

Republic of Turkey

***PATENT PROTECTION
IN TURKEY***

***DECREE-LAW NO.551 PERTAINING TO THE
PROTECTION OF PATENT RIGHTS
IN FORCE AS FROM JUNE 27, 1995
AS AMENDED BY THE DECREE LAW NO:566 DATED
SEPTEMBER 22, 1995 AND
AMENDED/ADDED/REPEALED BY THE LAW NO:4128 OF
NOVEMBER 7, 1995***

*Turkish Patent Institute
March 1996*

**DECREE-LAW NO.551 PERTAINING TO THE PROTECTION OF
PATENT RIGHTS
IN FORCE AS FROM JUNE 27, 1995**

Provisions in **bold**, in Articles 43, 53, 57, new Article 73/A and Article 174 have been amended/added/repealed by Law No. 4128 of November 07, 1995. Transitional Article 4 has been amended by the Decree-Law No. 566 dated September 22, 1995.

PART ONE

Preliminary Provisions

SECTION ONE

Aim, Scope, Persons Entitled To Protection and Definitions

Aim and Scope

Article 1 :

The aim of this present Decree-Law is to protect the inventions by granting

1. Patents,

or

2. Utility Model Certificates,

in order to promote the inventive activity and to contribute to technical, economical and social development by implementing the inventions in industry.

This present Decree-Law contains the principles, the rules and the conditions/requirements for issuing Patents or Utility Model Certificates to inventions qualifying for grant of industrial property right.

Persons Entitled To Protection

Article 2 :

The Protection conferred by this law is available to natural and legal persons who are domiciled or who have industrial or commercial establishments within the territory of the Republic of Turkey, or to the persons entitled to file applications under the provisions of the Paris Convention.

Natural or legal persons other than those referred to in the first paragraph of this present Article, who are nationals of the States which accord legal or de facto protection to the nationals of the Republic of Turkey shall enjoy, according to the reciprocity principle, patent and/or utility model protection in Turkey.

Definitions

Article 3:

Within the meaning of this present Decree-Law, Institute means the Turkish Patent Institute set-up in accordance of the Decree-Law No. 544.

Within the meaning of this present Decree-Law, “Paris Convention” is the international Convention for the Protection of Industrial Property dated March 20, 1883.

Priority of Application of International Agreements

Article 4 :

Where International Agreements having entered into force according to the laws of the Republic of Turkey, contain provisions which are preferential/more favorable to those of this present Decree-Law, the persons referred to in Article 2 may request to benefit from such preferential/more favorable provisions.

SECTION TWO

Patentability Requirements

Patentable Inventions

Article 5 :

Inventions which are novel, which surpass the State-of-the-Art and which are applicable in industry shall be protected by patents.

Non-Patentable subject matter and Inventions

Article 6 :

The following, not being inventions as of their nature, shall remain outside the scope of this present Decree-Law :

- a/ Discoveries, scientific theories, mathematical methods;
- b/ Plans, methods, schemes/rules for performing mental acts, for conducting business/trading activity, and for playing games.
- c/ Literary and artistic works, scientific works, creations having an esthetic characteristic, computer programs.
- d/ Methods involving no technical aspect, for collecting, arranging, offering/presenting and transmitting information/data.
- e/ Methods of diagnosis, therapy and surgery applying to human or animal body.

The provision under the paragraph one, subparagraph (e) of this present Article, shall apply neither to the products and compositions (per se) used in connection with these methods nor to their process of manufacturing.

Patent shall not be granted for inventions in respect of following subject matter.

- a/ Inventions whose subject matter is contrary to the public order or to morality as is generally accepted.
- b/ Plant and animal varieties/species or processes for breeding/plant or animal varieties/species, based mainly on biological grounds.

Novelty

Article 7 :

Any invention which is not part of/comprised in the State-of-the-Art shall be deemed to be novel.

The State-of-the-Art shall be held to comprise information/data pertaining to the subject matter of the invention, accessible to the public in any part of the world, before the date of filing of the application for patent by disclosure whether in writing, or orally, by use or in any other way.

Patent and Utility Model applications filed in Turkey prior to the date of filing of the application for patent and published on or after that date are considered to be comprised in the State-of-the-Art as of their first disclosed contents/texts.

