

Intellectual Property in Turkey – Industrial & Intellectual Rights

1. What is Intellectual Property?

Intellectual property is a category of property that includes intangible creations of the human intellect. Though intellectual property has many types, they are recognized differently in various countries and legal systems. For the sake of argument, we can talk about a traditional distinction as Industrial Rights and Intellectual Property Rights.

Modern concept of intellectual property has been developed in England in the 17th and 18th centuries, though it was the late 20th century that intellectual property was accepted as one of the main areas of the world's legal systems.

2. What are the fundamentals of Intellectual Property in Turkey?

Turkey has a well functioning IP system with its modern legislation, administrative body, specialized IP courts, enforcement agencies and institutionalized attorney system. Turkey is,

- a member of WTO and fully aligned with TRIPs Agreement
- a member of WIPO and its 17 international treaties
- a member of EPO and party to EPC

Aligned with the EU equis at an advanced level well functioning with 23 IP courts and 1.000 active patent and trademark attorneys

3. What are the Intellectual Property Items Protected under Turkish Law?

In the scope of these three parts video series, we will talk about Industrial Rights and Intellectual Property Rights under Turkish law.

When we talk about Industrial Rights, we will be talking about

- Trade Marks
- Patent
- Utility Model
- Geographical Indication
- Traditional Specialty Guaranteed
- Designs
- Integrated Circuit Topography

When we talk about Intellectual Property Rights, we will be talking about Copyright

4. What is the Scope of Video Series?

In these two parts video, we will cover Industrial Rights and in our third video we will cover Intellectual Property Rights in Turkey.

5. How are Industrial Rights Regulated under Turkish law?

The Code of Industrial Property no 6769 which entered into force on 10th of January 2017 is the fundamental legal regulation in this field. This Code encompasses applications, registrations and post-registration processes regarding trademarks, geographical signs, design, patent, utility model and traditional product names and legal and criminal sanctions concerning the violation of these rights.

Before the enactment of this code, there were different legal regulations covering industrial rights which made it harder for practitioners and scholars as well as the judiciary branch to come up with organized solutions to complex problems and upcoming developments in this field. This code systematically regulated existing topics while bringing new solutions to arisen problems. Please note that older regulations are still applicable to an extent for applications that have been completed before the entry into force of this code.

6. What is the Regulating Body of Industrial Property Rights in Turkey?

Turkish Patent and Trademark Office "TÜRKPATENT" which was established in 1994, is the main regulatory body under Turkish law, authorized to register and undertake procedures for the protection of industrial rights in Turkey. It's responsibilities and capabilities have been broadened in time to include representing Turkey in international

organizations, promoting IP through the country. It's been accepted as an International Searching and International Preliminary Examining Authority before WIPO as of January 2018.

TÜRKPATENT has more than 500 employees with around 100 qualified patent examiners. It had 14.000 patent applications, 40.000 design applications and 110.000 trademark applications in 2015 which puts it among the first ten offices in the world.

7. Are There Specific Legal Bodies To Deal With Disputes Arising Out Of Or In Connection With Intellectual Property?

Yes; there are eighteen specialized Intellectual Property Courts in Ankara, İstanbul and İzmir. Ten of them function as civil courts and eight of them function as criminal courts. These courts function with their specialized judges and public prosecutors as well as their expert persons to submit technical reports on the cases.

The main responsibility of these courts is to solve the disputes arising from The Code of Industrial Property no 6769 between real and legal persons. Also, Ankara Intellectual Property Courts are specifically authorized to solve the disputes arising out of the decisions of Turkish Patent and Trademark Office. It is important to note that specific chambers of general courts throughout Turkey are also authorized to act as an International Property Court other than these cities.

We should also state that there are special IP units in the General Directorate of Security in eighty one Turkish cities, especially responsible for fighting against piracy.

8. Who are Eligible For Protection under The Code of Industrial Property no 6769?

We should state that,

- Citizens of Republic of Turkey,
- Natural or legal entities domiciled or engaged in industrial or commercial activities within the borders of Turkey,
- Persons who have the right of application according to the Paris Convention or Agreement Establishing the World Trade Organization,
- According to reciprocity principle, persons whose citizenships are in states that provide Turkish citizens the protection of industrial property rights

are under the protection of The Code of Industrial Property.

9. Do all Rights have to be Registered in order to be Protected?

One distinction of IP rights in Turkey are registered and unregistered rights. Registered rights should be applied before the relevant authority to benefit from the protection whereas unregistered rights arise automatically without fulfilling any procedures upon the creation. Registered intellectual property rights can be protected under general provisions, such as unfair competition.

