

# Intellectual Property Rights in Turkey: Overview

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## PATENTS

### Requirements to Obtain a Patent

#### 1. Provide a brief definition of a patent, the key legal requirements to obtain it and the law that applies.

A patent is an industrial property right that gives the patent owner the right to prevent third parties from certain activities such as producing, using, selling, or importing the product or process that is the subject of the invention for a 20-year period.

The applicant must prove the following to obtain a patent:

- Novelty.
- Inventive step.
- Industrial application.

(Article 82/1, Intellectual Property Law no. 6769 (IP Law).

The following are not considered inventions and therefore cannot be patented:

- Discoveries, scientific theories, and mathematical methods.
- Plans, methods, and rules in relation to mental acts, business, and game activities.
- Computer programs.
- Literary and artistic works, scientific works, and creations with an aesthetic characteristic.
- Delivery of information.

(Article 82/2, IP Law.)

The following are inventions but cannot be protected by a patent:

- Inventions violating public order or morality.
- Methods of treatment, including diagnosis and surgical methods practised on the human or animal body.
- Plant and animal varieties or species or biological processes for producing or breeding plants and animals (except microbiological processes or products of them).
- A simple discovery of an element of the human body, including a gene sequence.
- Human cloning processes, the use of human embryos for industrial or commercial purposes, and certain processes to modify the human genetic code.

Turkey is party to almost all international IP treaties (see *Question 52*). At national level, the main sources of patent law are the:

- IP Law.
- Regulation on the Implementation of the IP Law.

- Regulation on Employee Inventions, Inventions Realised in Higher Education Institutions, and Inventions Realised as a Result of Publicly Funded Projects.
- Regulation on the Implementation of the European Patent Convention Regarding the Grant of European Patents in Turkey.

The above legislation applies to all patents in Turkey, including pharmaceutical patents and software patents.

### Registering a Patent

#### 2. Which authority registers patents? Briefly outline the key stages and timing in obtaining a patent.

### Patent Registration Authority

Patent applications are examined and granted by the *Turkish Patent and Trademark Office (TPTO)*. Its website provides guidance on the *application requirements and procedure*.

The documents and/or information required for a patent application are as follows:

- Application form.
- Description explaining the subject of the invention.
- Claim or claims covering technical features of the invention claimed to be novel.
- Technical drawings referred to in the specification, claim, or claims.
- Abstract.
- Document showing that the application fee has been paid.

### Process and Timing

When all the minimum requirements are submitted to the TPTO, a patent application filing date is allocated and the application is processed. All other required documents can be completed within two months from the application filing date. The minimum requirements to allocate a filing date are as follows:

- Request to grant a patent.
- Identity and contact information of the applicant.
- A description written in Turkish or in one of the specified foreign languages or a reference to a previous application.

Details of patent application fees are available on the *TPTO website*.

Foreign priority for patent applications is recognised in Turkey.

After the patent application is filed, it is examined by the TPTO in terms of the formal requirements. If there is no deficiency in the application, the TPTO prepares a search report on the applicant's request by paying the required fee.

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To prepare a search report, the TPTO carries out a detailed search on the patent application in terms of novelty, inventive step, and industrial applicability. The TPTO examines patent/non-patent technical literature around the world and evaluates documents closest to the invention made available before the application date.

During the examination phase, the TPTO examines whether the patent application is suitable for registration according to the IP Law. If the patent application does not comply with the IP Law, the applicant is notified to make changes to the application, provided that these changes do not exceed the scope of the application. Such notifications are repeated if necessary up to three times.

If no early publication request is made with the application, the patent application is published in the Patent Bulletin at the end of 18 months following the application date. All Official Bulletins are published on the *TPTO website*.

Third parties can oppose a patent before the TPTO within six months of publication of the patent grant decision in the Patent Bulletin (post grant opposition procedure). The grounds of opposition are as follows:

- The object of the patent does not fulfil the patentability conditions.
- The invention has not been sufficiently disclosed.
- The object of the patent exceeds the scope of the application.

A patent registration process including the above stages typically takes about two to three years.

### Patent Search and Information Facilities

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#### 3. What official facilities are available to conduct searches and obtain information on patents?

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There are TPTO portals for patent:

- *Searches.*
- *File tracking.*
- *Advanced searches.*

### Enforceable Patent Protection Term

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#### 4. When does patent protection start and how long does it last?

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Patent protection starts from the application filing date, subject to payment of maintenance fees. The term of protection is 20 years.

The term of patent protection cannot be extended.

Supplementary protection certificates (SPCs) or equivalent are not available in Turkey for patents protecting pharmaceutical and agricultural products.

### Maintaining Patents

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#### 5. What steps must a patent owner take to maintain the registration and legally protectable status of its patents?

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To maintain patent protection, annual fees must be paid to the TPTO, starting at the end of the second year from the application filing date.

Details of maintenance fees are available on the *TPTO website*.

Annual fees not paid by the due date can be paid within six months following the due date, with an additional fee. If not, the patent will

expire. Under the IP Law, the patent can be restored by paying a fee within two months following notification by the TPTO to the applicant that the patent has expired.

The patent owner or person authorised by the owner must use the invention protected by the patent. Otherwise, the patent may be subject to a compulsory licence under the IP Law. A declaration of use should be filed with the TPTO within the three-year period from publication of the decision to grant the patent in the Patent Bulletin or four years from the date of the patent application, whichever is later.

### Patent Infringement

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#### 6. What rights does a patent give to its owner? On what grounds can a patent infringement action be brought? What are the main defences to a patent infringement action?

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### Rights Granted by a Patent

The patent owner has the following rights:

- Preventing and removing consequences of patent infringing acts (see below, *Grounds for Patent Infringement*) (Article 141, IP Law).
- Preventing third parties from supplying a person not entitled to perform/execute the patented invention with means or tools that make it possible to perform or execute the patented invention, if they relate to an essential element of that invention (Article 86, IP Law).
- Licensing its patent rights to third parties.

