

Quick Answers on Design Protection

Last updated September 2021

Turkey

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Country specific issues - Legal system (civil/common law) ▼

LawReferences

Industrial Property Code No. 6769 of December 22, 2016 (Industrial Property Code)

[Regulation on the Implementation of the Industrial Property Code No. 6769 \(Implementing Regulation under Industrial Property Code\)](#)

Commentary

Turkey has a civil law system. There used to be individual legislations (Decree Laws) for each intellectual property right and registered design rights were protected under the provisions of Decree Law No. 554 of June 24, 1995 on the Protection of Industrial Designs (Industrial Designs Decree Law). However, the new Industrial Property Code no. 6769 of December 22, 2016 (IP Code) entered into force on January 10, 2017 and replaced and repealed the Decree Laws pertaining to intellectual property rights, including the Industrial Designs Decree Law, by bringing all those rights together within the ambit of a single Code. The design chapter (Book III) of the IP Code includes changes which seek to achieve greater compliance with the relevant directives of European Union.

The Regulation on the Implementation of the IP Code (Implementing Regulation), which specifies the rules and procedures to be followed for the protection of intellectual property rights, entered into force on April 24, 2017 as well.

The provisions of the IP Code and the Implementing Regulation shall apply to all design applications filed on or after the effective date of the IP Code and all designs, the registration processes of which are completed, regardless of their application date.

Case Law

No applicable case law

Country specific issues - Specific territories within the country ▼

LawReferences

No applicable law reference

Commentary

There are no specific territories in Turkey.

Case Law

No applicable case law

Origin of design rights - Registration ▼

LawReferences

[Articles 55, 56, 64, 65 and 67 of Industrial Property Code](#)

[Articles 59 to 66 of Implementing Regulation under Industrial Property Code](#)

Commentary

Both registered and unregistered designs are protected under the provisions of the IP Code. A design that is registered as per the provisions of the IP Code is protected as a registered design. Pursuant to Article 56(1) of the IP Code, the design has to be new and have individual character in order to be protected as a registered design.

After a design application is filed with the Turkish Patent and Trademark Office (the Office), it is examined on formalities and absolute grounds. With the IP Code, novelty examination has been introduced for design applications and the Office will conduct this examination ex-officio within the scope of its examination on absolute grounds. If the application is found to be eligible for registration as a result of the ex-officio examination, it is published in the Official Designs Bulletin, pending oppositions, for three months. If no opposition is lodged within this period, the application is granted with a registration certificate. The design benefits from the same protection as having obtained the registration certificate after it is published on the Official Designs Bulletin.

Case Law

No applicable case law

Origin of design rights - Use (unregistered design right) ▼

LawReferences

[Articles 55, 59 and 69 of Industrial Property Code](#)

Commentary

Unregistered designs are protected under the provisions of the IP Code only they are made publicly available in Turkey for the first time. The period of protection is three years as of becoming publicly available. Contrary to registered designs, unregistered designs are protected against only identical or indistinguishably similar designs that are copied from the (protected) unregistered design. If it is not possible for the designer of the latter design, who created the design independently, to know by reasonable means that the protected design has been presented to the public before his own design, the latter design cannot be considered as a copy of the protected design.

Case Law

No applicable case law

Origin of design rights - Administrative requirements - Filing ▼

Law References

[Article 61 of Industrial Property Code](#)

[Articles 47 to 55 of Implementing Regulation under Industrial Property Code](#)

Commentary

The application for registration has to be filed before the Office. The application can either be paper-based or filed electronically. The language of the application is Turkish.

Case Law

No applicable case law

Origin of design rights - Administrative requirements - Requirements regarding the application ▼

Law References

[Article 61 of Industrial Property Code](#)

[Articles 47 to 55 of Implementing Regulation under Industrial Property Code](#)

Commentary

An application for registration of a design must be filed with an application form filled electronically, which includes information identifying the applicant(s) and the drawing, painting, graphic, photographic or similar representation of the design suitable for reproduction by publication.

The application shall contain the name of the product on which the design is used or to which it is applied. It is optional to include in the application a written description of the visual characteristics of the design and/or the product on which the design is used. The application shall also include priority documents, if any; request, if any, for postponing the publication and information on the agent, in case an agent has been appointed.

In order to have a valid filing, an application fee must be paid and the receipt of payment must be annexed to the application. The application shall also include the identity and contact information of the designer(s) and, if any, the request for keeping the name of the designer(s) confidential in the publication. If the applicant is neither the designer nor the sole designer, an explanation shall be supplied on the means whereby the right to apply for registration is obtained.

All documents filed with the application for registration of a design or submitted later to the Office must comply with the Implementing Regulation.

Case Law

No applicable case law

Origin of design rights - Administrative requirements - Multiple applications ▼

LawReferences

[Article 61 of Industrial Property Code](#)

[Article 55 of Implementing Regulation under Industrial Property Code](#)

Commentary

Multiple embodiments can be included in a multiple design application as different designs. The multiple design application can include no more than 100 designs. In multiple applications, each product on which the design is used or to which it is applied should be included into the same class. If the examiner evaluates that the designs in the multiple design application do not belong to the same class or exceed 100 designs, additional fee is requested and application is divided into separate applications.

Case Law

No applicable case law

Origin of design rights - Administrative requirements - Date of filing**LawReferences**

[Article 64 of Industrial Property Code](#)

[Articles 59 and 60 of Implementing Regulation under Industrial Property Code](#)

Commentary

The Office shall examine whether the application complies with the conditions specified in Articles 61 and 63 and whether there are any deficiencies. If the Office concludes that there are no deficiencies, the application is accorded the date of filing as the date, hour and minute on which the application was filed originally at the Office or at the body authorized as such by the Office.

Case Law

No applicable case law

Origin of design rights - Administrative requirements - Priority

Law References

[Articles 62 and 63 of Industrial Property Code](#)

[Articles 56 to 58 of Implementing Regulation under Industrial Property Code](#)

Commentary

Natural or legal persons or their legal successors in title who are nationals of a state that is party to the Paris Convention or the Agreement Establishing the World Trade Organization or who are domiciled or have an active business in such member state will enjoy a right of priority of six months for the purpose of filing an application for obtaining a registration certificate in Turkey in respect of the same design from the date of filing a valid application at the authorized bodies of such state.

If the above-mentioned natural or legal persons or their legal successors in title have duly filed an application for the registration of a design in a state which is not party to the Paris Convention or the Agreement Establishing the World Trade Organization, they may benefit from the priority right within the framework of the principles stipulated above.

The above-mentioned natural or legal persons or their legal successors in title

Natural or legal persons indicated in Article 3 of the IP Code, who have displayed the design for which an application for registration is made or the product on which this design is used, at national or international exhibitions in Turkey or at official or officially recognized national or international exhibitions in the states party to the Paris Convention or the Agreement Establishing the World Trade Organization, may also claim a right of priority for the registration of the design in Turkey if the application for priority is filed within a period of six months from the date of the first display of the design or the product.

Case Law

No applicable case law

LawReferences

[Articles 65 and 66 of Industrial Property Code](#)

[Articles 61 to 63 of Implementing Regulation under Industrial Property Code](#)

Commentary

After a design application is filed with the Office, it is examined on formalities and absolute grounds. Within the scope of this examination, the Office also conducts a novelty examination. If the application is found to be eligible for registration as a result of the ex-officio examination, it is published in the Official Designs Bulletin, pending oppositions, for three months. If no opposition is lodged within this period, the application is granted with a registration certificate.

Case Law

No applicable case law

Origin of design rights - Administrative requirements - Fees

LawReferences

[Article 161 of Industrial Property Code](#)

[Article 53 of Implementing Regulation under Industrial Property Code](#)

Commentary

The official fee for filing a single design application online is around EUR 20. The official fee for filing an application for each additional design after the first one is EUR 9. The official fee for claiming priority and filing the priority document online is EUR 30. The official fee for the renewal of a design registration for one design is around EUR 60 and for each additional design of a multiple design registration is around EUR 8 (for requests submitted online). The official fee for obtaining a certified copy of registration (through an online request) is around EUR 27. The disbursements for these processes would be around EUR 40.

Case Law

No applicable case law

Design right requirements - Object of protection - Appearance of a product

Law References

[Article 55 of Industrial Property Code](#)

[Articles 50 and 51 of Implementing Regulation under Industrial Property Code](#)

Commentary

Pursuant to Article 55/1 of the IP Code, 'design' means the appearance of the whole or part of a product or its ornamentation resulting from its various features. Designs are protected in Turkey based on the 'views'; thus the view of which part is included in the application, that part is protected. It is not obligatory to include a certain view as it depends on the applicant.

It is recommended to include the view that discloses a feature of the design for which protection is requested. Further, it is recommended to include views taken from the basic sides, such as front, rear, right and left sides and top and bottom of the design.