Disclosures not affecting Patentability

Article 8 :

In the circumstances hereunder cited, disclosure of information which otherwise would affect the patentability of an invention claimed in the application shall not affect the patentability of that invention where the information was disclosed, during the 12 months preceding the date of filing or, where priority is claimed, the date of priority of the application:

- a/ by the inventor,
- b/ by an office when the information was contained
 - (1) in another application filed by the inventor and which application should not have been disclosed by the office, or
 - (2) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor or,
- c/ by a third party which obtained the information directly or indirectly from the inventor.

According to the paragraph one of this present Article, shall be deemed inventor any person who, at the date of filing the application, had the right to the patent.

The effects of paragraph one of this present Article are not limited to a term and may be invoked at any time.

Where the applicability of paragraph one of this present Article is contested, the party invoking that this paragraph must be applied shall have the burden of proving, that the conditions of that paragraph are fulfilled or are expected to be fulfilled.

Surpassing the State-of-the-Art (involving inventive level/step)

Article 9 :

An invention shall be deemed to surpass the State-of-the-Art (to involve inventive activity/step) when it is the result of an activity which is not obviously realizable from the State-of-the-Art, by a person skilled in the concerned technical field.

Applicability in Industry

Article 10 :

An invention shall be regarded as being applicable in industry where it is susceptible to be produced or used in any given field of industry, including agriculture.

PART TWO

Right to a Patent

Usurpation of the Right And Indication of the Inventor

Right to a Patent

Article 11 :

The right to a patent shall belong to the inventor or to his successor in title and shall be transferable.

Where an invention has been made jointly by more than one person, if not foreseen otherwise by the parties, the right to request a patent shall belong to them jointly.

Where an invention has been made independently by several persons at the same time, the right to a patent shall belong to the person who has filed the first application or who can claim an earlier priority right on others.

The person who is the first to apply for a patent shall be vested with the right to request the patent until proof to the contrary is established.

Usurpation of the Right to a Patent

Article 12 :

A person claiming to be the rightfully vested with the right to request the patent; in conformity with paragraph one of Article 11, may initiate legal proceedings against the applicant in accordance with the provisions of Article 129. No claim may be raised before the Institute in that the applicant is not the rightfully vested with the right to request the patent. Where the court decision concerning the right to a patent is in favour of the plaintiff, the holder of the right to a patent may request one of the following courses of action within three months after the judgment has become res judicata.

a/ He may request that the prior application for patent subject to the court action in the matter of usurpation of same, be accepted as his application and be further prosecuted as such.

- b/ He may file a new application for the same invention by claiming the same date of priority. Such an application will be prosecuted as of the date of filing of the first application. In such a situation, the application subject to usurpation shall remain without effect.
- c/ He may request that the application subject to usurpation be rejected.

The provisions of Paragraph three of Article 45 of this present Decree-Law, shall apply to every new application filed in conformity with Paragraph one of this present Article.

Where a court action has been instituted in accordance with Paragraph one hereabove for determining the right to a patent, the application may not be withdrawn without the consent of the plaintiff. The court shall rule to suspend the patent granting procedure as from the date of publication of the application until the date when the judgment becomes res judicata in the case where the plaintiff's claim is rejected and in the case where the plaintiff's claim is accepted within a period of three months subsequent to the date when the judgment becomes res judicata.

Usurpation of a Patent

Article 13 :

Where a patent has been granted to a person other than the rightful owner according to Paragraph one of Article 11, the person; claiming to be the rightfully vested, with such right; may institute a court action claiming the transfer of ownership of the patent without prejudice to his other rights and claims conferred by the patent.

Where only partial right to the patent is claimed, a court action may be instituted claiming that joint ownership on the patent be recognized in accordance with paragraph one of this present Article.

The right to raise such a claim and institute such a court action according to Paragraph one and two of this present Article, shall be exercised within two years following the date of publication of the patent, or in case of bad faith, until the expiry of the term of protection of the patent.

At the request of the interested party, the court action instituted according to the present Article and the claims put forward therein, the final ruling or any other action concluding the court action shall be entered in the Patent Register in order to have effect against third parties.

Consequences of Termination of Usurpation

Article 14 :

Where the ownership of a patent changes in conformity with Article 13, any license granted or other rights benefiting to third persons on the patent shall expire with the entry of said change of ownership in the Patent Register.

Where, prior to the entry of the rightful patent owner in the Patent Register in conformity with Paragraph one of this present Article, the person who subsequently is understood to be the unrightful owner of the patent or a person who has been granted a license for the patent,

subject to the court action, prior to the institution of same, have put the said patent to use or have taken effective and concrete steps for that purpose, may request from the rightful patent owner(s) the grant of a non-exclusive license.