### Grounds for Patent Infringement

Any of the following acts listed in Article 141 of the IP Law are grounds for bringing a patent infringement action:

- Imitating a patented product by manufacturing it fully or in part without the patent owner's permission.
- Selling, distributing, or trading in any other way products manufactured in violation of ownership rights, or importing, keeping for sale, or using such products or suggesting a contract about such products, with knowledge that the products are complete or partial imitations or while in a position to know they are such imitations.
- Using an invented method without the patent owner's permission or selling, distributing, or trading in any other way products manufactured with a direct use of the invented method without permission, or importing, keeping for sale, or using or suggesting a contract about such products with knowledge that they were manufactured with the invented method without permission or while in a position to know they were manufactured in this way.
- Registering the patent right on behalf of an unauthorised person.
- Extending contractual or compulsory licensing rights or transferring such rights to third parties.

### Defences to a Patent Infringement Action

The most common defences to patent infringement actions include:

- Invalidity of the patent.
- The product or process does not fall within the scope of the patent, for example, that another process has been used in the manufacture of the patented product or another formulation or technical system has been used.
- The patent owner's right has expired.

- Prior user's right.
- "Bolar" exemption (Article 85/3(c), IP Law). This is the most frequent defence in pharmaceutical patent infringement claims. Experimental activities, including involving an invention subject to a patent, pharmaceutical licensing, and all necessary tests and experiments are outside the scope of the rights conferred by a patent.
- Experimental acts involving the patented invention (Article 85/3(b), IP Code).
- Exhaustion of patent rights. Release of a product bearing an IPR anywhere in the world is sufficient for exhaustion of the IPR in Turkey (Article 152, IP Law).
- Farmer's privilege defence (Article 85, IP Law).
- Prosecution history estoppel if the patent owner invokes the doctrine of equivalents (Article 89/6, IP Law).

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## 7. Which courts have jurisdiction over patent infringement actions? Is there a fast-track and/or a small-claims procedure?

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Patent infringement actions are dealt with by specialised IP courts in Istanbul, Ankara, and Izmir. In other cities, the third chamber of the civil courts of first instance (or the first chamber, if there are fewer than three chambers) deals with IP infringement actions.

There is no small-claims procedure for patent infringement actions.

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## 8. What are the remedies in patent infringement actions?

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The following remedies can be obtained in a patent infringement action:

- Prevention of infringing acts, including the manufacturing, sale, import, and export of the infringing products.
- Removal and destruction of infringing materials.
- Claim for pecuniary and non-pecuniary damages (in case of intentional infringement).
- Publication of the court's decision.
- Precautionary injunction if the court agrees that the matter is urgent.
- Preliminary injunction, for a party filing or intending to file an infringement action under Article 141 of the IP Law, if there is evidence of use or intention to use the patent which would infringe the claimant's right. A request for a preliminary injunction can be filed before, after, or at the same time as the main action and is examined on an urgent basis and separately from the infringement proceedings.
- A permanent injunction is not generally available. A permanent injunction may be the outcome of an infringement action where the court acknowledges that the defendant's acts are infringing and decides to stop them entirely.

### Monitoring Patent Infringement

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## 9. What steps can a party take to monitor whether another party is infringing its patents?

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Freedom of information requests can be filed with the relevant administrative authority to monitor developments about potentially infringing products.

The websites and databases of administrative authorities may include developments on potentially infringing products and can be monitored.

Another option is to file customs applications to monitor the import or export of products that may infringe patent rights.

### Patent Revocation

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## 10. On what grounds can third parties challenge a patent through invalidation, cancellation, or revocation proceedings?

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A patent can be declared invalid by a court on any of the following grounds:

- The invention does not meet the patentability requirements.
- The invention has not been described in a sufficiently explicit and comprehensive manner to enable a person skilled in the technical field to implement it.
- The patent exceeds the scope of the application or is based on a divisional application and exceeds its scope.
- The patent holder does not have the right to the patent.
- The patent exceeds the scope of its protection.

(Article 138, IP Law.)

The validity of a patent can only be challenged before an IP court or the civil courts (if there is no IP court in the jurisdiction) (see *Question 7*). A patent can only be invalidated by a court decision.

### UTILITY MODELS

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## 11. Is utility model protection available in your jurisdiction?

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### Legal Conditions for Utility Model Protection

Utility models are protected in Turkey as industrial property rights under the IP Law.

To obtain a utility model, the applicant must prove novelty and industrial application.

### Registration Authority

Utility model applications are examined and granted by the TPTO. Its *website* provides guidance and its official YouTube channel (accessible from the official website) provides visual guidance.

The documents and information required for a utility model application are similar to those for patents (see *Question 2*).

### Process and Timing

A utility model application in Turkey goes through the following stages during registration, which takes about one to two years:

- Details of utility model application fees are available on the *TPTO website*.
- Foreign priority is recognised for utility model applications in Turkey.

After the utility model application is filed, it is examined by the TPTO in terms of the formal requirements. If there is no deficiency in the application, the TPTO prepares a search report on the applicant's request.

To prepare a search report, the TPTO carries out a detailed search on the utility model application in terms of novelty and industrial applicability. The TPTO examines all patent/non-patent technical literature around the world and evaluates documents closest to the

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invention made before the application date. However, there is no substantive examination for utility models.

If no early publication request is made with the application, the utility model application is published in the Official Bulletin at the end of 18 months following the application date.

Third parties cannot oppose a utility model application (Article 143/11, IP Law). However, third parties can file statements against the content of the search report within three months from publication of the search report in the Official Bulletin.

### Utility Model Search and Information Facilities

See *Question 3*.

### Enforceable Utility Model Protection Term

Utility model protection starts from the application date. The term of protection is ten years.

### Maintaining Utility Models

To maintain utility model protection, annual fees must be paid to the TPTO, starting at the end of the second year from the application filing date.

Details of utility model maintenance fees are available on the *TPTO website*.

Annual fees not paid by the due date can be paid within six months following the due date, with an additional fee. If not, the utility model will expire. Under the IP Law, the utility model can be restored by paying a fee within two months following notification by the TPTO to the applicant that the utility model has expired.