Features such as colour, surface shading, surface texture or materials can be claimed by disclosing them in the views and (optionally) mentioning them in the written description.

Design applications are permitted for icons and graphical user interface and screen shots. The requirements are not different from those for a device. Protection covers only the visual features of the icon or the interface.

Design applications are also permitted for software animations, but protection covers only the visual of the animation and if intermediate position is included in the application, it is protected.

It is optional to include a written description of the visual characteristics of the design and/or the product on which the design is used. Mentioning the function or the aim or the production method of the product within the written description shall not affect the scope of protection.

Case Law

No applicable case law

Design right requirements - Object of protection - Whole or part of a product / complex products ▼

Law References

[Articles 55 and 56 of Industrial Property Code](#)

Commentary

Design of a product that is part of a complex item shall be protected, provided that the design of the part itself is new and has individual character.

The design of the part shall be accepted to have a novel and individual character if it fulfills the following conditions: the part should be visible when it is mounted on the complex item, during the normal use of the complex item and the visible characteristics of the part should be new and have individual character. Unseen parts/devices (e.g. parts of an engine) cannot be registered as designs.

Case Law

No applicable case law

Design right requirements - Object of protection - Relevant features ▼

LawReferences

[Article 55 of Industrial Property Code](#)

[Articles 50 and 51 of Implementing Regulation under Industrial Property Code](#)

Commentary

The appearance of a product results from its features. According to the IP Code, design means the appearance of the whole or part of a product or its ornamentation resulting from various features such as lines, colour, texture, form, shape and material. If special protection is requested for colour, surface shading, surface texture or materials, they can be claimed by disclosing those features in the views and (optionally) also mentioning them in the written description.

If an application is filed with colourful views and then the design is planned to be used later in other colours, a new application with no colour might be filed as it will have broader protection.

Case Law

No applicable case law

Design right requirements - Object of protection - Dimensions (two-dimensional/three-dimensional) ▼

LawReferences

[Article 53 of Implementing Regulation under Industrial Property Code](#)

Commentary

Both two-dimensional and three-dimensional appearances can qualify for design right protection.

Case Law

No applicable case law

Design right requirements - Object of protection - Specifics ▼

LawReferences

No applicable law reference

Commentary

There are no further remarkable specifics as to the object of protection that have not been mentioned in the previous sections 'Appearance of a product', 'Whole or part of a product / complex products', 'Relevant features' and 'Dimensions'.

Case Law

No applicable case law

Design right requirements - Requirements for protection - The informed user ▼

LawReferences

[Article 56 of Industrial Property Code](#)

Commentary

The IP Code refers to the viewpoint of the 'informed user' in determining whether the design have an individual character. The design shall be understood to have an individual character if the overall impression it creates on the informed user is different from the overall impression created on the same user by any design. The definition of the informed user does not take place in the IP Code, but according to the precedents and the doctrine, informed user is not a designer or technical expert, but rather someone with a professional or personal interest in the design, shows a high degree of attention, has a relatively high degree of knowledge of the sector in question and uses the product in accordance with its purposes.

Case Law

No applicable case law

Design right requirements - Requirements for protection - Individual character ▼

LawReferences

[Articles 56 and 58 of Industrial Property Code](#)

Commentary

A design shall be understood to have an individual character if the overall impression it creates on the informed user is different from the overall impression created on the same user by any design that is made public before the application or the priority date of the design (for registered designs and design applications), with which they shall be compared or the date when the design is first presented to public (for unregistered designs). With the IP Code, this criterion for individual character has been changed to 'difference' from 'significant difference'. In the assessment of the individual character, the degree of freedom of the designer in developing the design shall also be taken into consideration.

The scope of protection of a design is also determined by taking into consideration its individual character.

Case Law

No applicable case law

Design right requirements - Requirements for protection - Overall impression of the design - Visible features ▼

LawReferences

No applicable law reference

Commentary

The overall impression of the design serves two core functions. First, it decides whether or not the design for which registration is sought has individual character. Second, the overall impression of the design determines the scope of protection once the design right has been obtained.

The overall impression of the design arises from all the features that are reproduced and made visible in the application for registration.

Case Law

No applicable case law

Design right requirements - Requirements for protection - Overall impression of the design - Exclusion of features dictated by their technical function ▼

LawReferences

[Article 58 of Industrial Property Code](#)

Commentary

For avoidance of hampering the development of further designs to be applied to same type of products in the same area and preventing the protection provided by the design right to exceed what is actually necessary, visual characteristics of a product necessitated by its technical function fall outside the scope of protection.

Case Law

No applicable case law

Design right requirements - Requirements for protection - Overall impression of the design - Exclusion of interconnections ▼

LawReferences

[Article 58 of Industrial Property Code](#)

Commentary

For avoidance of hampering the development of further designs to be applied to interconnection products, visual characteristics of a product which is required to be produced in a certain form and size in order to enable the product where the design is used or to which it is applied, to be mechanically mounted on or connected to another product, fall outside the scope of protection.

Case Law

No applicable case law

Design right requirements - Requirements for protection - Overall impression of the design - Impression on the informed user ▼

LawReferences

[Article 56 of Industrial Property Code](#)

Commentary

The IP Code refers to the viewpoint of the 'informed user' in determining whether the design have an individual character. The design shall be understood to have an individual character if the overall impression it creates on the informed user is different from the overall impression created on the same user by any design. The definition of the informed user does not take place in the IP Code, but according to the precedents and the doctrine, informed user is not a designer or technical expert, but rather someone with a professional or personal interest in the design, shows a high degree of attention, has a relatively high degree of knowledge of the sector in question and uses the product in accordance with its purposes.

Case Law

No applicable case law

Design right requirements - Requirements for protection - Overall impression of the design - **Consideration of degree of freedom in developing**

LawReferences

[Articles 56 and 58 of Industrial Property Code](#)

Commentary

In evaluating the scope of protection of the design and whether it has individual character, the degree of freedom of the designer in developing the design is taken into consideration.

Also, in evaluating whether a design feature is dictated by technical function, the freedom of the designer in the design characteristics and elements are taken into consideration. Design features resulting from a technical function which do not leave to the designer any freedom in the design characteristics and elements fall outside the scope of protection.

Case Law

No applicable case law

Design right requirements - Requirements for protection - Overall impression of the design - **Assessment of prior art**

LawReferences

[Article 56 of Industrial Property Code](#)

Commentary

In order to assess the novelty and the individual character of the design, the design is compared to the designs of prior art. Designs of prior art include those that have been made public in Turkey or in the world before the application date or if priority is claimed, the date of priority of the design (for registered designs and design applications), with which they shall be compared or the date when the design is first presented to public (for unregistered designs).

Case Law

No applicable case law

Design right requirements - Novelty - **Grace period**

LawReferences

[Articles 56 and 57 of Industrial Property Code](#)

Commentary

Only new designs are to be protected under the IP Code. A design shall only be considered new if before the date of reference (the application date or the date of priority for registered designs and design applications and the date the design is first presented to public for unregistered designs), no identical design has been made available to the public in the world. If the designs differ only in terms of small details, they shall be regarded as identical.

A designer is given a period of grace in which he or she as well as his or her successor in title has the opportunity to make the design available to the public without any negative effect on the novelty or the individual character. The same applies if a third party made the design available to the public with the approval of or in abuse of the relation with the designer or his or her successor in title. The period of grace covers the 12 months preceding the date of filing of the application or if a priority is claimed, twelve month period preceding the date of priority.

Case Law

No applicable case law

Design right requirements - Novelty - Disclosure - Making available to the public

LawReferences

[Article 57 of Industrial Property Code](#)

Commentary

The ways in which a design can be made available to public are exemplified under Article 57/1 of the IP Code, including the activities of use, publication, description, promotion, exhibiting of the design and putting on the market through means such as sales. The disclosure of the design to a third person with the condition of confidentiality shall not be regarded as presentation to the public.

Case Law

No applicable case law

Design right requirements - Novelty - Disclosure - Privilege of the designer

LawReferences

[Article 57 of Industrial Property Code](#)

Commentary

Article 57/2 of the IP Code constitutes a specific privilege of the designer with regard to disclosure. A designer is given a period of grace in which he or she as well as his or her successor in title has the opportunity to make the design available to the public without any negative effect on the novelty or the individual character. The same applies if a third party made the design available to the public with the approval of the designer or his or her successor in title. The period of grace covers the 12 months preceding the date of filing of the application or if a priority is claimed, twelve month period preceding the date of priority.

Case Law

No applicable case law

Design right requirements - Novelty - Disclosure - Abuse

LawReferences

[Article 57 of Industrial Property Code](#)

Commentary

Article 57/2 of the IP Code provides for a disclosure not to be taken into consideration for the purpose of applying the novelty and individual character tests if the design has been disclosed by a third party following an abusive act against the designer or his or her successor in title. For such disclosure not to be taken into account for the purpose of applying the novelty and individual character tests, it has to occur during the twelve-month period preceding the date of the filing of the application or the date of priority.

