

Patents, trade marks, copyright and designs in Turkey: overview

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PATENTS

1. What are the legal requirements to obtain a patent?

There are three main patentability criteria:

- Industrial applicability.
- Surpassing invention step.
- Novelty.

For inventions that meet these criteria and application must be filed with the Turkish Patent Institute to register the patent.

2. What categories are excluded from patent protection?

The categories that are aligned with Article 53 of the European Patent Convention (EPC) are (*Article 6, Patent Decree Law*):

- Inventions that, if they were commercially exploited, would be contrary to public order or morality.
- Plant or animal varieties or essentially biological processes for the production of plants or animals.
- Methods for the treatment of the human or animal body by surgery or therapy as well as diagnostic methods practised on the human or animal body.

3. Which authority registers patents? Does its website provide guidance on the application procedure?

The Turkish Patent Institute is the administrative body responsible for governing industrial rights. There are detailed guidelines in Turkish explaining the registration procedure on its website (www.tpe.gov.tr/TurkPatentEnstitusu).

The application will be rejected if the patent does not meet the patentability criteria or falls under one of the patent exclusions.

4. On what grounds and when can third parties oppose a patent application?

The patent application is published on the website on the issuance of the research report regarding state of art (for the inventive step criterion). Third parties can file oppositions against the report within six months of the publication.

After completion of the assessment of oppositions at that stage, the examination report is prepared in order to examine whether the patent application meets the patentability criteria. Once this report is published, again third parties can file oppositions against the report within six months as of its publication (*Article 62, Patent Decree Law*).

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

The date of the application is also the protection date of the patent. Protection is for 20 years and this period cannot be extended.

The priority rights issued under European Patent Convention (EPC) and Patent Cooperation Treaty (PCT) can be relied on, provided that the local registration application is made in due time and also meets the local criteria.

6. On what grounds can a patent infringement action be brought?

Article 73 of the Patent Decree Law covers the scope of patent rights. Accordingly, a patent owner can prohibit the following:

- The manufacture, sale, use or import of the product that is the subject of the patent for purposes other than personal reasons.
- The use of a procedure that is the subject of the patent or the product manufactured or imported by the use of the patent protecting the process, or that it is used for any reasons other than personal use.
- Taking part in, or facilitating the use of, the mentioned acts.
- In the case of a licence agreement, if the patent rights are expanded by the licensee without permission or approval of the licensor.
- Refraining from explaining the source of the products that are unduly manufactured.

7. Which courts deal with patent infringement actions?

Specialist IP courts of first instance handle civil and criminal IP disputes in three major cities of Istanbul, Ankara and Izmir. In other cities, courts of first instances are authorised. Appeals are examined by the Court of Appeals.

8. What are the defences to patent infringement actions?

There are various defences to patent infringement actions, including:

- The subject of the patent's claims do not cover the act alleged to have been infringed.
- The use is not for commercial purposes.

Counterclaims that the patent is invalid are frequently asserted.

9. What are the remedies in patent infringement actions?

Remedies for a patent infringement action include:

- Compensation.
- Seizure of goods infringing or manufactured by infringing the patent.
- Announcement of the decision given in the lawsuit, in other words, publication of the infringement in newspapers for public disclosure.

10. Is there a fast-track and/or a small-claims procedure for patent infringement actions?

For infringement actions there is no fast-track or small-claims procedure. Fast-track procedures are only available for patent protection, such as non-examined patents or utility model protections.

TRADE MARKS

11. What are the legal requirements to obtain a trade mark?

A trade mark must have distinctive character, that is, it must be capable of identifying the source of a particular good (and so not be descriptive or generic). It must also be capable of being reproduced.

12. Is it necessary or advisable to register trade marks?

It is advisable to register trade marks for greater and easier protection. Registered trade marks are protected under the Trade Mark Decree Law. An unregistered mark can be protected under one of the following:

- General provisions under the Turkish Commercial Code.
- If the trademark is a "famous" mark and the well-known status can be proved, then certain protections may be available under the Decree Law.

13. Which authority registers trade marks? Does its website provide guidance on the application procedure?

The Turkish Patent Institute is the administrative body responsible from governance of industrial rights. There are detailed guidelines in Turkish explaining the registration procedure on the website (www.tpe.gov.tr/TurkPatentEnstitusu).