The utility model owner or person authorised by the owner must use the invention protected by the utility model. Otherwise, the utility model may be subject to a compulsory licence under the IP Law. A declaration of use should be filed with the TPTO within the three-year period from publication of the decision to grant the utility model in the Official Bulletin or four years from the date of the utility model application, whichever is later.

### Utility Model Infringement

The same principles apply as for patents (see *Question 6*, *Question 7*, and *Question 8*).

### Monitoring Utility Model Infringement

The same principles apply as for patents (see *Question 9*).

## TRADE MARKS

### Legal Requirements to Obtain a Trade Mark

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#### 12. Provide a brief definition of a trade mark, the key legal requirements to obtain it and the law that applies.

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A trade mark is a sign capable of distinguishing the goods or services of one undertaking from those of other undertakings and of being represented on the register in a manner to determine the clear and precise subject matter of the protection afforded to its proprietor (Article 4, IP Law).

A trade mark can be letters, words, numbers, figures, colours, sounds, and the shape of goods or their packaging.

Trade marks are regulated under the IP Law.

### Unregistered Trade Marks

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#### 13. Is there protection for unregistered trade marks?

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In Turkey, it is generally necessary and highly advisable to register trade marks, since the substantial protection provided under the IP Law is in principle gained by registration. For instance, trade mark

infringement can only be claimed by an owner of a valid trade mark registration. In case of infringement, unregistered trade marks are mostly protected under unfair competition provisions instead of the IP Law.

If a right to an unregistered trade mark or to another sign used in the course of trade is acquired before the date of application or priority claimed for an application to register a trade mark, the trade mark application will be refused upon opposition of the proprietor of that prior sign (Article 6(3), IP Law).

The IP Law does provide an exception to the registration requirement for prior and "genuine" ownership of unregistered trade marks and unregistered well-known marks within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property 1883 (Paris Convention).

However, "genuine" ownership is debatable, and the latest Court of Cassation precedents do not recognise genuine right ownership if it is not obtained in Turkey. The TPTO/IP Courts require a lot of evidence to support a genuine ownership claim and well-known status claim under the Paris Convention. Further, the genuine ownership and well-known status exceptions mainly apply in cancellation or opposition proceedings. They help to prevent or annul registration of an identical or similar mark but are not grounds for a trade mark infringement claim.

### Registering a Trade Mark

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#### 14. Which authority registers trade marks? Briefly outline the key stages and timing to obtain a registered trade mark.

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### Trade Mark Registration Authority

Trade marks are registered by the TPTO. Its website provides guidance on the *application procedure*.

### Process and Timing

In Turkey, trade mark protection can be applied for by a direct application to the TPTO and an international application through the *Madrid System*. Foreign priority for trade mark applications is recognised.

The TPTO provides search reports on request.

When a trade mark application is filed with the TPTO, the TPTO carries out a procedural examination for absolute grounds for refusal (see *Question 16*) and formal requirements. If there is no deficiency or absolute ground for refusal, it publishes the application in the Official Bulletin. Third parties can oppose the application during the two months from the publication date.

If an opposition is filed, the TPTO examines the opposition. The applicant or the opponent can appeal against the TPTO's decision on the opposition within two months of notification of the decision. Appeals are assessed by the Higher Board of the TPTO. For these procedures, an online system called *EPATS* is used.

Details of trade mark application fees are available on the *TPTO website*.

### Trade Mark Search and Information Facilities

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#### 15. What official facilities are available to conduct searches and obtain information on trade marks?

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*TURKSMD*, an affiliated company of the TPTO, conducts a clearance search in the online database for possible obstacles to a trade mark registration.

Trade mark applicants can also conduct their own research in the online database on the *TPTO website*.



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## 16. On what grounds can the authority refuse to register a trade mark? On what grounds can third parties challenge a trade mark application?

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### Grounds for an Authority Refusing to Register a Trade Mark

TPTO can reject a trade mark application on absolute grounds after an ex-officio examination (Article 5, IP Law) and relative grounds if raised by third parties as an opposition ground (Article 6, IP Law). The absolute grounds for refusal are:

- Non-compliance with the legal requirements of the IP Law (see *Question 12*).
- An identical or indistinguishably similar earlier trade mark or trade mark application, for the same or same type of goods or services (this can be overcome by submitting a notarised letter of consent from the owner of the senior trade mark).
- Descriptiveness (indicating the kind, type, characteristics, quality, quantity, intended purpose, value, geographical origin, and so on).
- The mark has become customary in current and established trade practices.
- The mark consists of a shape resulting from the nature of the goods or is necessary to obtain a technical result or which gives substantial value to the goods.
- Deceptiveness.
- No authorisation from the relevant authorities to use the mark.
- The mark involves armorial bearings, emblems, or hallmarks with historical and cultural value that are of public concern, the registration of which is not authorised by the relevant authorities.
- The mark involves religious values or symbols.
- The mark is contrary to public policy and public morals.
- The mark is composed of or contains a registered geographical indication.

### Third Party Grounds for Challenging a Trade Mark Application before Registration

Third parties can oppose an application for registration of a trade mark based on absolute grounds (if the TPTO has missed these) and relative grounds for refusal. The relative grounds for refusal are:

- The application is identical or similar to an earlier trade mark registration or application for identical or similar goods or services, and there is a likelihood of confusion among the relevant consumers including a likelihood of association).
- Unauthorised application for an identical or indistinguishably similar trade mark by the agent or representative of the trade mark owner in their own name, without justification.
- Prior and genuine ownership by a third party of the mark applied for.
- A well-known mark under Article 6*bis* of the Paris Convention (the application is identical or similar to an unregistered well-known mark for identical or similar goods and services).
- An earlier trade mark registration or application well-known in Turkey and the later application would take unfair advantage of or be detrimental to the distinctive character or well-known status of the earlier trade mark.
- The application contains the name, trade name, photograph, copyright, or industrial property right of a third party.