Case Law

No applicable case law

Grounds for non-protection - Designs dictated by technical function

LawReferences

[Article 58 of Industrial Property Code](#)

Commentary

For avoidance of hampering the development of further designs to be applied to same type of products in the same area and preventing the protection provided by the design right to exceed what is actually necessary, visual characteristics of a product necessitated by its technical function fall outside the scope of protection.

Case Law

No applicable case law

Grounds for non-protection - Designs of interconnections

LawReferences

[Article 58 of Industrial Property Code](#)

Commentary

For avoidance of hampering the development of further designs to be applied to interconnection products, visual characteristics of a product which is required to be produced in a certain form and size in order to enable the product where the design is used or to which it is applied, to be mechanically mounted on or connected to another product, fall outside the scope of protection.

Case Law

No applicable case law

Grounds for non-protection - Designs contrary to public policy or morality

LawReferences

[Article 58 of Industrial Property Code](#)

Commentary

Pursuant to Article 58/4(a) of the IP Code, designs contrary to public order and general morality principles are outside the scope of protection. Pursuant to Article 58/4(ç), designs, which include

inappropriate use of the sovereignty signs within the scope of Article 6ter of the Paris Convention or other marks, arms, emblems, signs or names which concern public, have become public property in terms of religious, historical and cultural values and have not been granted a registration permit by the relevant authorities are also outside the scope of protection.

Case Law

No applicable case law

Scope of protection - Exclusive right to use the design for a product ▼

LawReferences

[Article 59 of Industrial Property Code](#)

Commentary

Under the IP Code, all rights arising from the design, including the right to use the design, belong exclusively to the owner of the design.

Case Law

No applicable case law

Scope of protection - Exclusive right to prevent the use of any other third party ▼

LawReferences

[Article 59 of Industrial Property Code](#)

Commentary

In addition to the right to use the design, the design right also confers the right to prevent the use of any other third party. Pursuant to Article 59/1 of the IP Code, third parties, without the consent of the design right holder, cannot produce, put on the market, sell, offer to make an agreement for, import, put to commercial use or keep in stock for this purposes the design or the product on which the design is used. On the other hand, the design owner cannot exercise his or her right in respect of the use of the design after three years from the first putting on the market of the design, for repair purposes and upon the fulfillment of certain conditions.

For unregistered designs, protection is conferred only against identical or indistinguishably similar designs that are copied from the (protected) unregistered design. If it is not possible for the designer of the latter design, who created the design independently, to know by reasonable means that the protected design has been presented to the public before his own design, the latter design cannot be considered as a copy of the protected design.

Case Law

No applicable case law

Scope of protection - No different overall impression - **Impression on the informed user** ▼

LawReferences

[Article 56 of Industrial Property Code](#)

Commentary

The IP Code refers to the viewpoint of the 'informed user' in determining whether the design have an individual character. The design shall be understood to have an individual character if the overall impression it creates on the informed user is different from the overall impression created on the same user by any design. The definition of the informed user does not take place in the IP Code, but according to the precedents and the doctrine, informed user is not a designer or technical expert, but rather someone with a professional or personal interest in the design, shows a high degree of attention, has a relatively high degree of knowledge of the sector in question and uses the product in accordance with its purposes.

Case Law

No applicable case law

Scope of protection - No different overall impression - **Consideration of degree of freedom in developing** ▼

LawReferences

[Articles 56 and 58 of Industrial Property Code](#)

Commentary

In evaluating the scope of protection of the design and whether it has individual character, the degree of freedom of the designer in developing the design is taken into consideration.

Also, in evaluating whether a design feature is dictated by technical function, the freedom of the designer in the design characteristics and elements are taken into consideration. Design features resulting from a technical function which do not leave to the designer any freedom in the design characteristics and elements fall outside the scope of protection.

Case Law

No applicable case law

Scope of protection - No different overall impression - Assessment of prior art

LawReferences

[Article 56 of Industrial Property Code](#)

Commentary

In order to assess the novelty and the individual character of the design, the design is compared to the designs of prior art. Designs of prior art include those that have been made public in Turkey or in the world before the application date or if priority is claimed, the date of priority of the design (for registered designs and design applications), with which they shall be compared or the date when the design is first presented to public (for unregistered designs).

Case Law

No applicable case law

Scope of protection - Moral rights

LawReferences

[Article 61 of Industrial Property Code](#)

[Article 49 of Implementing Regulation under Industrial Property Code](#)

Commentary

The application for the registration of a design shall include the identity and contact information of the designer(s). The designer has the right, against the applicant for or the holder of the design right, to be cited as the designer in the priority documents, in the publication and in the register.

The designer can request his or her name to be kept confidential and such request should be filed along with the application for the registration of the design. In such case, the designer's name shall not be included in the publication.

Case Law

No applicable case law

Entitlement - Designer

Law References

[Article 70 of Industrial Property Code](#)

[Article 49 of Implementing Regulation under Industrial Property Code](#)

Commentary

The designer is entitled to the design right and thus entitled to apply for registration of the design.

According to Article 49/1 of the Implementing Regulation, 'designer' refers to the creator of the design subject to protection.

Case Law

No applicable case law

Entitlement - Successor

Law References

[Articles 70 and 148 of Industrial Property Code](#)

Commentary

Pursuant to Article 70/1 of the IP Code, the right to the design shall vest in the designer or his or her legal successor in title.

The rights deriving from an application for a design and from a registered design right can be transferred either on a contractual basis or on a statutory basis.

Case Law

No applicable case law

Entitlement - Joint development

Law References

[Article 70 of Industrial Property Code](#)

Commentary

If more than one person is the designer, the joint proprietorship shall be determined in accordance with the agreement between the parties. If no such agreement exists, the joint proprietorship provisions under the Turkish Civil Code shall apply.

Each person entitled to a design right can, in his or her own right independently of other joint proprietors, dispose of his or her share of the design right (joint holders have priority purchase right in case of transfers to third parties), make use of the design after having informed the other proprietors, undertake necessary measures to protect the design and institute legal proceedings against third parties in case of infringements of the joint design right.

Case Law

No applicable case law

Entitlement - Employer

LawReferences

[Articles 73 and 74 of Industrial Property Code](#)

Commentary

As per Article 73/1 of the IP Code, where designs are developed by the employees during the business relationship as per the activity they are liable for or based mostly on the experience and work of the business, unless otherwise specified by the contract or understood from the nature of the work, the design right will vest with their employers.

The design right shall vest with the employers, if requested, for designs which are not created as per Article 73/1 of the IP Code but developed by the employers using the information and equipment available in the general field of activity at the workplace. In such cases the employee has the right to request a compensation in the amount which is to be determined based on the significance of the design. The Court shall judge an appropriate value for the reward in case the parties cannot agree on the value.

Case Law

No applicable case law

Entitlement - Entitlement claims

LawReferences

[Article 71 and 72 of Industrial Property Code](#)

Commentary

If an application for registration has been made or the design has been registered (for design applications/registered designs) or presented to public (for unregistered designs) by a person who is not the genuine right owner, the person who claims to be the genuine right owner, without prejudice to any other rights and claims arising from the design right, can request from the court the transfer of the design right ownership to him or her or to be recognized as the design owner.

In case the above-mentioned claims are not asserted within three years as of the date of publication of the design registration or the date the unregistered design is presented to public, they will be forfeited. This shall not apply in case of bad-faith of the person who is not the genuine right owner.

Where there is a change of ownership of a design as a result of the legal proceedings, all rights of the third parties shall lapse upon the recording of the change in the register. If, before the genuine right owner has been recorded in the registry, the person who is later identified as not being the genuine right owner or the person who has made a licensing agreement with him or her has begun using the design or made serious preparations to do so, he or she can request a non-exclusive license from the genuine right owner within two months, commencing from the date the Office notifies the parties of the recordal of the genuine right owner in the registry. This shall not apply in case these persons were in bad-faith while using the design or making serious preparations to do so.

Case Law

No applicable case law

Entitlement - Right to be cited

LawReferences

[Article 61 of Industrial Property Code](#)

[Article 49 of Implementing Regulation under Industrial Property Code](#)

Commentary

The designer has the right, against the applicant for or the holder of the design right, to be cited as the designer in the priority documents, in the publication and in the register.

The application for the registration of a design shall include the identity and contact information of the designer. The designer can request his or her name to be kept confidential and such request should be filed along with the application for the registration of the design. In such case, the designer's name shall not be included in the publication.

Case Law

No applicable case law

Limitations and exceptions of protection - Statutory restrictions - Private and non-commercial use ▼

LawReferences

[Article 59 of Industrial Property Code](#)

Commentary

Pursuant to Article 59/3(a) of the IP Code, the rights conferred by a design shall not extend to acts done privately and for non-commercial purposes.