Such a request may be filed within a period of two months, in the case of the person appearing as the former owner in the Patent Register, or, in the case of the licensee, within a period of four months. Said periods run as from the date when the Institute notifies the interested parties of date of the entry of the rightful patent owner in the Patent Register.

The license granted in accordance with Paragraph two of this present Article shall be granted for a reasonable period and under fair conditions. In determining such period and conditions, the provisions concerning the grant of compulsory licenses shall apply likewise.

The provisions set forth in Paragraphs two and three of this present Article shall not apply, where the owner of the patent or the licensee, at the time, when they have commenced putting the patent to use or making serious preparations for such use have acted in bad faith.

Indication of the Inventor

Article 15 :

The name of the inventor shall be indicated in the letter's patent. The inventor shall have the right to request from the applicant or the patentee to be indicated as the inventor in the letter's patent.

PART THREE

Employee's Inventions

SECTION ONE

The Concept of Employee Inventions

Article 16 :

Employee inventions within the meaning of this present Decree-Law are those inventions qualifying for protection under a Patent or a Utility Model Certificate.

Technical improvement proposals do not qualify for protection under a Patent or a Utility Model Certificate.

Within the meaning of this present Decree-Law, an employee is a person who is in the service of another person and is responsible to carry out the work specified by the employer, with personal liability against the employer, in accordance with the provisions of a private legal contract or a legal relationship of similar nature. Trainees and students serving and undergoing a practical training who are not receiving a payment and are not bound to a specific working period are also considered as employees according to the provisions of this present Decree-Law.

Concept of Service Inventions and Free Inventions

Article 17 :

Within the meaning of this present Decree-Law, employee's inventions are classified as service inventions or free inventions.

Service inventions are those inventions which are made by the employee during the term of his employment, in a private enterprise or public authority, while performing, as of his obligation, the task (s)he has been assigned to or which are based to a great extent on the experience and work/activity of the private enterprise or public authority.

Employee's inventions not falling under the scope of inventions referred to in Paragraph two hereabove, shall be deemed to be free inventions. Free inventions are subject to the provisions of Articles 31 and 32.

Service Inventions and Duty to Report

Article 18 :

An employee having made a service invention shall be under the duty to report, without delay, the invention to his employer, in writing. Where the invention has been made by more than one employee, such report to the employer can be jointly made. The employer shall notify without delay and in writing the persons(s) having made such report, the date when same has been received at his end.

In the report, the employee is under the obligation to disclose the technical problem, its solution and how the service invention was realized. For the better understanding of the invention, the employee shall provide the employer with the drawing(s) of the invention, if any.

The employee shall furthermore specify the experience and activities/work of the enterprise from which he has benefited; if any, the contributions of other employees, the nature/form of such contributions, the instructions he received in respect of his work and with regard to said contributions and the contributions which he considers to be his own.

The employer shall, within two months as from the date of receipt of the employee's report, inform same of the corrections he deems necessary to be made therein. Where the employer fails to request for the correction of the report within the foreseen period of two months, the report referred to in Paragraph two of this present Article, shall be deemed to be (legally) valid/effective even when it fails to meet the requirements.

The employer is under the obligation to provide the assistance necessary for enabling the employee to report in compliance with this present Decree-Law.

Employer's Right on an Invention

Article 19 :

An employer may claim a right, in part or in whole, for a service invention.

The employer shall notify the employee of his claim, in writing. Such claim must be made within four months as from the date of receipt by the employer of the employee's report.

Effect and Consequences of the Claim

Article 20 :

Where the employer claims ownership in whole on the service invention, with the notification of the declaration (in writing), to this effect, to the employee, all rights on the service invention shall pass to the employer.

Where the employer claims partial ownership on the service invention, the employer may use the invention on the basis on his partial claim. Should such use by the employer considerably impede employee's further exploitation of his invention, the employee may request that, within a period of two months, his employer either takes over, in whole, the service invention or releases it free in his favour.

Dispositions on a service invention made by an employee prior to his employer making a claim in respect thereof, shall have no effect against the employer where such dispositions infringe the rights of the employer.

Service Inventions Becoming Free Inventions

Article 21 :

A service invention shall become a free invention under the following situations:

- a/ where the employer releases a service invention free under a statement in writing;
- b/ where the employer makes a claim for part of the service invention;
- c/ where the employer has not made a claim to the service invention within four months upon receiving the report of the employee made according to Article 18 or, has not replied within two months to the proposal made according to Paragraph two of Article 20;

The fact that an invention has become free according to Paragraph one (b), of this present Article, shall not affect the right of the employer to make use of same in accordance with Paragraph two of Article 20.