- The application is identical or similar to a trade mark registration the protection period of which has ended due to non-renewal, for identical or similar goods/services, and the application is filed within two years of the end of the protection period of the earlier registration and the earlier registration is put to use within this two-year period.
- The application is filed in bad faith.

### Enforceable Trade Mark Protection Term

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## 17. When does trade mark protection start and how long does it last?

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The term of protection of a registered trade mark is ten years from the application filing date. It is renewable every ten years indefinitely on payment of renewal fees.

### Maintaining Trade Marks

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## 18. What steps must a trade mark registrant take to maintain the registration and legally protectable status of its trade marks?

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A trade mark registration is renewable every ten years indefinitely on payment of renewal fees.

A request for renewal must be made by the trade mark owner to the TPTO within six months before the expiry of the protection date, with details of payment of the renewal fee. If not, a renewal request can be made within six months after the expiry of the protection date, on payment of an additional fee. If the fee and the additional fee are still not paid in this six-month period, the trade mark registration will lapse.

To maintain the validity of a trade mark registration, the trade mark must be put to genuine use by the owner or an authorised third party. If within five years following the registration date the trade mark has not been put to genuine use in Turkey by the trade mark owner in connection with the goods or services for which it is registered, or if such use has been suspended for an uninterrupted period of five years, the trade mark will be revoked unless there are proper reasons for the non-use (Article 26, IP Law).

The TPTO does not investigate genuine use on its own motion. A request for revocation for non-use must be filed with a court. As of 2024, such revocation requests will be submitted to the TPTO.

The following are deemed as proper use of a registered trade mark:

- Use of the trade mark with different elements that do not alter the distinctive character of the mark.
- Use of the trade mark on goods or packaging solely for export purposes.

In addition, use of the trade mark with the consent of the trade mark owner is also deemed to constitute use by the trade mark owner.

### Trade Mark Violations

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## 19. What rights does a trade mark give to its owner? Identify and describe the available claims for trade mark violations? What are the main defences to trade mark actions?

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### Rights Granted by a Trade Mark

A trade mark owner can prevent the use of a sign without their consent that is any of the following, as set out in Article 7(2) of the IP Law:

- Identical to the trade mark for goods or services for which the trade mark is registered.
- Identical or similar to the registered trade mark for identical or similar goods or services and there is a likelihood of confusion among the public, including a likelihood of association between the sign and the trade mark.
- Identical or similar to the registered trade mark, where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark due to the reputation it has in Turkey.

If the sign is used in trade in accordance with the above acts, the following can also be prevented:

- Affixing the sign to the goods or their packaging.
- Putting the goods on the market, offering them as deliverable, or stocking them for these purposes under the sign, or offering or supplying services under the sign.
- Importing or exporting the goods under the sign.
- Using the sign on business papers and adverts of the undertaking.
- Using an identical or similar sign on internet media as a domain name, router code, key word, or in similar manner with a commercial impression, if the person using the sign has no right or legal affiliation to use that sign.
- Using the sign as a trade or company name.
- Using the sign in comparative advertising in a manner that is against the law.

As an exception, the trade mark owner cannot prevent honest use of a trade mark by a third party in trade if:

- Real persons indicate their own name or address.
- They indicate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of the goods or rendering of the service, or other characteristics of them. In certain situations, it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts or equivalent products.

### Grounds for and Elements of Trade Mark Infringement Claims

A trade mark infringement action can be brought on the following grounds without authorisation, as set out in Article 29(1) of the IP Law:

- Using a sign identical to a registered trade mark for identical goods or services for which the trade mark is registered.
- Using a sign identical or similar to a registered trade mark for identical or similar goods or services for which the trade mark is registered and which creates a likelihood of confusion.
- Using a sign identical or similar to a well-known registered trade mark for goods or services not covered by the trade mark, which would take unfair advantage of or be detrimental to the distinctive character or well-known status of the trade mark.
- Imitating a trade mark by using an identical or indistinguishably similar trade mark.
- Selling, distributing, or releasing onto the market products with an infringing trade mark and the party knows or should know that the trade mark is infringing, or importing, exporting, possessing for commercial purposes, or offering the products for sale.
- Expansion or assignment of the rights granted by the trade mark owner through licensing.

The claimant should show with reliable evidence that a third party is violating its registered trade mark, in the context of the above grounds.

If the defendant raises a non-use defence in the infringement proceedings, the claimant must prove its genuine use of the trade mark (see *Question 18*).

In addition to possible non-use, courts will evaluate whether the claimant has lost its right to sue due to long-term silence (see *Question 23*).

### Other Trade Mark Causes of Action

An infringement action can be brought against use of a sign identical or similar to a registered trade mark, irrespective of being for identical, similar, or different goods or services, where use of that sign without due cause takes unfair advantage of or is detrimental to the distinctive character or reputation of the trade mark due to its well-known status in Turkey. The claimant must prove that its trade mark has well-known status in Turkey. Remedies and defences in such cases are the same as for other trade mark infringement actions (see *Question 21*).

### Defences to Trade Mark Claims

Main defences to trade mark claims are:

- Non-use of the trade mark (see *Question 18*).
- Invalidity claim against the trade mark (see *Question 22*).
- The trade mark owner was aware of the use of the trade mark by the other party or co-existence of the trade marks for a long period of time. Where a trade mark owner has acquiesced in the use of a later trade mark for a period of five successive years while being aware or should have been aware of the situation, the trade mark owner cannot use their trade mark as an invalidation ground unless the registration of the later trade mark is in bad faith (Article 25/6, IP Law).
- Exhaustion of the trade mark owner's right.
- Fair use.
- Descriptive use.
- Private/non-commercial use.

## 20. Which courts have jurisdiction over trade mark infringement actions? Is there a fast-track and/or a small-claims procedure?

See *Question 7*.

Criminal actions are dealt with by criminal IP courts in Istanbul, Ankara, Izmir, and Antalya. In other cities, the third chamber of the criminal courts of first instance (or the first chamber, if there are fewer than three chambers) deals with criminal actions.