Case Law

No applicable case law

Limitations and exceptions of protection - Statutory restrictions - Educational and scientific use ▼

LawReferences

[Article 59 of Industrial Property Code](#)

Commentary

According to Article 59/3(c) of the IP Code, the rights conferred by a design shall not extend to acts of reproduction for the purposes of making citations or teaching, provided that such acts are compatible with fair trade practices and do not prejudice the normal exploitation of the design and the source of the design is mentioned.

According to Article 59/3(b), the design right owner is also not entitled to exercise his or her right in respect of acts done for experimental purposes.

Case Law

No applicable case law

Limitations and exceptions of protection - Statutory restrictions - Further restrictions ▼

LawReferences

[Article 59 of Industrial Property Code](#)

Commentary

Pursuant to Article 59/3(ç), in order not to impair transnational traffic and transport, the right owner is not entitled to exercise his or her rights in respect of the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Turkish Republic. The restriction also applies to the importation of spare parts and accessories for the purpose of repairing such crafts and the execution of repairs on ships and aircrafts.

Pursuant to Article 59/4 of the IP Code, the right owner is not entitled to exercise his or her rights against the use of the design, after three years as from the first putting on the market of the design, provided that the product designed is part of a complex product upon whose appearance the design is dependent, the use is for repair purposes so as to restore the complex product its original appearance and the public is not misled as to the origin of the product used for repair. Pursuant to Article 59/5 of the IP Code, the right owner is also not entitled to exercise his or her rights against the use of the equivalent parts published by the Ministry of Industry and Technology within the scope of Article 59/4, within three years as from the first putting on the market of the design.

Case Law

No applicable case law

Limitations and exceptions of protection - Exhaustion

LawReferences

[Article 152 of Industrial Property Code](#)

Commentary

After the product subject to design protection has been put on the market anywhere in the world by the holder of the design right or by third parties with the consent of the holder of the design right, the acts relating to the product fall outside the scope of design protection. Whereas the late (now repealed) Industrial Designs Decree Law no. 554 (and the other Decree Laws) previously adopted the domestic exhaustion principle, this has been changed with the IP Code, which has adopted the international exhaustion principle for all IP rights, including the designs.

Case Law

No applicable case law

Limitations and exceptions of protection - Rights of prior use

LawReferences

[Article 60 of Industrial Property Code](#)

Commentary

Pursuant to Article 60/1 of the IP Code, third parties, who have used, in good faith, domestically for commercial purposes or have made serious and real preparations to do so, a design that has been developed independently of a registered design and which falls into scope of protection of the registered design, before the application date of the registered design, shall be granted the right to use the design based on prior use. Such right to use the design shall be limited to the preparations made by the third parties and is granted in a degree to meet the reasonable needs of the relevant undertaking. The rights arising from prior use shall be recorded in the Register and published.

The rights arising from prior use cannot be extended by way of license and cannot be transferred separately from the undertaking.

Case Law

No applicable case law

Limitations and exceptions of protection - Government use

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

Lapse of design law rights - Expiration

LawReferences

[Article 69 of Industrial Property Code](#)

[Article 67 of Implementing Regulation under Industrial Property Code](#)

Commentary

For registered designs, the period of protection is five years as of the date of application for registration, which can be renewed every five years, up to a total of twenty five years. For unregistered designs, the period of protection is three years as of the date the design is first presented to public.

For registered designs, the period of protection is renewed in case requested by the design owner, on the condition of paying the renewal fee. The request for renewal must be submitted and the renewal fee must be paid within six months before the date when the period of protection ends. In case the request for renewal is not submitted or the renewal fee is not paid within this term, the renewal request can be submitted within an additional period of six months as from the date when the period of protection ends, upon payment of an additional fee. The renewal shall become effective as of the day following the day on which the previous protection period terminates. The renewal shall be recorded in the Register and published. Renewal fees are determined by the Office. In case the design is not renewed, the design rights shall lapse on the date when the period of protection ends.

Case Law

No applicable case law

Lapse of design law rights - Invalidity

LawReferences

[Articles 77 to 79 of Industrial Property Code](#)

Commentary

A registered design shall be declared invalid by the court if it does not fall within the description of the 'design' as per the IP Code; if it is not new and does not have an individual character; if it is contrary to the principles of public order or general morality; if it results from a technical function; if it includes

inappropriate use of the sovereignty signs within the scope of Article 6ter of the Paris Convention or other marks, arms, emblems, signs or names which concern public, have become public property in terms of religious, historical and cultural values and have not been granted a registration permit by the relevant authorities; if the application for registration is not filed by the legal or real persons entitled as per the IP Code or if it is proved that the application was filed in bad faith and includes unauthorized use of an intellectual property right; if the entitlement to the design right actually belongs to another person or persons or if there is a conflicting design which has been made available to the public at a later date but having an earlier date of filing. Declaration of invalidity may be requested during the period of protection or within five years following the termination of the design right. A final decision for the declaration of invalidity will have retroactive effect.

Case Law

No applicable case law

Lapse of design law rights - Revocation

Law References

[Article 80 of Industrial Property Code](#)

Commentary

The design will be revoked upon the expiration of the protection period and in case no renewal request is made or the request for cancellation made by the right owner.

Case Law

No applicable case law

Lapse of design law rights - Waiver

Law References

[Article 80 of Industrial Property Code](#)

[Article 70 of Implementing Regulation under Industrial Property Code](#)

Commentary

The owner of the design application or registration can waive his or her rights on the design partially or wholly. The request for a waiver shall be filed in writing to the Office. Waiver shall have effect as of the date of recordal in the Registry and it is also published.

The right owner cannot waive his or her rights on the design without the consent of the licensees or holders of rights recorded in the Register.

Where there is a claim by a third party on the design and a court injunction obtained in this respect has been recorded in the Register, waiver of design rights cannot be requested without the consent of the referred third party.

Case Law

No applicable case law

Design right as a property right - Applicable law

Law References

[Article 148 of Industrial Property Code](#)

[Articles 125 to 127 of Implementing Regulation under Industrial Property Code](#)

Commentary

Similar to other intellectual property rights, design rights can be subject to legal transactions. The rights arising from a design application or registration can be transferred to third parties and are also subject to inheritance. These rights can be charged as security, and be levied in execution. Related provisions of the Turkish Code of Civil Procedure and the Bankruptcy and Execution Law shall have effect with respect to security rights and execution. The rights arising from a design application or registration can also be subject to an exclusive or non-exclusive license to be effective within the total or part of the territory of national boundaries.

Case Law

No applicable case law

Design right as a property right - Assigning Design rights

LawReferences

[Article 148 of Industrial Property Code](#)

[Article 125 of Implementing Regulation under Industrial Property Code](#)

Commentary

The rights arising from a design application or a registered design can be transferred to third parties. Such transfer is recorded in the Register and published upon payment of the fee prescribed in the Implementing Regulation. The effects will enter into force vis-à-vis third parties as of the publication date.

Case Law

No applicable case law

Design right as a property right - Transition and transfer - **Independent transfer** ▼

LawReferences

[Article 148 of Industrial Property Code](#)

Commentary

The transfer of the rights arising from a design can be made independently from the relevant enterprise.

Case Law

No applicable case law

Design right as a property right - Transition and transfer - **Transfer for whole or part territory** ▼

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this as there is only a single territory.

Case Law

No applicable case law

Design right as a property right - Transition and transfer - **Requirement that transfer it recorded in writing** ▼

LawReferences

[Article 148 of Industrial Property Code](#)

[Article 125 of Implementing Regulation under Industrial Property Code](#)

Commentary

Transactions concerning intellectual property rights, including designs, are subject to a writing requirement. Transfer agreements should also be notarized in order to be valid.

Accordingly, entering into a written and notarized agreement affects the transfer of the rights deriving from a design application or a registered design. However, for the transfer to have effect on third parties, it should be recorded in the Register and published.

Pursuant to Article 125 of the Implementing Regulation, a notarized assignment agreement containing the number of the design and in case the assignment agreement is in a foreign language, its Turkish translation approved by a certified translator must be submitted, along with the request form and the information showing the payment of the relevant fee, for the transfer to be recorded in the Registry.

Case Law

No applicable case law

Design right as a property right - Transition and transfer - Requirement that transfer is recorded in the register

LawReferences

[Article 148 of Industrial Property Code](#)

[Article 125 of Implementing Regulation under Industrial Property Code](#)

Commentary

The transfer of a design application or registration is recorded in the Register and published, upon the request of one of the parties, on the condition of payment of the relevant fee and fulfillment of other conditions laid down in the Implementing Regulation. The registration and publication of the transfer is essential for it to have legal effect on third parties as the effects will enter into force vis-à-vis third parties as of the publication date of the transfer.