10. How Trademarks are covered under Turkish Law?

Trademarks are regulated between the 4th and 32nd articles of The Code of Industrial Property. These provisions cover the eligibility conditions for a trademark application, grounds for refusal, scope of rights conferred by a trademark and its exceptions, use of trademarks in general and in reference works, priority rights and its effect, international trademark applications filed under the Madrid Protocol, examination of application, observations of third parties, oppositions and appeals, and examination of oppositions and appeals, registration, term of protection and renewal, licence, grounds for and effects of invalidation and revocation, acts considered as infringement and criminal provisions related to it, last but not least guarantee mark and collective mark.

11. What are the Fundamentals of Trademark under Turkish Law?

Product or services are eligible for trademark application. A trademark is a sign which distinguishes goods and services from the competitors. Trademarks can include names, designs, logos, letters, and numbers. Distinctive sound, motion and colour marks can also be registered as a trademark.

Although an unregistered trademark is protected up to a point, it is better to register it before TÜRKPATENT for a broader coverage. A trademark is protected for ten years; starting from the application date and this term may be renewed for ten years of periods upon expiry.

Applications are submitted to TÜRKPATENT locally by licensed trademark attorneys or over WIPO since Turkey is a member of Madrid Protocol. Please note that Nice Classification established by the Nice Agreement dated 1957 which is renewed every five years will be used during the application. There is no need to submit proof or declaration of use while applying.

Following the examination of the application, it will be published for opposition unless it is refused. The examination period generally does not take more than two to three months. If the application is refused, the applicant has the right to object it inside TÜRKPATENT's authorized Dispute Resolution Board. If the application is accepted or the refusal of TÜRKPATENT's own or the third parties are nullified by the Dispute Resolution Board, then it is registered. Please note that the decision of the Board, may also be subject to the IP court if applied by the concerning parties. Whole TÜRKPATENT procedure generally takes about 9-12 months to complete without opposition and 6 months more with opposition. It also takes about two years in the local IP court to come up with a verdict in the first stage, leaving aside the appeal phase.

12. How is an Invention Protected Under Turkish Law?

An invention is protected under Turkish Law in two main ways. First is the Patent, second is the Utility Model. The main distinction between them is the inventive step. If an invention is novel, which means, it is not anticipated by prior art; it involves an inventive step and it is capable of industrial application then it is eligible for patent protection. If the invention does not involve an inventive step then it is eligible for a simpler way, Utility Model. The protective results of these models carry differences such as duration. The protection period is 20 years for patents but 10 years for Utility Models.

13. How is Patent covered under Turkish Law?

Patent is regulated between the 82nd and 141th articles of The Code of Industrial Property. These provisions cover the patentable inventions and exceptions to patentability, novelty, inventive step, applicability to industry, statements which do not affect on the invention to be granted a patent or a utility model, scope and limits of patents right, application, granting the patent and objection, duration of protection and annual fees, transactions regarding patent process, right of ownership and disseisor, employee inventions, supplementary and confidential patent and license.

14. What are the Fundamentals of Patent under Turkish Law?

First it is important to note that a patent should be registered to be eligible for legal protection. Application for registration can be filed directly over TÜRKPATENT via licensed patent attorneys as for trademark applications or using the Patent Cooperation Treaty or European Patent Office and designate Turkey. Turkey is a member of the Paris Convention; so it is possible to use the first filing date of an existing patent application, as the effective filing date of Turkey, on the condition that application in twelve months.

A patent application is similar to trademark application in whole. After the application to TÜRKPATENT and preliminary review, the applicant is replied in two months for the eligibility of the application. If the application is deemed in compliance with the legal requirements, then comes the search request, preparation of search report and publication phases. The applicant is obliged to apply to TÜRKPATENT in twelve months and pay the required costs for a search request on the state of the art; this is also known as a prior art search. Failing to do so will cause the application to be deemed withdrawn.

Following the completion of the search report, it is published on the official Bulletin. At this stage the applicant is obliged to apply for the examination request in three months by paying the fees. If the examination report states that the application and the related invention is in conformity with the legal requirements, then the patent is granted and published on the Bulletin. Note that the applicant will have three total chances to fix the deficiencies during this stage.

We should note that, there are similar steps for the applicant and the third parties to object to the decisions of both TÜRKPATENT in it's Dispute Resolution Board and in IP Court against this decision later on.

As a common provision for both Patents and Utility Models, there is no renewal period and a specific fee should be paid every year to TÜRKPATENT for twenty years for the patent and ten years for the Utility Model for validation and protection in this period. Failing to do so in accordance with normal and legally accepted periods shall result in losing all rights pertaining to the patent and the utility model.

These were the main points concerning intellectual property, trademarks, patent and utility model in Turkey. Now let's move to our next video where we will be talking about geographical signs, designs, traditional product names and integrated circuit topography.