trial proceeding takes approximately 2 to 3 years, including the appeal proceeding.

Alternative dispute resolution

The Code on Mediation in Legal Disputes on Certain Aspects of Civil Matters entered force on 7 June 2012. The mentioned Code is also enforceable for IP disputes. According to the mentioned Code, both parties may decide to resolve the dispute before a registered mediator.

In addition, it is also important to stress the other provisions in the Turkish legal system subject to “amicable settlements”:

- According to the Attorney’s Act, attorneys may invite the other party to conciliation before a court action has been filed or before hearings have commenced for an already filed action, provided that such conciliation pertains exclusively to matters that the parties may elicit of their own will. If the other party takes up the invitation and conciliation is reached, the subject of the conciliation, its place and date, and the actions that each party will carry out are laid out in a memorandum and signed jointly by the attorneys and the clients.
- According to the Civil Procedural Law, the judge is allowed to invite the parties to reach an amicable settlement if necessary.

Useful contacts/links for businesses

- Turkish Patent and Trademark Office (TURKPATENT) – Official IP Office of Turkey <http://www.turkpatent.gov.tr/turkpatent>
- Ministry of Culture and Tourism – For Copyright Related issues in Turkey <http://www.telifhaklari.gov.tr>
- Middle East Technical University DNS working Group – For .tr domain names <https://www.nic.tr>
- WIPO (World Intellectual Property Organization) <http://www.wipo.int/portal/en/index.html>
- EPO (European Patent Office) <http://www.epo.org>
- AIPPI Turkey (Turkey Section of International Association for the Protection of Intellectual Property) – For the English translation of Group Reports <http://www.aippiturkey.org/konu-sorulari-ve-yonergeler/>
- ICC Turkey <http://icc.tobb.org.tr>



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