Case Law

No applicable case law

Design right as a property right - Transition and transfer - Effect on third parties

LawReferences

[Article 148 of Industrial Property Code](#)

Commentary

The effects of the transfer shall enter into force vis-à-vis third parties as of the publication date. Rights arising from legal transactions that are not recorded in the Register, including transfer, cannot be asserted against bona fide third parties.

Case Law

No applicable case law

LawReferences

[Article 148 of Industrial Property Code](#)

[Article 127 of Implementing Regulation under Industrial Property Code](#)

Commentary

Transactions concerning intellectual property rights, including designs, are subject to a writing requirement. Accordingly, entering into a written agreement will give rise to the rights in security. However, for the imposition of the pledge to have effect on third parties, it should be recorded in the Register and published.

Pursuant to Article 127 of the Implementing Regulation, the pledge agreement containing the number of the design and in case the pledge agreement is in a foreign language, its Turkish translation approved by a certified translator must be submitted, along with the request form and the information showing the payment of the relevant fee, for the pledge to be recorded in the Registry.

Case Law

No applicable case law

LawReferences

[Article 148 of Industrial Property Code](#)

Commentary

The effects of the pledge shall enter into force vis-à-vis third parties as of the publication date. Rights arising from legal transactions that are not recorded in the Register, including pledges, cannot be asserted against bona fide third parties.

Case Law

No applicable case law

LawReferences

[Articles 75, 76, 148 and 158 of Industrial Property Code](#)

[Article 69 of Implementing Regulation under Industrial Property Code](#)

Commentary

The rights arising from a design application or registration can be subject to a license contract. The license must be understood to be non-exclusive, unless provided otherwise in the contract. Accordingly, the licensor can use the design personally and may grant licenses to third parties on the same design. In the case of an exclusive license, the licensor cannot grant licenses to other parties and cannot personally use the design, unless this right is explicitly preserved.

Unless otherwise provided in the contract, the licensee cannot transfer his or her rights arising from the license to third parties and cannot grant a sub-license. The licensee can take any kind of action relating to the use of the design, throughout the period of the license. The licensee must abide by the conditions in the license contract.

Case Law

No applicable case law

LawReferences

No applicable law reference

Commentary

A license is usually granted concerning a specific region or regions. In this respect the licensor undertakes not to make claims based on their exclusive rights arising from their intellectual property rights against the licensee within the borders of the restricted region. If, in the scope of the license agreement, no regional restriction is stated, the licensee has the right to use the license rights within the national borders of the country where the agreement is signed. If the license is restricted through a regional determination, the licensor must produce the licensed products within the borders of this region and sell the products within the borders of the determined region.

Also, there might be a restriction on the field of use of the license. The subject matter of a license agreement may relate to many different markets. In this respect, a licensor has the right to determine a specific field of use and separate the sectors the products will be used in. With this type of license, it is provided that the licensees use the license only in the specified field. In this respect, the licensor can grant many other license rights to other licensees in other fields. Restricting the field of use provide the licensor with an easy protection over collecting the royalty.

Case Law

No applicable case law

Design right as a property right - Licenses - Powers of the licensee

LawReferences

[Articles 75 and 158 of Industrial Property Code](#)

Commentary

The licensee can take any kind of action relating to the use of the design, throughout the period of the license. Additionally, in case of an infringement of the design rights, unless provided otherwise by the contract, the holder of an exclusive license can institute all legal proceedings that have been made available to the right owner by the IP Code. The holder of a non-exclusive license, in case his or her right to institute legal proceedings due to infringement has not been explicitly restricted in the contract, should notify the right owner and request him or her to institute the required proceedings in case of infringement. If the right owner refuses or fails to institute the proceedings within three months as of the date of notification, the holder of the non-exclusive license can institute the proceedings in his or her name and to a degree which his or her interests necessitate, by also including the notification. In such case, the holder of the non-exclusive license should notify the right owner that the proceedings have been instituted.

Both the holders of non-exclusive license and exclusive license can, in the face of serious damage where elapsing of time cannot be remedied, request the court to issue an injunction for precautionary measures. In case the court grants this request, the licensee who has made the request is also entitled to initiate the proceedings. In such case, the licensee should notify the right owner that the proceedings have been instituted.

Case Law

No applicable case law

Design right as a property right - Licenses - Effects vis-à-vis third parties

LawReferences

[Articles 148 and 158 of Industrial Property Code](#)

Commentary

Licensing basically effects third parties only insofar as not only the licensor is entitled to sue, but also the holder of an exclusive license can institute in his own name all legal proceedings which have been made available to the right owner in case of an infringement of the design right.

The holder of a non-exclusive license, in case his or her right to institute legal proceedings due to infringement has not been explicitly restricted in the contract, should notify the right owner and request him or her to institute the required proceedings in case of infringement. If the right owner refuses or fails to institute the proceedings within three months as of the date of notification, the holder of the non-exclusive license can institute the proceedings in his or her name and to a degree which his or her interests necessitate, by also including the notification. In such case, the holder of the non-exclusive license should notify the right owner that the proceedings have been instituted.

Both the holders of non-exclusive license and exclusive license can, in the face of serious damage where elapsing of time cannot be remedied, request the court to issue an injunction for precautionary measures. In case the court grants this request, the licensee who has made the request is also entitled to initiate the proceedings. In such case, the licensee should notify the right owner that the proceedings have been instituted.

Case Law

No applicable case law

Design right as a property right - Licenses - Formal requirements

LawReferences

[Article 148 of Industrial Property Code](#)

[Article 69 of Implementing Regulation under Industrial Property Code](#)

Commentary

Licensing contracts shall be in writing and upon the request of one of the parties shall be entered in the Register and published. Pursuant to Article 69 of the Implementing Regulation, the licensing contract containing the declarations and the signatures of the licensee and the licensor, the name of the design subject to license, the registration number of the design, the duration and the fees of the contract (if there is any) and in case the license contract is in a foreign language, its translation into Turkish approved by a certified translator must be submitted, along with the request form and the information showing the payment of the relevant fee, for the license to be recorded in the Registry.

Case Law

No applicable case law

Design right as a property right - Insolvency

LawReferences

[Article 184 of Enforcement and Bankruptcy Code No. 2004 of June 09, 1932 \(Enforcement and Bankruptcy Code\).](#)

Commentary

In case of the insolvency of the right owner, the registered design rights are transferred to the bankruptcy estate.

Case Law

No applicable case law

Design right as a property right - Valuation

LawReferences

No applicable law reference

Commentary

Valuation of design rights is as complex and difficult as for all intellectual property rights. Given the lack of a general market value the basic method is expert evaluation in every single case.

In case the design right is the basis of a certain business the most reliable basis of valuation are sales revenues, taking into account the prospective duration of protection, other factors that contribute to the company value as well as license fees.

Case Law

No applicable case law

Enforcement - Remedies - Injunctive relief

Law References

[Article 159 of Industrial Property Code](#)

[Articles 389 to 399 406 of Code of Civil Procedure No. 6100 of January 12, 2011 \(Code of Civil Procedure\)](#)

Commentary

The IP Code provides special provisions for preliminary measures for the prevention of ongoing or anticipated infringements of rights. Where there is a likelihood of infringement and irreparable damages, the courts may issue preliminary injunctions.

Preliminary injunctions may be sought and may be granted prior to or during the substantive proceedings relating to intellectual property. The claimants must prove that they are the rights holder, that their rights are being infringed or there is a high likelihood of infringement and that they may suffer irreparable harm or damages. The high likelihood of infringement is interpreted as imminent danger of infringement. The courts are encouraged to issue preliminary injunctions in a manner that will secure the enforcement of the final judgment.

Preliminary injunction may be sought for cessation or prevention of the infringing activities as well as for seizure of the counterfeit infringing goods. Goods seized under preliminary injunction are safeguarded under the court's custody until the final adjudication of the substantive proceedings.

A reasonable amount of deposit in terms of cash, bank performance bonds or government bonds or the like is usually required in order to secure the rights of the defendant and third parties whose rights and positions may be prejudiced by the preliminary injunction.

Preliminary injunctions can be requested at any stage of the civil proceedings. Injunctions granted prior to commencement of substantive proceedings will automatically lapse if substantive proceedings are not commenced within two weeks of obtaining the injunction. Preliminary injunction can be maintained until the final judgment becomes procedurally final or may be altered by the judge at any appropriate time during the trial. Bank guarantees or other form or guarantees may be submitted in lieu of a preliminary injunction subject to the court's decision.

Case Law

No applicable case law



LawReferences

[Articles 149 to 151 of Industrial Property Code](#)

Commentary

The IP Code regulates three types of action for damages, namely: damages for pecuniary loss; damages for mental anguish and damages for loss of prestige.

Damages for pecuniary loss are constituted from the value of actual loss and loss of income. The value of actual loss means the reduction over property holdings of the rights holder. Reduction can occur by increasing the indebtedness or decreasing the earnings.