14. On what grounds can the regulatory authority refuse to register a trade mark?

Absolute and relative grounds for rejection are issued under Article 7 and 8 of the Trade Mark Decree Law. In summary, the trade mark will be rejected if it does not possess distinctive character or is the same or similar to a trade mark that is registered before on same or similar group of goods or services. This is because there would be risk of confusion by the public. Also, if the trade mark is contrary to public morals it will also be rejected.

15. On what grounds and when can third parties oppose a trade mark application?

A third party can oppose the trade mark application if the trade mark does not possess a distinctive character or is the same or similar to a trade mark that is registered before on same or similar group of goods or services.

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

Trade mark protection lasts for ten years from the application date.

17. On what grounds can a trade mark infringement action be brought?

A trade mark infringement action can be brought in the following circumstances:

- If the trade mark is being used, exploited or imported by unauthorised third parties.
- If the use of mark could lead to dilution.
- If there is a risk of confusion by the public.
- If the use of mark could lead the mark to turn into a generic name.
- Taking part in, or facilitating use of, the mentioned acts.
- In a licence agreement, if the trade mark rights are expanded by the licensee without the permission or approval of the licensor.
- Refraining from explaining the source of the products that are unduly manufactured.

18. Which courts deal with trade mark infringement actions?

Specialist IP courts of first instance handle civil and criminal IP disputes in three major cities of Istanbul, Ankara and Izmir. In other cities, courts of first instances are authorised. Appeals are examined by the Court of Appeals.

19. What are the defences to trade mark infringement actions?

The defences to trade mark infringement actions include:

- That the trade mark being used is different than the registered mark.
- The goods or services are not similar or same.

- There is no confusion risk by the public.
- The two marks are distinctive and different from each other.
- The part of the public addressed by the goods or services where the marks are used are different so there is no risk of confusion.

20. What are the remedies in trade mark infringement actions?

The remedies in trade mark infringement actions include:

- Compensation.
- Prohibition from use of trade mark on goods or services.
- Seizure of infringing goods.
- Changing the goods in a way to end the trade mark infringement.

21. Is there a fast-track and/or a small-claims procedure for trade mark infringement actions?

There is no fast-track or small claims procedure for trade mark infringement actions.

COPYRIGHT

22. What are the legal requirements to obtain copyright protection?

The works that carry individuality of its creator fall under the scope of the Law on Literary and Artistic Works No. 5846 and are entitled to copyright protection. The following works that are created by the right owner and the neighbouring rights are protected under the law:

- Conduction or interpretation of these works by other artists.
- Phonogram productions where the voices are recorded for the first time.
- The rights of radio and television.

23. Can copyright be registered?

There is no registration requirement for copyrights. However, if the owner wishes to reinforce its right, special databases for registering copyrights are available. These are administered by the Copyrights Directorate of the Ministry of Tourism and Culture. Registration is advantageous in proving ownership and providing easier protection. There is a brief frequently asked question section for this arbitrary registry on the website of the General Directorate that provides very basic guidance on the registration of copyrights, such as books and songs.

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

Protection starts from the date the work is publicised and lasts for 70 years.

25. On what grounds can a copyright infringement action be brought?

The type of the infringement action depends on the grounds of alleged infringement, meaning that moral or material rights can be infringed:

- Moral rights are infringed if the work is published without the permission of the right owner.
- Material rights are infringed if the work is used, processed, reproduced or distributed by unauthorised third parties.

There are also penal and civil provisions for infringements. These actions can be filed against infringements for works as well as neighbouring rights.

26. Which courts deal with copyright infringement actions?

Specialist IP courts of first instance handle civil and criminal IP disputes in three major cities of Istanbul, Ankara and Izmir. In other cities, courts of first instances are authorised. Appeals are examined by the Court of Appeals.

27. What are the defences to copyright infringement actions?

The most frequent defence (and counterclaim) is challenging the validity of the copyright.

28. What are the remedies in copyright infringement actions?

The remedies that are available in copyright infringement actions include:

- Compensation.
- The prevention of unauthorised use.
- Seizure of goods manufactured by infringing copyrights.
- Public announcement in newspapers for an apology in infringing the copyright.

29. Is there a fast-track and/or a small-claims procedure for copyright infringement actions?

There is no fast-track or small-claims procedure for copyright infringement actions.

REGISTERED DESIGNS

30. What are the legal conditions to obtain a registered design right?

The industrial design must be novel and distinctive.