There is no fast-track procedure. However, a preliminary injunction allows a claimant to ensure the effectiveness of the final judgment (see *Question 21*).

## 21. What are the remedies in trade mark infringement actions?

The remedies in trade mark infringement actions are:

- Preliminary injunctions. The claimant must prove that the act that is the subject of the legal proceedings violates the trade mark in Turkey or serious and effective engagements are performed to that end. In practice, they are applied for at the

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beginning of an infringement action or can be requested ex parte even without bringing a court action.

- Prevention and prohibition of infringing acts.
- Compensation for material and moral damages (where the infringer is at fault and there is damage).
- Confiscation of infringing products and/or equipment (the trade mark right owner can also request ownership of the confiscated products and/or equipment).
- Removal and destruction of infringing products and/or equipment (if essential to stop the infringing acts).
- Publication of the court's decision.
- Criminal remedies.

If the infringer also holds a trade mark registration in violation of the claimant's earlier rights, it is possible to ask for the invalidity of such a registration.

### Challenging a Trade Mark After Registration

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#### 22. On what grounds can third parties challenge a registered trade mark through invalidation, cancellation, or revocation proceedings (after registration)?

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Third parties can challenge a registered trade mark through invalidation and revocation proceedings.

Invalidity of a registered trade mark can be requested if there are absolute or relative grounds for non-registration (Articles 5 and 6, IP Law) (see *Question 16*).

Revocation of a trade mark can be requested:

- If the trade mark is not put to genuine use by the proprietor or an authorised third party within five years following the date of registration, or if such use has been suspended for an uninterrupted period of five years.
- The trade mark becomes generic for the registered goods or services due to the owner's actions or the owner not taking necessary measures.
- The trade mark is misleading the public about the nature, quality, or geographic origin of the goods or services for which it is registered, due to use by the trade mark owner or with the trade mark owner's consent.
- If a guarantee mark or a collective mark is not properly used in accordance with the relevant laws.

### Monitoring Trade Mark Infringement

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#### 23. What steps can a trade mark owner take to monitor whether another party is infringing its trade mark rights?

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There is no official or specific method to monitor possible third-party infringements. Trade mark owners can subscribe to watch services or perform online and on-site investigations themselves or through their legal representatives.

Trade mark owners should take necessary measures to prevent infringing acts within a reasonable time, and preferably within five years of the date they become aware of such infringement, to avoid the defence of loss of right due to silence (see *Question 19*).

Under the IP Law, trade mark owners are not obliged to inform their licensees of third-party infringements unless they agree otherwise in their licences.

## COPYRIGHT

### Categories of Subject Matter Eligible for Copyright Protection

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#### 24. What categories of subject matter are eligible for copyright protection?

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A work is eligible for copyright protection if it is an intellectual or artistic work bearing a characteristic of its author and is a scientific and literary work, a musical work, a work of fine art, or a cinematographic work (Copyright Law).

### Legal Requirements to Obtain Copyright Protection

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#### 25. What are the legal requirements for a work to be protected by copyright?

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Copyright arises automatically on creation of an intellectual or artistic work bearing a characteristic of its author. The copyright protection period starts from the first communication of the work to the public.

### Copyright Registration

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#### 26. Can copyright be registered?

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Registration is not required to establish copyright in Turkey. Copyright registration is voluntary in Turkey.

Cinematographic and musical works must be registered to exploit rights and facilitate proof of ownership but not to create the rights. Copies for sale of a cinematographic, musical, and literary work (except for periodicals) must carry a label from the Ministry of Tourism and Culture to prove their authenticity.

The rules and procedures for recording and registration, fees, and other issues are set out in Regulation 26171 on the Recording and Registration of Intellectual and Artistic Works.

The registration authority is the *General Directorate of Copyright*, part of the Ministry of Culture and Tourism.

An application for registration must be made to the General Directorate of Copyright on an application form with relevant documentation, including a declaration acknowledging ownership of the copyright and accepting criminal and other liability if proved otherwise.

### Enforceable Copyright Protection Term

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#### 27. When does copyright protection start and how long does it last?

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Copyright protection arises automatically from creation of the work. The copyright protection period starts from the first time it is made available to the public and lasts for 70 years after the author's death. For legal entities, the duration of protection is 70 years from the date of publication.

The length of copyright protection does not vary depending on the type of work.

Copyright is not renewable.

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## Maintaining Copyright

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### 28. What steps must a copyright owner take to maintain the registration, if applicable, and legally protectable status of its copyright?

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Registration of copyright is voluntary and provides evidence to determine the person or persons who created the work. Registration is declaration-based and does not constitute a right.

Renewal is not available for copyright.

If it is determined that the owner of the copyright registration is not the owner of the copyright work, the registration will be invalidated.

## Copyright Search and Information Facilities

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### 29. What official facilities are available to conduct searches and obtain information on copyright?

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For information purposes, the General Directorate of Copyright has a searchable *database of works*.

## Monitoring Copyright Infringement

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### 30. What steps can a copyright owner take to monitor whether another party is infringing its copyright?

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There is no official or specific method to monitor possible third-party infringements. Copyright owners can subscribe to watch services or perform online and on-site investigations themselves or through their legal representatives.

## Copyright Infringement

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### 31. What rights does copyright grant? On what grounds can a copyright infringement action be brought? What are the defences to copyright infringement actions?

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## Rights Granted by Copyright

Copyright owners have economic and moral rights (see *Question 34*).

Economic rights include the rights of adaptation, reproduction, distribution, performance, and to communicate the work to the public by devices enabling the transmission of signs, sounds, and/or images.

## Grounds for and Elements of Copyright Infringement Claims

Under the Law on Intellectual and Artistic Works No. 5846 (Copyright Law), an infringement action can be brought where the moral and/or economic rights of the author are infringed by:

- Unauthorised reproduction, distribution, or communication of the work.
- Unauthorised adaptation of the work (derivative works).
- Breach of the author's moral rights to disclose the work, of attribution to the work, to the integrity of the work, or to access the work.