In order to calculate the loss of income the rights holder must choose one of the three methods of calculation. In the first method of calculating the loss of income, the possible income occurring without the unfair competition of the infringer is taken into account. In the second method, the loss of income is calculated according to the earnings due to the infringement of the infringer. In the third method, the loss of income is calculated according to the license fee that would be paid if the trade mark was used through a license agreement by the infringer.

While seeking damages, the claimant should pick one of the methods to allow the court to make the calculation. It is not obligatory to choose one of these methods while filing the action and the court should ask the claimant's choice of method during the course of the proceedings. Loses for moral damages can also be demanded by the rights holder. In addition, a proprietor of an intellectual property right may request extra damages for the harm incurred from the improper use of intellectual property right by the infringing party that was detrimental to the reputation of the intellectual property right.

Case Law

No applicable case law

Enforcement - Remedies - Removal from circulation

LawReferences

[Article 149 of Industrial Property Code](#)

Commentary

In case of an infringement of the design right, the right owner can request from the court the prohibition and prevention of the infringing acts. This naturally encompasses a possible request from the owner of the design right for the recall of all infringing products and their removal from circulation to prevent further sales of those products.

Case Law

No applicable case law

Enforcement - Remedies - Destruction

LawReferences

[Article 149 of Industrial Property Code](#)

Commentary

In case of an infringement of the design right, the right owner can request from the court the destruction of the confiscated products and equipment if it is essential for the preclusion of acts of infringement or the alteration of these products and equipment, the costs of which shall be met by the infringer.

Case Law

No applicable case law

Enforcement - Remedies - Surrender of goods

Law References

[Article 149 of Industrial Property Code](#)

Commentary

In case of an infringement of the design right, the right owner can request from the court the confiscation of the products constituting infringement and the equipment used directly to produce such products, in a way that would not prevent manufacturing of products other than the infringing products. The right owner can also request proprietorship over the confiscated products and equipment.

Case Law

No applicable case law

Enforcement - Remedies - Surrender of profits

Law References

[Article 151 of Industrial Property Code](#)

Commentary

The injury suffered by the design right holder includes not only the value of the actual loss but also the income loss incurred due to infringement of the design rights. The loss of income shall be calculated in accordance with one of the following evaluation methods, to be selected by the design right holder who has suffered the injury: according to the possible income that the design right holder would have generated if the competition of the infringing party did not exist; according to the net income generated by the infringing party from the use of the design; according to a license fee that would have been paid if the party infringing the design right would have utilized the design under a legal licensing contract.

In calculation of the profits surrendered, in particular the economic value of the design, the term of protection remaining at the time of infringement, the type and number of the outstanding licenses, the extent and quality of the infringement and similar factor shall be taken into consideration.

Where the design right holder has selected one of the evaluation options specified above; the court may add on a reasonable extra amount if the court is in the opinion that the design contributes substantially to the economic value of the product. The assessment of the contribution of the design to the economic value of the product shall be grounded on the verification that the demand for the product results substantially from the design.

Case Law

No applicable case law

Enforcement - Remedies - Information regarding source

Law References

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

Enforcement - Remedies - Right to publication

LawReferences

[Article 149 of Industrial Property Code](#)

Commentary

In case of an infringement of the design right, the right owner, in case there is a justified reason or interest, can request from the court the publication of the finalized judgment in full or in summary in a daily paper or by other means, the costs of which shall be met by the other party or the notification of the finalized judgment to the interested parties. In case this request is accepted, the form and scope of publication shall be determined in the judgment. The right to publication shall lapse if not requested within three months commencing from the date the judgment is finalized.

Case Law

No applicable case law

Enforcement - Remedies - Unjustified enrichment/further remedies

LawReferences

[Article 149 of Industrial Property Code](#)

Commentary

In case of an infringement of the design right, if the right owner has requested both compensation and proprietorship over the confiscated products and equipment, the value of the products and equipments shall be deducted from the compensation awarded. If the value of the products turns out to be above the compensation value awarded, the right owner shall repay the balance to the infringing party.

The right owner can also request the implementation of a seizure at customs the products which have infringed as fraudulent copies the rights of the design right holder.

Case Law

No applicable case law

Enforcement - Remedies - Declaratory judgment

LawReferences

[Articles 149 and 154 of Industrial Property Code](#)

Commentary

In case of an infringement of the design right, the right owner can request from the court to determine whether or not the relevant acts constitute infringement. Any interested party can also institute proceedings against the right owner to obtain a judgment of non-infringement. Before instituting such proceedings, the interested party can first request the right owner to provide his or her opinion on whether or not a commercial or industrial activity he or she has undertaken or planning to undertake or serious and actual attempts he or she has made for these means in Turkey constitute infringement. In case no response is given by the right owner within one month as of the date of notification of the request or if the right owner's answer is not accepted by the interested party, the interested party can institute proceedings against the right owner to obtain a judgment of non-infringement. However, such notification is not a pre-condition for instituting court proceedings.

Persons, against whom an action of infringement has been brought by the right owner, cannot institute proceedings with respect to the procurement of a judgment of non-infringement.

Case Law

No applicable case law

Enforcement - Statute of limitation

LawReferences

[Article 157 of Industrial Property Code](#)

[Article 72 of Turkish Code of Obligations No. 6098 of January 11, 2011 \(Turkish Code of Obligations\)](#)

Commentary

Pursuant to Article 157 of the IP Code, time limit provisions of the Code of Obligations shall have effect concerning the time limits for claims relating to infringement of design rights. As the infringement of design rights constitutes a tortuous act, Article 72 of the Turkish Code of Obligations shall govern the infringement claims. Accordingly, infringement claims shall lapse after a period of two years commencing from the date the right owner finds out about the infringement/damage and the identity of the infringer and in any case, after a period of ten years commencing from the date the act of infringement occurred.

Case Law

No applicable case law

Enforcement - Liability of intermediaries

Law References

No applicable law reference

Commentary

There is not any explicit provision relating to the liability of intermediaries in the IP Code.

Case Law

No applicable case law

Enforcement - Criminal law enforcement - **Applicable law**

Law References

No applicable law reference

Commentary

Criminal remedies provided under the repealed Industrial Designs Decree Law were cancelled by the Constitutional Court in 2009. The IP Code also does not provide criminal remedies for design infringement cases. Therefore, criminal remedies are not applicable for design infringement cases.

Case Law

No applicable case law

Enforcement - Criminal law enforcement - **Sanctions**

Law References

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

Enforcement - Criminal law enforcement - **Procedure**

Law References

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

Litigation and procedural aspects - **Applicable procedural law**

LawReferences

[Articles 156, 157 and 159 of Industrial Property Code](#)

[Articles 389 to 406 of Code of Civil Procedure](#)

Commentary

The procedural rules governing infringement and invalidation claims are mainly set out in Articles 156 and 157 of the IP Code.

As per Article 159/3 of the IP Code, Related provisions of the Code of Civil Procedure shall govern the imposition of precautionary measures.

Case Law

No applicable case law

Litigation and procedural aspects - Plaintiff - Proprietor

LawReferences

[Articles 70 and 149 of Industrial Property Code](#)

Commentary

Plaintiff to a lawsuit based on the infringement of a design right is mainly the right owner. Pursuant to Article 70/1 of the IP Code, the owner of the right is the designer or his or her legal successor in title.

Case Law

No applicable case law

Litigation and procedural aspects - Plaintiff - Co-proprietor

LawReferences

[Article 149 of Industrial Property Code](#)

[Articles 688 to 700 of Turkish Civil Code No. 4721 of November 22, 2001 \(Turkish Civil Code\)](#)

Commentary

If the design application or registration belongs to more than one person, the proprietorship on the right shall be determined as per the agreement between the parties. If no such agreement exists, the joint proprietorship provisions of the Turkish Civil Code shall apply. Under the IP Code, the joint proprietor can institute legal proceedings against third parties in case of infringements of the joint design right. In such case, the joint proprietor should notify the other proprietors within one month, in order to enable them to attend the proceedings.

Case Law

No applicable case law

Litigation and procedural aspects - Plaintiff - Licensee

Law References

[Article 158 of Industrial Property Code](#)

Commentary

In case of an infringement of the design rights, unless provided otherwise by the contract, the holder of an exclusive license can institute all legal proceedings that have been made available to the right owner by the IP Code. The holder of a non-exclusive license, in case his or her right to institute legal proceedings due to infringement has not been explicitly restricted in the contract, should notify the right owner and request him or her to institute the required proceedings in case of infringement. If the right owner refuses or fails to institute the proceedings within three months as of the date of notification, the holder of the non-exclusive license can institute the proceedings in his or her name and to a degree which his or her interests necessitate, by also including the notification. In such case, the holder of the non-exclusive license should notify the right owner that the proceedings have been instituted.

