

How are Geographical Indication and Traditional Speciality Guaranteed Rights Covered under Turkish Law?

Geographical Indication and Traditional Speciality Guaranteed Rights are regulated between the 33rd and 54th articles of The Code of Industrial Property. These provisions cover the products within the scope of protection, appellation of origin, designation of origin, and traditional speciality guaranteed, names that shall not be registered, right of application, application conditions, examination and the publication of the application, applications originating from foreign countries, objection and examination, registration and amendment requests, scope of right, use and control, relation with trademarks, control of use, termination of right, invalidity, infringement of right and its consequences.

What are the fundamentals of Geographical Indication and Traditional Speciality Guaranteed Rights are Covered under Turkish Law?

Food, agricultural, mining, handicraft and industrial products resulting from unification of natural and human factors, which comply with the provisions in the code no 6769, shall be entitled to geographical indication or traditional speciality guaranteed protection provided that they are registered.

In this context, geographical indication is the sign indicating a product that has become associated with a locality, area, region or country where it originates due to an apparent characteristic, its reputation or other features. They are registered as appellation of origin or designation of origin.

Producer groups, Public institutions and professional organizations, associations, foundations and cooperatives operating for public interest in relation to the product and the relevant producer in case the product is produced only by a single producer, have the right for application for registration.

The Office shall examine the application and that which is found eligible under Article 38 shall be published in the Bulletin else it will be rejected. The applicant may reject this decision in two months and third persons in three months. If an application is not rejected by any party; or rejected and this rejection is dismissed by the Board, then it is registered upon the payment of the registration fee.

Registrant of the geographical indication may demand the prevention of third parties' commercial or misleading, deceptive use or the imitation of the geographical indication or the emblem, use of false or misleading explanation or indications about the origin and the natural or essential qualities of the product. Kindly note that registered geographical indication shall not confer any exclusive rights to the registrant.

Registered geographical indications and traditional specialties guaranteed shall be used by those operating in the production or marketing of products that comply with the specifications provided in the registration. These persons shall inform the registrant concerning their production and marketing activities of the product subject to the geographical indication and the traditional specialty guaranteed.

We should note that, after the registration of the geographical indication, a trademark application filed to be used for the goods or services related to the geographical indication shall be refused, in case it has been registered, it may be invalidated through legal proceeding.

Third parties commercial use of a registered geographical sign in a way to exploit the reputation of it; any deceptive use, replicas or any associative use about the place of origin or the translation of the geographical sign; any use of false or misleading indication or description about the origin or the properties of the product shall be considered as infringement. The applicant is entitled to start legal procedures for a civil law case in this situation.

How are Designs and Products Covered under Turkish Law?

Design and products are regulated between the 55th and 81st articles of The Code of Industrial Property. These provisions cover the design right and its scope, novelty and individual character, disclosure, the scope of protection, rights arising from previous use, application requirements, classification and multiple application, priority right claim, examination, registration and publication, opposition to registration, term of protection and renewal, right ownership and disseize, employees' designs, license, termination of the right, infringement of design right and its consequences.

What are the fundamentals of Designs and Products under Turkish Law?

Design is the appearance of the whole or a part of a product resulting from the features of, the line, contour, colour, shape, material or texture of the product itself or its ornamentation. Product means any industrial or handicraft item, including parts intended to be assembled into a complex product, products like packaging, presentations of more than one object perceived together, graphic symbols and typographic typefaces, but excluding computer programs.

A design shall be protected as a registered design in case it is registered in accordance with the Code and a design shall be protected as non-registered design in case it is presented to the public for the first time in Turkey.

In principle, design is protected by the Code provided that it is new and has an individual character. Design owner may use his rights arising from this Code against designs which have no individual character compared to his own design.

A design shall confer on its holder the exclusive right to use it. Third parties without the consent of the design right holder cannot produce, put on the market, sell, import, use for commercial purposes or keep in stock for those purposes the product in which the design is incorporated or to which it is applied, or cannot make a recommendation for contract.