31. Which authority registers designs?

The Turkish Patent Institute registers designs. Registration is advised as it provides greater and easier protection. The registered designs are entitled to protection under the Industrial Design

Decree Law. Unregistered designs can be protected under the general provisions of the Turkish Commercial Code.

32. On what grounds and when can third parties oppose a registered design application?

The designs are registered on application. After registration, the design is published and third parties can file oppositions against the design within six months of the publication.

33. When does registered design protection start and how long does it last?

Protection starts from the date of publication and lasts for five years. This can be renewed for up to 25 years.

34. On what grounds can a registered design infringement action be brought?

The scope of the protection of registered designs is covered under Article 48 of the Industrial Design Decree Law. The design owner can, therefore, prohibit the following:

- The manufacture, sale, exploitation, use or import of the product that bears the design or where it is used for any reasons other than personal use.
- Taking part in, or facilitating use of, the mentioned acts.
- In a licence agreement, expanding the design rights without permission or approval of the licensor.
- Refraining from explaining the source of the products that are unduly manufactured.

35. Which courts deal with registered design infringement actions?

Specialist IP courts of first instance handle civil and criminal IP disputes in three major cities of Istanbul, Ankara and Izmir. In other cities, courts of first instances are authorised. Appeals are examined by the Court of Appeals.

36. What are the defences to registered design infringement actions?

A defence to a registered design infringement action is to challenge the validity or ownership of the design as a counterclaim.

37. What are the remedies in registered design infringement actions?

The remedies in a registered design infringement action include:

- Ceasing the infringement.
- Compensation.
- Seizure of the products infringing the design.
- Distortion or destruction of the infringing property.

38. Is there a fast-track and/or a small-claims procedure for registered design infringement actions?

There is no fast-track or small-claims procedure for registered designs.

UNREGISTERED DESIGNS

39. What are the legal conditions for unregistered design rights to arise?

There are no specific provisions concerning unregistered design rights under Turkish law. An unregistered design can be subject to copyright protection if it is accepted as a "work", which means it carries the individuality of its creator.

40. When does unregistered design protection start and how long does it last?

This is not applicable in Turkey.

41. On what grounds can an unregistered design infringement action be brought?

If an unregistered design fulfils the criteria of being a "work" then a copyright infringement action can be brought. An unfair competition action can also be initiated under the general unfair competition provisions.

42. What are the defences to unregistered design infringement actions?

A defendant can challenge the individuality, originality and novelty of the unregistered design as a defence to an unregistered design infringement action.

43. What are the remedies in unregistered design infringement actions?

The claimant can request:

- Ceasing from using, and preventing the use of, the confidential information.
- Compensation in the form of damages.
- Destruction of infringing goods.

CONFIDENTIAL INFORMATION

44. What are the legal conditions for rights in confidential information to arise?

Confidential information (such as trade secrets or know-how), is not registered or issued under Turkish Law. Therefore, the general principles are applied under the unfair competition rules issued under Article 54 *et seq.* of the Turkish Commercial Code. In

practice, mostly parties issue the status of confidential information under contracts either as:

- A separate contract to protect such clauses.
- Under their agreement relating to, for example, licensing or deals.

45. On what grounds can an action for unauthorised use of confidential information be brought?

If there is a contract between the parties covering a licence or confidentiality, contractual provisions are enforced. However, if there is no such contract, since confidential information is not covered separately under Turkish Law, the general principles apply. Article 54 *et seq.* of the Turkish Commercial Code cover unfair competition. So long as the case falls under one of these provisions then an unfair competition action can be filed.

46. Which courts deal with actions for unauthorised use of confidential information?

The courts of first instance that has jurisdiction deal with actions for unauthorised use of confidential information.

47. What are the defences to actions for unauthorised use of confidential information?

The defences to actions for unauthorised use of confidential information include questioning the confidential nature of the information and arguing that the use of the information was legitimate.

48. What are the remedies in actions for unauthorised use of confidential information?

The remedies in actions for unauthorised use of confidential information include:

- Ceasing from using, and preventing the use of, the confidential information.
- Compensation in the form of damages.

49. Is there a fast-track and/or a small-claims procedure for actions for unauthorised use of confidential information?

There is no fast-track or small-claims procedure for actions for unauthorised use of confidential information.

THE REGULATORY AUTHORITY

Turkish Patent Institute

W www.tpe.gov.tr/TurkPatentEnstitusu

Main areas of responsibility. Registration and administration of industrial rights.

Guidance on application procedure. This is available at the website.