Both the holders of non-exclusive license and exclusive license can, in the face of serious damage where elapsing of time cannot be remedied, request the court to issue an injunction for precautionary measures. In case the court grants this request, the licensee who has made the request is also entitled to initiate the proceedings. In such case, the licensee should notify the right owner that the proceedings have been instituted.

Case Law

No applicable case law

Litigation and procedural aspects - Plaintiff - Other plaintiffs

Law References

[Article 78 of Industrial Property Code](#)

Commentary

Invalidity claims can be asserted by any person of interest on the basis that the design does not fall within the description provided in the IP Code; it is not new and does not have individual character; it is contrary to the principles of public order and general morality; it results from a technical function;

it includes

inappropriate use of the sovereignty signs or other marks, arms, emblems, signs or names which concern public, have become public property in terms of religious, historical and cultural values and have not been granted a registration permit by the relevant authorities; the application for registration is not filed by the legal or real persons entitled as per the IP Code or it is proved that the application was filed in bad faith and includes unauthorized use of an intellectual property right.

Invalidity claims on the basis that the entitlement to the design right actually belongs to another person or persons can only be asserted by the person who is entitled to the design right.

Invalidity claims on the basis that there is a conflicting design which has been made available to the public at a later date but having an earlier date of filing can only be asserted by the prior right owner.

Case Law

No applicable case law

Litigation and procedural aspects - Defendant - Infringer

LawReferences

[Article 81 of Industrial Property Code](#)

Commentary

Defendants to infringement claims are infringers (the licensee in case the rights acquired by the licensing contract are transferred to third parties or expended without the consent of the design right holder).

The infringer is the executer of the acts laid down in Article 81 of the IP Code.

Case Law

No applicable case law

Litigation and procedural aspects - Defendant - **Other defendants**

LawReferences

[Article 48 of Industrial Designs Decree Law](#)

Commentary

There is not any explicit provision relating to the liability of intermediaries in the IP Code. Therefore there is not any other defendants.

Case Law

No applicable case law

Litigation and procedural aspects - Competent court - **International jurisdiction**

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

Litigation and procedural aspects - Competent court - **Territorial jurisdiction**

LawReferences

[Article 156 of Industrial Property Code](#)

[Article 6 of Code of Civil Procedure](#)

Commentary

Territorial jurisdiction regarding infringement and invalidation claims is governed by Article 156 of the IP Code. In respect of infringement claims, the competent court in terms of territorial jurisdiction is the court of the plaintiff's domicile or the place where the infringing act was committed or the place where the infringing act had effect. Pursuant to Article 6 of Code of Civil Procedure, the lawsuit can also be filed before the court of the defendant's domicile.

Where the plaintiff is not a Turkish citizen, the competent court is the court of the registered office of the authorized agent recorded in the Registry and if the agent's record has been cancelled, the court of the seat of the Turkish Patent and Trademark Office.

In respect of invalidation claims, the competent court in terms of territorial jurisdiction is the court of the defendant's domicile. If the applicant or design right holder is not domiciled in Turkey, the competent court is the court of the registered office of the authorized agent recorded in the Registry and if the agent's record has been cancelled, the court of the seat of the Turkish Patent and Trademark Office. The competent court in terms of territorial jurisdiction in respect of the actions against the decisions of the Turkish Patent and Trademark Office is Ankara Civil IP Courts.

Case Law

No applicable case law



LawReferences

[Article 156 of Industrial Property Code](#)

Commentary

In respect of subject matter competence, special courts to be established by the Ministry of Justice shall have jurisdiction for all of the actions and claims provisioned by the IP Code.

High Council of Judges and Prosecutors shall determine which of the Civil Courts of First Instance and the Criminal Courts of First Instance shall be appointed as special courts and indicate their respective jurisdiction based on the request of the Ministry of Justice.

There are currently specialized Civil IP Courts in three cities; Ankara, Istanbul and Izmir. In other cities, the 3rd Chamber of the Civil Courts of First Instance (if there are less than 3 Chambers the 1st Chamber of the Civil Courts of First Instance) deals with the actions and claims provisioned by the IP Code.

Pursuant to Article 156/2 of the IP Code, the competent court in terms of subject matter competence in respect of the actions against the decisions of the Turkish Patent and Trademark Office is Ankara Civil IP Courts as special courts.

Case Law

No applicable case law

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

LawReferences

[Articles 78 and 79 of Industrial Property Code](#)

Commentary

For obtaining declaration of invalidation of registered design rights, an invalidation action should be filed before the competent civil courts.

Case Law

No applicable case law

LawReferences

[Articles 149 to 151 of Industrial Property Code](#)

Commentary

In case of an infringement of design rights the right owner or unless otherwise stated in the contract, the holder of an exclusive license is entitled to bring variety of claims including an action for an injunction before the competent civil courts.

Case Law

No applicable case law

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this since invalidation proceedings are held by the competent civil courts.

Case Law

No applicable case law

LawReferences

[Article 159 of Industrial Property Code](#)

[Articles 389 to 406 of Code of Civil Procedure](#)

Commentary

The IP Code provides special provisions for preliminary measures for the prevention of ongoing or anticipated infringements of rights. Where there is a likelihood of infringement and irreparable damages, the courts may issue preliminary injunctions.

Preliminary injunctions may be sought and may be granted prior to or during the substantive proceedings relating to intellectual property. The claimants must prove that they are the rights holder, that their rights are being infringed or there is a high likelihood of infringement and that they may suffer irreparable harm or damages. The high likelihood of infringement is interpreted as imminent danger of infringement. The courts are encouraged to issue preliminary injunctions in a manner that will secure the enforcement of the final judgment.

Case Law

No applicable case law

Litigation and procedural aspects - Provisional measures - **Ex parte proceedings**

LawReferences

[Article 159 of Industrial Property Code](#)

[Articles 389 to 406 of Code of Civil Procedure](#)

Commentary

Preliminary injunctions may be sought and may be granted prior to or during the substantive proceedings relating to intellectual property. Injunctions granted prior to commencement of substantive proceedings will automatically lapse if substantive proceedings are not commenced within two weeks of executing the injunction. Preliminary injunction can be maintained until the final judgment becomes procedurally final or may be altered by the judge at any appropriate time during the trial. Bank guarantees or other form or guarantees may be submitted in lieu of a preliminary injunction subject to the court's decision.

Case Law

No applicable case law

Litigation and procedural aspects - Provisional measures - **Attachment**

LawReferences

[Articles 32 to 41, 78 to 105 of Enforcement and Bankruptcy Code](#)

Commentary

Attachment is granted to secure enforcement of the monetary claims the court grants as a result of the infringement action. It is not required for the court's decision to be finalized in order to obtain attachment against the infringer.

Case Law

No applicable case law

Litigation and procedural aspects - Evidence - **Burden of proof**

LawReferences

[Article 190 of Code of Civil Procedure](#)

Commentary

According to the general rules of Turkish Civil procedure Law, the burden of proof basically lies with the party to whom the facts to be proven are beneficial. Thus, the right owner or licensee as claimants has to show and prove all facts supporting the infringement of an existing design right as well as additional conditions for their claim, such as the incurrence of damage. If the infringements of an existing design right is proven the burden of proof regarding any defense lies with the infringer.

Accordingly, regarding the claims of invalidity and revocation, the claimant has to prove all facts supporting the invalidity and revocation.

Case Law

No applicable case law

Litigation and procedural aspects - Evidence - Standard of evidence

LawReferences

[Articles 187, 198, 200 to 239, 303 of Code of Civil Procedure](#)

Commentary

Turkish Civil Procedure Law requires proof of all facts of the case. Pursuant to Article 198 of the Code of Civil Procedure, the judge has discretion in its evaluation of the evidence adduced (discretionary evidence). However, certain claims have to be proven with certain types of evidence, the conditions, effects and the result of which are expressly laid down in the legislation. That type of evidence is called conclusive evidence and the judge does not have discretion to evaluate any other type of evidence in respect of the claims that should statutorily be proved with conclusive evidence. In case the claim is proven with conclusive evidence, the judge does not have discretion to question the accuracy of the fact asserted in the claim.

Case Law

No applicable case law

Litigation and procedural aspects - Evidence - Means of evidence

LawReferences

[Articles 192, 199 to 293, 303 of Code of Civil Procedure](#)

Commentary

Admissible means of evidence under Turkish civil procedure law encompasses all types of evidence, involving those that have not been envisaged in the legislation, except for the facts that require the admission of conclusive evidence to be proven.

The means of evidence envisaged under the Code of Civil Procedure are deed, oath, final judgment (conclusive evidence), witness evidence, expert opinion and documentary evidence (discretionary evidence).

Case Law

No applicable case law

Litigation and procedural aspects - Evidence - Preservation of evidence

LawReferences

[Article 400 of Code of Civil Procedure](#)

Commentary

In case there is a possibility that the evidence will be lost unless preserved immediately or submission of such evidence will become considerably difficult, the parties can request from the court the preservation of such evidence to be submitted in the future in an ongoing case or in a case that has not yet been brought to court.