Upon application, Office examines compliance of the application with conditions specified in the Code and if no deficiency is determined and it is not rejected on other grounds, it is finalized and recorded in the registry as a registered design and published in the Bulletin. At this stage, the applicant may request the postponing of the publication for a period of thirty-months.

The applicant may raise an objection against the Office decisions for examination in two months from the date of notification and third persons in three months from the publication date against the registration. Oppositions are examined by the Board.

The term of protection of a registered designs covers a period of five-year as from the date of filing. This period may be prolonged in total up to twenty five years by means of renewing in five-year periods.

Design right belongs to the designer or his successors and may be transferred; it may also be subject to an exclusive or non-exclusive license agreement. Design right shall terminate if the duration of protection expires and registration shall not be renewed in time and if the right owner relinquishes his right.

Some acts shall be deemed as infringement of a design right as: a) to produce, put on the market, sell, offer for contracting, import, use for commercial purposes or stock for those purposes an identical or similar product without the consent of the right holder; b) to broaden the rights granted by the design owner through licensing or to transfer these rights to third parties without consent; c) to disseize the right of a design. The registrant is entitled to start legal procedures for a civil law case in this situation.

How is Integrated Circuit Topography Covered under Turkish Law?

Integrated Circuit Topographies are regulated by the Integrated Circuit Topography Protection Act, dated 22.04.2004, no 5147. This Act covers principles, rules and conditions for protection of registered integrated circuit topographies. Protection provided by this Act does not prevent right owners from benefiting from protection provided by other legal mechanisms.

This act covers beneficiaries of protection, subject, conditions and term of protection, right ownership, authorities of right owner and limitation of protection, conditions for application and registration, transfer, transfer by inheritance, pledge, seizure and license, conditions of nullity, expiry of rights and competent authorities, violations, provisional injunctions and time limitation, general conditions and termination of compulsory license, penalties and right of complaint.

What are the fundamentals of Integrated Circuit Topography under Turkish Law?

Integrated circuit is defined in the Act as a product in its intermediary or final form which is designed to fulfill an electronic function or other similar functions, has at least one active component and a part or all of the interconnections are combined in and/or on a part of material.

Integrated circuit topography is defined in the Act as the series of images fixed in any format, which demonstrate the three dimensional sequence of the layers constituting the integrated circuit and are prepared for production and the image of all or a part of the surface of the integrated circuit in any phase of production.

Protection provided by the Act is applicable for Turkish citizens, resident and operating on industrial or commercial basis within the borders of Turkey and those who are eligible to file applications within the scope of international treaties.

Original integrated circuit topographies are protected under a registration certificate. Protection is not applicable for the content, operating process, system or technique that the integrated circuit topography is based on or information fixed on the topography other than the topography.

The start of protection provided for the integrated circuit topography is the date when it is launched on the market or application for registration. The term of protection is ten years from the start date. Right of protection belongs to the respective designer or his/her legal successors. If it is designed by multiple persons, it is used jointly, unless otherwise agreed. Kindly note that the right of protection designed by officers, personnel and employees while serving their duties belongs to the employer.

The right owner has exclusive rights to prevent the inclusion of the protected integrated circuit topography to an integrated circuit or prevent the importation, sales or commercial reproduction which includes the protected integrated circuit topography. The registrant is entitled to start legal procedures for civil and criminal law cases in case of infringement against third parties.

The Office is authorized for registration of integrated circuit topographies. Upon application, Office examines compliance of the application with conditions specified in the Act and if no deficiency is determined and it is not rejected on other grounds, it is finalized and recorded in the registry without examining accuracy of information and published in the Bulletin.

Right of protection may be transferred; and may also be subject to an exclusive or non-exclusive license agreement. The integrated circuit topography protection right shall expire upon expiration of the protection period or waiver of the integrated circuit topography right owner from the respective right.

We should note that, both the applicant and the third parties have the right to object to the decisions TÜRKPATENT in IP Court later on.