To succeed in a copyright infringement claim, the claimant must be able to show its ownership of the copyright and prove that the defendant breaches the claimant's moral and/or economic rights.

When assessing damages in copyright infringement cases, the courts also consider a number of factors such as the parties' situations, the duration and degree of the violation, the goodwill or bad faith of the defendant, and so on.

## Defences to a Copyright Infringement Action

The most common defences are:

- Personal use.
- Use for educational purposes in schools or other educational institutions.
- Use within "freedom of quotations."
- Expiration of copyright (the work is in the public domain).
- Influential use to create an original and independent work.
- Use due to public order or in the interests of the community.

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### 32. Which courts have jurisdiction over copyright infringement actions? Is there a fast-track or a small-claims procedure?

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See *Question 20*.

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### 33. What are the remedies in copyright infringement actions?

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The following remedies can be obtained in a civil action for copyright infringement:

- Preliminary injunction for seizure of the infringing products. A party filing or intending to file an infringement action can ask the court for a preliminary injunction if there is evidence of use or intention to use the copyright which would infringe the claimant's right. A request for a preliminary injunction, which can be filed before, after, or at the same time as the main action, is examined separately from the infringement proceedings.
- Prevention of manufacturing, sale, import, and export of the infringing products.
- Removal and destruction of infringing materials.
- Claim for pecuniary and non-pecuniary damages (in case of intentional infringement).
- Publication of the court's decision.

Criminal remedies such as dawn raids and penalties including imprisonment and fines are also available.

## Moral Rights

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### 34. Are moral rights protected?

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Moral rights are protected and arise automatically upon creation of the copyright work. The author's moral rights include the following, as determined under section 3/A(II), Articles 14, 15, 16, and 17 of the Copyright Law:

- To exclusively determine whether their work is disclosed to the public and the time and manner of its publishing.
- To decide whether the work is disclosed to the public or published with or without the author's name or under a pseudonym.
- No abbreviations, additions, or other modifications can be made to a work or to the author's name without their consent.



- Where necessary, the author can demand the owner or possessor to temporarily allow the author to access the original of a work of fine art.

Under Turkish Law, civil rights must be asserted in order to be executed. Therefore, moral rights, being a civil right, need to be asserted to take effect against third parties.

The right to use moral rights can be transferred. The moral rights themselves cannot be transferred or waived.

If an author has not determined the manner in which the authority to disclose the work to the public and to designate the name are to be exercised or has not left this matter to another person, these rights can be exercised after the author's death by the executor or, if no executor has been appointed, successively by the author's surviving spouse, children, testamentary heirs, parents, and siblings.

After the author's death, these persons can exercise the rights to disclose the work to the public, to designate the name, and to prohibit modifications in their own name for a period of 70 years after the author's death. If there are no such persons or if they do not exercise their rights or the term of 70 years has expired, the Ministry of Culture and Tourism can exercise in its own name the rights to disclose the work to the public, to designate the name, and to prohibit modifications if the work is deemed to be important for national culture.

## REGISTERED DESIGN RIGHTS

### *Basis of Registered Design Protection*

#### **35. Is design right protection available through registration? What are the legal conditions to obtain a registered design?**

Legal protection is available for registered designs in Turkey. Conditions to obtain a registered design right are novelty and distinctive character (Article 56, IP Law).

The following are excluded from protection:

- Designs that do not comply with public morality or public order.
- Visual characteristics of products that are required due to a technical function.
- Visual characteristics of products that must be manufactured in a certain form and dimension so that the product can be mechanically assembled or connected to another product.
- Use of armorial/heraldic bearings, within the meaning of Article 6bis of the Paris Convention, and the inappropriate use of religious, historical, and cultural values emblems, hallmarks, and so on.

### Registering a Design

#### **36. Which authority registers designs? Briefly outline the key stages and timing in obtaining a registered design.**

##### Design Registration Authority

The TPTO registers designs. Registration is not mandatory for protection. Unregistered designs are protected under certain conditions (see *Question 44*). However, registration of designs has many advantages such as a longer protection period and a wider scope of protection against similar designs.

Guidance on design right applications is on the *TPTO website*.

##### Process and Timing

An application is made by filing a form including the following:

- Details of the applicant.
- A representation of the design showing it visually and suitable for reproduction.
- The name of the product in which the design is intended to be incorporated or to which it is intended to be applied.
- The identity of the designer(s).
- Information about how the right to apply has been obtained from the designer(s).
- If applicable, a postponing request.
- If available, the attorney's details.

A single application can be filed for multiple designs.

Turkey recognises foreign priority for design applications for applicants benefiting from the Paris Convention or the agreement establishing the WTO.

The TPTO examines whether the formal conditions are met and the design's compliance with public morality or public order. The TPTO conducts an examination to determine whether the design is novel and distinctive under the IP Law. If there is no obstacle, registration is granted.

The TPTO does not provide a search report.

Registration based on the initial examination is subject to opposition by third parties within three months of publication of the registration of the design in the Official Bulletin.

Third parties can oppose a registered design application on the following grounds:

- Lack of legal conditions to obtain a registered design right (novelty or individual character).
- Conditions that exclude the design from protection.
- Unauthorised filing against the owner's will.
- Bad faith.
- Infringement of another IPR.

Details of registered design fees are on the *TPTO website*.

Turkey is a party to the *Hague System for the International Registration of Industrial Designs*. Applicants can register designs in more than one country with lower costs through a single application.

### Design Search and Information Facilities

#### **37. What official facilities are available to conduct searches and obtain information on design rights?**

Online search options are available on the *TPTO website*.

### Enforceable Registered Design Right Protection Term

#### **38. When does registered design protection start and how long does it last?**

Registered design protection starts from the application filing date and lasts for five years. It can be renewed for four consecutive periods of five years, up to 25 years in total.

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## Maintaining Design Rights

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### 39. What steps must a registered design right owner take to maintain the registration and legally protectable status of its design rights?