Case Law

No applicable case law

Litigation and procedural aspects - Evidence - Protection of confidential information

LawReferences

No applicable law reference

Commentary

Under Turkish civil procedure law there are no specific rules as to the protection of confidential information. Nevertheless, pursuant to general provisions, it is possible to request from the court the protection of information to be submitted on the basis that it is confidential or a trade secret. In such case, only the court, experts and to the extent allowed by the court, the opposing party can examine the information protected.

Case Law

No applicable case law

Litigation and procedural aspects - Evidence - Presumption of validity

LawReferences

[Articles 204, 205, 208 to 214 of Code of Civil Procedure](#)

Commentary

It is presumed that notary deeds, court judgments and deeds that are acknowledged before the court or deemed by the court to have been issued by the opponent to the deed are valid, unless proven otherwise.

In case the signature or the content of an authenticated deed is disowned, such claim should be asserted as a separate action to be filed against the person by whom the deed has been authenticated.

Case Law

No applicable case law

Litigation and procedural aspects - Alternative dispute resolution

LawReferences

No applicable law reference

Commentary

There are no arbitral institutions in Turkey that are specific to Intellectual Property rights disputes. But, it is accepted that regardless of its nature, design disputes that can be settled between the parties are generally regarded as being arbitral. Design arbitration addresses principally contractual rights and obligations, breaches and infringements under license agreements. Arbitration is not applied as often as it could be for the settlement of design disputes.

Case Law

No applicable case law

Litigation and procedural aspects - Length and costs of different proceedings - **Actions for revocation or invalidation** ▼

LawReferences

No applicable law reference

Commentary

Actions for revocation and invalidation of the design rights are subject to civil law and held before the competent civil courts. The proceedings last around 12 to 18 months at the first instance level and an additional 18 to 24 months at the appeal.

The costs of the proceedings are highly variable and it is not possible to provide an exact figure. The amount of the attorney's fee varies depending on the experience and seniority of the lawyer. Court fees are insignificant. Court duties may be in the range of EUR 135 while the expert fees (if appointed) may be around EUR 230 to 330 depending on the qualifications of the experts.

Case Law

No applicable case law

Litigation and procedural aspects - Length and costs of different proceedings - **Actions regarding infringement** ▼

LawReferences

No applicable law reference

Commentary

Actions regarding infringement of design rights are subject to civil law and held before the competent civil courts. The proceedings last around 12 to 18 months at the first instance level and an additional 18 to 24 months at the appeal.

The costs of the proceedings are highly variable and it is not possible to provide an exact figure. The amount of the attorney's fee varies depending on the experience and seniority of the lawyer. Court fees are insignificant. Court duties may be in the range of EUR 135 while the expert fees (if appointed) may be around EUR 230 to 330 depending on the qualifications of the experts. For the damages action, court fees are 5.6 % of the total amount of the claim.

Case Law

No applicable case law

Litigation and procedural aspects - Length and costs of different proceedings - **Invalidity proceedings before the registration office** ▼

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this since invalidation proceedings are held by the competent civil courts.

Case Law

No applicable case law

Litigation and procedural aspects - Length and costs of different proceedings - Preliminary injunction proceedings ▼

LawReferences

No applicable law reference

Commentary

The length of the preliminary injunction proceedings primarily depends on whether the court refers the case to the experts and usually last about 1 to 4 months.

The costs of the proceedings are highly variable and it is not possible to provide an exact figure. The amount of attorney's fee varies depending on the experience and seniority of the lawyer. Court fees vary depending on whether the case is referred to an expert or not.

Case Law

No applicable case law

Customs measures - Applicable law ▼

LawReferences

No applicable law reference

Commentary

Turkey has an intellectual property rights protection system in the customs areas that is compatible with European Union (EU) regulations and the international agreements to which Turkey is a party. The rules for customs measures in respect of intellectual property rights are primarily laid down in Article 57 of Customs Law and Articles 100 to 111 of Customs Regulations.

Case Law

No applicable case law

Customs measures - Scope ▼

LawReferences

[Article 159 of Industrial Property Code](#)

[Article 57 of Customs Law](#)

Commentary

Customs authorities can seize suspected goods and can grant a temporary suspension decision in respect of shipments made subject to importation and exportation, as well as transit trade and shipments located in any Turkish free trade zones.

Case Law

No applicable case law

LawReferences

[Article 103 of Customs Regulations](#)

Commentary

There is an official system for protection of intellectual property rights by Turkish Customs that requires only a single application, for each and every intellectual property right, to be filed through the website of General Directorate of Customs in Ankara. These intellectual property applications cover all shipments made subject to importation and exportation, as well as transit trade and shipments located in any Turkish free trade zones.

Case Law

No applicable case law

LawReferences

[Article 102 of Customs Regulations](#)

Commentary

Customs authorities can seize suspected goods ex officio, after which Customs inform the rights holders, invite them to check the relevant shipments and take any necessary action. Customs authorities that discover suspected goods entering the country will grant a temporary suspension decision and the rights holder will be requested to check the products, obtain samples or take pictures of those products and provide a preliminary injunction decision within ten working days starting from the notification of the decision. The intellectual property owners are entitled to request an additional 10-day period should the process requires more time, such as in the cases where the actual examination of the sample takes longer. However, such extension requests can be rejected.

Case Law

No applicable case law

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

LawReferences

[Article 57 of Customs Law](#)

[Article 100 of Customs Regulations](#)

Commentary

Pursuant to Article 57 of Customs Law and Article 101 of Customs Regulation, customs authorities can grant a temporary suspension decision in respect of shipments made subject to importation and exportation, as well as transit trade and shipments located in any Turkish free trade zones.

Case Law

No applicable case law

Customs measures - Application in more than one jurisdictions at the same time

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

Customs measures - Other means of enforcement at national borders

LawReferences

No applicable law reference

Commentary

Turkish Law makes no express provision for this.

Case Law

No applicable case law

Interference with other rights - Trademark law

LawReferences

[Industrial Property Code, Book I: Trademark](#)

Commentary

Objects of design rights protection can be two or three-dimensional designs which can also be objects of trademark protection as long as they have distinctive character and are capable of being represented on the register in a manner which enables determination of the subject matter of protection clearly and precisely. Thus, protection can be sought on basis of Trademark Law as well as on basis of Design Law.

Case Law

No applicable case law

Interference with other rights - Copyright law

LawReferences

[Articles 1 and 4 of Law No. 5846 of December 5, 1951 on Intellectual and Artistic Works \(Law on Intellectual and Artistic Works\)](#)

Commentary

Design Law and Copyright Law do not exclude each other although both laws govern the protection of aesthetics.

Designs can enjoy copyright protection as a work of fine art as per Articles 1 and 4 of the Law on Intellectual and Artistic Works. In order for a work to be protected under the Law, it must simply meet the objective and subjective conditions. The objective condition is that the work should be regarded within the scope of any of the four work types defined in the Law (i.e., literary and scientific works, musical works, artistic works, and cinematographic works). The subjective condition is originality.

If a design that is new and has a distinctive character and accordingly protected under the IP Code also fulfils the objective and subjective conditions of protection under the Law on Intellectual and Artistic Works, it will also be protected as per the latter.

Case Law

No applicable case law

Interference with other rights - Patent law

LawReferences

[Articles 58 and 82 of Industrial Property Code](#)

Commentary

According to Article 82 of the IP Code, aesthetic creations are excluded from patent protection as patent rights are technical property rights. Thus, if and to the extent to which protection is desired merely for the aesthetics of an object Patent Law is not applicable. Reciprocally Article 58 of the IP Code excludes from design right protection features dictated solely by a technical function.

Case Law

No applicable case law

Interference with other rights - Unfair competition law

LawReferences

[Articles 54 to 63 of Turkish Commercial Code No. 6102 of January 13, 2011 \(Turkish Commercial Code\)](#)

Commentary

Infringement of intellectual property rights also constitutes unfair competition under the Turkish Commercial Code. Therefore, infringement of designs rights can also be subject to unfair competition claims as per the Turkish Commercial Code.

Case Law

No applicable case law

Interference with other rights - General civil or common law

LawReferences

[Turkish Civil Code No. 4721 of November 22, 2001 \(Turkish Civil Code\)](#)

[Code of Civil Procedure No. 6100 of January 12, 2011 \(Code of Civil Procedure\)](#)

Commentary

The provisions of the Turkish Civil Code and the Code of Civil Procedure shall govern issues that have not been expressly regulated under the IP Code, such as the procedural statute of limitation in respect of civil proceedings and the standard, means and preservation of evidence, as well as the aspects of preliminary injunction that have not been expressly dealt with under the IP Code.

Case Law

No applicable case law

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