

Turkey takes off

News that Turkey's government and UK company Rolls-Royce are building a new manufacturing centre raises important questions over IP ownership, says **Selin Sinem Erciyas** and **Alkım Akan**



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The Tenth Development Plan of Turkey, which spans the period between 2014 and 2018, emphasises the necessity to enhance the country's accreditation and standard-setting capacity at international levels. This is to provide effective and sustainable use of research infrastructures through diversification, as well as a desire to foster greater cooperation between the public and private sectors.

According to this development plan, measures should be taken to establish platforms to facilitate and encourage greater public and private sector cooperation, especially in the R&D of priority technology areas such as life sciences, materials science, aviation and space, defence and nanotechnology.

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One of the indications was the increased speed of R&D in the aeronautical industry and the new agreement signed between the Turkish Patent Institute (TPI) and the University of Turkish Aeronautical Association (UTAA). As per this agreement, the TPI will open a patent office within the UTAA in Ankara to ensure effective cooperation over industrial property rights.

Moreover, a cooperation agreement was recently signed between the Technological Research Council of Turkey (TUBITAK) and Rolls-Royce to build the first Advanced Manufacturing Technology Centre (AMTC), which is to be a centre of excellence, in Turkey.

The aim of this centre of excellence is to develop industrial skills and abilities that will form the bases of national projects in Turkey carried out with the backing of the Ministry of Science, Industry and Technology. It is expected that the AMTC, as a centre of excellence that will function in the form of a private-public partnership, will increase the manufacturing and implementation capabilities of technologies concerning primarily the aeronautical sector, although it is also expected to include more areas such as civil nuclear, marine and other industrial sectors over time.

New R&D relationship

It is anticipated that the work carried out in the centre will make critical contributions to the manufacturing of new technologies and that the resultant technologies will go into production in both Turkey and UK. Turkey and the UK have begun working closely together, particularly in the fields of science and technology with the announcement of the year 2015 as UK-Turkey Year of Science and Innovation. Through the Newton-Katip Çelebi Fund in particular there has been a serious

increase in diplomatic relations between Turkey and the UK in the field of science and technology.

It is both desired and hoped that this initiative launched by Rolls-Royce for building a centre of excellence and conducting R&D activities in Turkey is to be followed by further international companies in the UK and for the collaboration of Turkey and the UK in this field to increase.

As the agreement signed between TUBITAK and Rolls-Royce is not publicly available, it is not clear how the IP rights are ruled. However, during searches for the most advantageous cooperation partner, the first procurement official stated that "Turkey wants a final product with all the technology-related licences belonging to the Turkish government".

Who owns the IP?

Although the right holder of IP rights born due to the work of the technology centres is not ruled by law and depends on the agreement between parties, a couple of general rules on right holder should be taken in to account.

Section 3, Part 1 of the Decree Law numbered 551 Pertaining to the Protection of Patent Rights (decree law 551) governs employees' inventions, and rules that an invention made by an employee during the term of their employment and as per their obligations in a private enterprise or a public authority or that depends, to a large extent, on the experience and the activity of the private enterprise or public authority, shall be classified as a service invention. As per the decree law 551, the employee is under an obligation to notify the employer in writing and without delay about the service invention. The employer can then claim rights on the service invention in full or in part. If the employer claims full rights on the service invention, all rights on the invention shall be transferred to them.

By definition, the work of technology centres, which focus on developing and implementing new technologies, requires the employees of those centres to devise inventions. Under Turkish patent law, unless otherwise agreed by the parties the technology centre shall have the right to demand the transfer of all rights on a service invention made by its employees to itself, making it the sole right holder of the rights on the invention.

A special situation exists for the development of computer programs and software, which is closely related to technology application development in technology centres. Contrary to the systems adopted in the US, Canada and Japan, under Turkish law computer software is not protected as an invention under the decree law 551 but rather protected as a literary and scientific work under law number 5846, which relates to intellectual and artistic works (LIAW). Indeed, Article 6/c of the decree law 551 expressly excludes computer software from the scope of the decree on the basis that it is "not [an] invention as of [its] nature". On the other hand, it is widely accepted that systems with technical functions that incorporate computer software (computer-implemented inventions) can be conferred patent protection under the decree law 551.

The rules concerning right ownership under LIAW differ from those regulated under the decree law 551. As per Article 8 of LIAW, the creator of the work is the owner of the work and, accordingly, is the sole owner of all moral and financial rights on the work. By definition, moral rights on the work are non-transferable. As for financial rights, Article 18 of LIAW states that "unless otherwise is understood from the parties' agreement or the nature of the work, rights on the works created by officials and employees during the course of their duties shall be exercised by their commissioners". Since the said article mentions merely the use of the financial rights on the work, in case the work is created during the course of the employee's duties, only the use of the employee's rights will be transferred to the employer, whereas the ownership of the rights remain with him/her. This raises a different

scenario than that envisaged for the service inventions under the decree law 551, where all rights on the service invention are transferred to the employer in case it claims full rights.

Since the sole right holder of the service invention will be the employer in case it claims full rights on the invention, the employer, by rule, will have the right and will be under the obligation to file a patent application for the invention.

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Patent applications

In terms of patent applications that are filed before TPI, the routine route is an 18-month publication term as of date of application and collecting of third-party opinions on the patentability and then start of the examination on the patentability phase. The TPI cooperates with patent offices in Denmark, Sweden, Austria and Russia for patentability examinations as it is not capable of conducting these examinations in-house. In this respect, applications are sent to one of these patent

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offices as per the choice of the applicant and the decision of the TPI depends on the outcome of the examination report of one of these patent offices.

On the other hand, there is a high possibility for the Turkish government to deem the inventions made during the work in AMTC, like developing fighter jet motors, as an issue related to Turkey’s national security and demand either that a patent application is not filed at all to keep it secret or that a secret patent is put on it. The secret patent issue is outlined in section 8, part 2 of the decree law 551.

Under the terms of a secret patent, the content of a patent application would be kept secret for a period of two months from the date of filing the application. However, the TPI may extend the time period during which the patent application is kept under secrecy to up to five months from the date of filing of the application if it considers that the invention - the subject matter of the application - is of importance for national defence.

Military presence

The TPI and the Ministry of National Defence shall cooperate and shall determine whether the invention is of importance to national defence. The Ministry of National Defence has the authority to examine, beforehand, all patent applications under the condition that it respects the obligation to secrecy.

When national defence interests are in question, the Ministry of National Defence, by request made before the expiry of the five-month period, may request of the TPI that the patent application be prosecuted under secrecy and for the applicant be kept informed.

The Ministry of National Defence, upon the request of the applicant or the patentee, may allow the subject matter of the patent application or of the patent to be used, in part or in whole, within the conditions to be laid down by the Ministry of National Defence.

Furthermore, if an invention is made in Turkey and it is a secret invention as per the decree law 551, the invention cannot be subjected to a patent application in any foreign country without the permission of the TPI. Permission to file a patent application in any foreign country cannot be given without the specific authorisation of the Ministry of National Defence.

Apparently the IP rights on the developments made in AMTC will be ruled as per the agreement between TUBITAK and Rolls-Royce and the parties will determine the frame of IP rights.

However, considering Turkey’s aim to be one of the top aerospace and defence nations by 2023, as well as its policy for development, we expect this centre to play a big role in bridging the gap between academia and industry and to bring great economic value as it will focus on key success factors of supplier capability development across our industry, including training and skills development, and technology innovation.



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