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A design right registration can be renewed for four consecutive periods of five years, up to 25 years in total, on payment of renewal fees.

A request for renewal must be made by the design right owner to the TPTO within six months before the expiry of the protection date, with details of payment of the renewal fee. If not, a renewal request can be made within six months after the expiry of the protection date, on payment of an additional fee.

If the renewal fee and the additional fee are still not paid in this six-month period, the design right registration will lapse.

Details of renewal fees for registered designs are on the *TPTO website*.

There is no requirement for use to maintain the validity of a design registration.

## Registered Design Right Infringement

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### 40. What rights does a registered design give to its owner? On what grounds can a registered design infringement action be brought? What are the defences to design infringement actions?

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#### Rights Granted by Registered Design Rights

A registered design provides the owner with an exclusive right to use it.

Third parties cannot, without the design right owner's consent, produce, put on the market, sell, import, use for commercial purposes, or keep in stock for these purposes the product in which the design is incorporated or to which it is applied, and cannot make a recommendation for contract (Article 59(1), IP Law).

#### Grounds for Registered Design Right Infringement

A design infringement action can be brought on the following grounds (among others):

- Making, producing, putting on the market, selling, using, offering, keeping for commercial purposes, or importing an identical or significantly similar version of the registered design without the design right owner's consent.
- Transferring to third parties or expanding rights acquired by a licence.
- Disseizing the design right.

(Article 81(1), IP Law.)

#### Defences to a Registered Design Right Infringement Action

The most common defences are:

- Cancellation claim against the registered design (counterclaim).
- Use of the design as a technical necessity.
- Personal use.
- Use for experimental, educational, or repairing purposes.

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### 41. Which courts have jurisdiction over registered design infringement actions? Is there a fast-track and/or a small-claims procedure?

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See *Question 20*.

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### 42. What are the remedies in registered design infringement actions?

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The remedies in registered design infringement actions are:

- Preliminary injunctions (see *Question 27*).
- Prevention and prohibition of infringing acts.
- Compensation for material and moral damage (where the infringer is at fault and there is damage).
- Confiscation of infringing products and/or equipment (the design right owner can also request ownership of the confiscated products and/or equipment).
- Removal and destruction of infringing products and/or equipment (if essential to stop the infringing acts).
- Publication of the court's decision.

Criminal remedies are not available for design infringement.

## Monitoring Design Infringement

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### 43. What steps can a party take to monitor whether another party is infringing its design rights?

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There is no official or specific method to monitor possible third-party infringements. Design right holders can subscribe to watch services or perform online and on-site investigations themselves or through their legal representatives.

## UNREGISTERED DESIGNS

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### 44. Is there protection for unregistered designs in your jurisdiction?

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#### Basis for Protection

Unregistered designs are entitled to protection under the IP Law.

#### Legal Conditions for Unregistered Design Rights

Unregistered design protection requires the design to be made available to the public anywhere in the world.

There are no particular features or types of design excluded from protection under the registered design right regime that would instead be protected under the unregistered design right regime.

An unregistered design right does not protect different aspects of a design compared with a registered design right.

#### Duration of Unregistered Design Protection

The term of unregistered design protection is three years from when the design is first made available to the public.

#### Unregistered Design Infringement

An owner of an unregistered design right can bring legal proceedings for a violation of the unregistered design right. The grounds, defences, courts, remedies, and procedures are similar to those for registered designs (see *Question 40 to 42*).

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## TRADE SECRETS AND CONFIDENTIAL INFORMATION

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### 45. Is there specific protection for trade secrets and confidential information in your jurisdiction?

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There is no specific protection for trade secrets and confidential information in Turkey. Related provisions are in the Constitution, Commercial Code, Criminal Code, Code of Obligations, Right to Information Act, employment laws, and so on.

In practice, trade secrets or confidential information are generally protected by unfair competition provisions in the Commercial Code which state that disclosing such information causes unfair competition.

The terms "trade secret" and "confidential information" are not defined in legal regulations but can be generally understood to be any information or documents that are (based on case law and doctrine):

- Generally unknown. The information must be confidential. For example, a trade secret is expected to be unknown and not disclosed to other colleagues or enterprises in the same sector.
- Difficult to acquire with the possibility of being damaged if acquired by competitors. Its owner is expected to make reasonable efforts to preserve the secrecy of the information. Obtaining such information is expected to be difficult and it should not be accessible through lawful means.
- Providing economic benefit to their owner. The information must have an economic value in itself, independent of the value of the enterprise or company. This can be determined through the availability and willingness of third parties to pay the owner to acquire and use the information.

Trade secrets will be defined according to the Draft Law on Trade Secrets, Banking Secrets and Client Secrets.

There is no system for registration of trade secrets and confidential information in Turkey.

### Maintaining Trade Secrets and Confidential Information

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### 46. What steps must an owner of trade secrets and confidential information take to maintain the legally protectable status of their trade secrets and confidential information?

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An owner of trade secrets and confidential information must make reasonable efforts to keep the information unknown.

### Monitoring Infringement of Trade Secrets and Confidential Information

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### 47. What steps can a party with rights protecting confidential information and trade secrets take to monitor whether another party is disclosing or using its trade secrets and confidential information?

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There is no official or specific method to monitor possible third-party disclosure or use. An owner of confidential information and trade secrets can perform online and on-site investigations themselves or through their legal representatives or create effective systems in their organisation to prevent disclosure or unauthorised use.

### 48. What rights do trade secrets and confidential information provide? On what grounds can an action for unauthorised

### disclosure or use of confidential information or trade secrets be brought? What are the defences to such actions?

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### Rights Granted

In practice, trade secrets or confidential information are generally protected by unfair competition provisions in the Commercial Code which state that disclosing such information causes unfair competition.

In addition, depending on the nature of the unauthorised use, the Constitution, Criminal Code, Code of Obligations, Right to Information Act, and employment laws may also provide grounds for protecting trade secrets or confidential information.

### Grounds for Unauthorised Use

An action based on trade secrets or confidential information can be based on the following:

- Benefiting from another's work or products without authorisation.
- Unfairly disclosing production or trade secrets, for example by using or transmitting trade secrets obtained in bad faith and without permission, or through other unlawful means.
- Non-compliance with legal or contractual rules for employees or competitors relating to trade secrets.

### Defences

Defences include:

- Compulsory disclosure of the information in the public interest.
- The information is not confidential.
- Prior disclosure of the information by the owner.

It is debatable whether ex-employees can use confidential information known to them through their employment after the employment ends. Such use is commonly prevented by non-competition agreements between employers and employees and most actions for unauthorised use arise from a breach of those agreements. A common defence is to assert that the agreement or a specific term of it is not breached.

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### 49. Which courts have jurisdiction over actions for unauthorised disclosure or use of confidential information or trade secrets? Is there a fast-track and/or a small-claims procedure? What are the remedies in such actions?

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### Courts

Most trade secret or confidential information disputes relate to unfair competition and non-compliance with an agreement (confidentiality agreement). Such actions are filed with the civil commercial courts of first instance.

Criminal actions based on Article 239 of the Criminal Code are brought before the criminal courts of first instance if a public prosecutor decides, after an investigation, that an offence has been committed.

### Remedies

Anyone whose clients, credit rating, professional reputation, commercial activities, or other economic interests are damaged by unfair competition can apply to a court for:

- A ruling of unfairness.
- Prevention of the unfair competition.

- Removal of the financial situation resulting from the unfair competition.
- Correction of incorrect or misleading statements that have caused the unfair competition.
- Compensation of damage if there is fault.

A precautionary injunction can be granted by the court if it decides the matter is urgent.

Fines or imprisonment can also be imposed for criminal liability under the Commercial Code.

## DOMAIN NAMES

### 50. Can an action be brought to protect a domain name?

The *TRABİS* system was activated on 14 September 2022 to manage Turkish domain name registrations. This is the central online system for domain names of the Information and Communication Technologies Authority, under the Domain Names Regulation.

A registry agency authorised by the Information and Communication Technologies Authority deals with applications, renewal, cancellation, and transfers of domain names and provides templates for this on its website.

Domain names are registered for at least one year up to five years.

Owners can renew their domain name and must comply with the Domain Names Regulation, co-operate with the registry agency, and not violate third-party rights.

As an alternative dispute resolution, disputes over a domain name are heard by arbitrators appointed by the Information and Communication Technologies Authority. However, it is also possible to file a court action.

The grounds/elements to bring a claim to protect a domain name under Article 25 of the Domain Names Regulation are:

- The disputed domain name is similar or identical to a trade mark, trade name, business name, or other identifying marks owned or used in commerce.
- The party assigning the domain name has no legal right or connection with this domain name.
- Malicious allocation or use of this domain name by the registrant.

It is therefore possible to say that this is similar to a trade mark infringement claim.

Although defences are not set in the Domain Names Regulation, they can be the following:

- The disputed domain name is not similar or identical to the claimant's trade mark/trade name/business name or other identifying marks owned or used in commerce.
- The owner of the disputed domain name has a legal right or connection with the domain name.
- The owner of the disputed domain name has not acted in bad faith.

## DATABASE RIGHTS

### 51. Is there protection for database rights?

Databases are mainly protected under the Copyright Law. Turkish law provides:

- Protection for original databases, under general copyright law principles (see *Question 24 to 34*).

- A sui generis database right for databases that are not an original creation.

Copyright protection for a database requires the database to be made available to the public. As with other copyrighted works, it must bear the characteristics of the author and be original.

Under Article 6/11 of the Copyright Law, a database is defined as a selection and compilation of data and materials according to a specific purpose and a specific plan, in a form that can be read by a device or in any other form. Therefore, databases are defined and protected as a compilation, a kind of copyrighted work within the meaning of the Copyright Law. Compilations are considered a copyrighted work created by benefiting from another copyrighted work but that are not independent of such a work. As with other copyrighted works, it must bear the characteristics of the author and be original.

An original database bearing the characteristics of its author is protected for 70 years as of the date it is first made available to the public and lasts for 70 years after the author's death. For legal entities, the duration of protection is 70 years from the date of publication. The scope of copyright protection for an original database is the same as for copyright generally (see *Question 37*).

A database that is not an original creation enjoys sui generis protection. The protection period is 15 years as of the date it is first made available to the public. A producer of a non-original database who has made qualitatively and/or quantitatively a substantial investment in the creation, verification, or presentation of the contents of the database has the right to permit or prohibit:

- A permanent or temporary transfer to another medium by any means and in any form.
- Distribution or sale, rental, or communication to the public in any way of all or a substantial part of the database contents, subject to the exceptions in the Copyright Law and if required for the purposes of public security and administrative and judicial procedures.

Copyright can be registered (see *Question 26*). The Copyright Law does not provide for the registration of databases.

## INTERNATIONAL IP TREATIES

### 52. Is your jurisdiction party to international treaties that facilitate the recognition of foreign IPRs in your jurisdiction?

Turkey is a party to numerous key international IP treaties that include the following.

#### Patents

- *WIPO Strasbourg Agreement Concerning the International Patent Classification.*
- *Paris Convention.*
- *Patent Cooperation Treaty (PCT).*
- *European Patent Convention.*
- *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).*

#### Utility Models

- *Paris Convention.*

#### Trade Marks

- *WIPO Madrid Agreement Concerning the International Registration of Marks 1891.*
- *Paris Convention.*
- *Trademark Law Treaty.*



- Nice Agreement Concerning International Classification of Goods and Services.
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

#### Copyright

- *Berne Convention for the Protection of Literary and Artistic Works.*
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

#### Design Rights

- *Hague Agreement Concerning the International Registration of Industrial Designs 1925.*

- Locarno Agreement Establishing an International Classification for Industrial Designs.

#### REFORM

#### 53. Summarise any proposals for reform to the main IPR laws and any recently enacted major reforms.

There is a Draft Law on Trade Secrets, Banking Secrets and Client Secrets. It has not been published yet.

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