The employee may dispose, as of his free will, of a service invention that has become a free invention, without being subject to the provisions of Articles 31 and 32.

Compensation for Claim of Whole Ownership

Article 22 :

Where the employer claims ownership in whole on the service invention, the employee shall have the right to a reasonable compensation as against the employer.

In assessing compensation, due consideration shall in particular be given to the economical/commercial applicability of the service invention, the duties of the employee in the enterprise and the enterprise's contribution to the invention.

Compensation for Claim of Partial Ownership

Article 23 :

Where the employer claims partial ownership on a service invention and uses such invention, the employee may demand a reasonable compensation. In assessing such compensation, Paragraph two of Article 22 shall apply.

After having stated a claim to a service invention, an employer may not avoid the payment of the compensation by contesting that the invention is not worth protection. Where the Institute or, in case the Institute is sued, the court decides that the invention is not patentable, the employee may not demand compensation. The employee's right to such compensation may be claimed until the decision as to the patentability of the invention becomes res judicata.

Determination of Compensation in the Regulation and Arbitration Procedure

Article 24 :

The compensation tariff pertaining to employee's invention and the arbitration procedure to be followed in case of disagreement shall be determined in the Regulation which will be published by the Ministry of Labour and Social Security within three months following the enactment of this present Decree-Law and after having consulted the professional organizations of employees and employers.

Modality for determining the Compensation

Article 25 :

The amount and the modality of payment of the compensation shall be determined by the parties in compliance with the provisions of the Regulation indicated in Article 24 after the employer has claimed ownership in full or in part on the service invention.

Where the parties fail to reach an agreement to determine the amount of the compensation and the modality of payment within thirty days in compliance with the provisions of the Regulation, the disagreement shall be settled by arbitration within sixty days.

The decision of arbitration shall be binding upon both parties.

Where two or more employees have contributed to a service invention, the amount of the compensation and the modality of payment shall be determined separately for each of them in accordance with the above provision.

The provisions, if any, of the employment contract, in respect thereof favourable to the employee shall apply.

Employer's Obligation to Apply for Domestic Patent

Article 26 :

An employer shall be entitled and under obligation to apply before the Institute for grant of a domestic patent for a service invention reported to him. Where the protection of the invention with a utility model certificate appears to be more appropriate, the employer is under obligation to file without delay an application for the protection of a patentable invention with a utility model certificate.

An employer's obligation to file such an application shall terminate under the following circumstances:

1. where the service invention has become free;
2. where the employee has agreed that no application is to be filed;
3. where the confidentiality of the operational secrets of the enterprise requires that an application shall not be filed.

Where, after claiming full ownership on a service invention, an employer does not comply with his obligation to file an application and also fails to do so within a reasonable time-period set by the employee, the employee may file an application before the Institute for the service invention in the name and on behalf of the employer.

Where a service invention has become free, the employee shall be entitled to file an application in his own name. Had the employer already filed an application for the protection of the service invention, the rights resulting from such application shall pass to the employee, when the invention is released free.

Filing an Application for a Service Invention in a Foreign Country

Article 27 :

After claiming full ownership on a service invention, an employer shall be entitled to apply for the protection of the subject invention in a foreign country.

For foreign countries in which an employer does not wish to obtain a patent, he is under the obligation to release free the service invention to the employee and shall enable the employee to apply for a patent in said countries. The invention is to be released free within a reasonable time-period to allow the employee to benefit from the deadlines for priority right(s) under international treaties.

The employer may reserve for himself a non-exclusive right to use the service invention against reasonable compensation in the foreign countries where he has released the invention free in order to enable the employee to obtain a letter's patent for same, and shall have the right to claim that the interests he has reserved to himself shall not be damaged in the concerned countries.

Parties' Mutual Rights and Obligations in Acquiring the Right to Patent

Article 28 :

Upon filing an application for patent for a service invention, an employer must give his employee copies of the filing petition and its enclosures and, if requested by the employee, must keep his employee informed of the progress of the application procedure.

The employee is under the obligation to assist his employer for obtaining a patent and to provide the information necessary to this effect.

Duties Resulting from an Application for Patent or from a Patent

Article 29 :

Where an employer, before meeting his employee's demand for reasonable compensation for the service invention, intends to discontinue prosecuting an application for patent or to surrender patent protection, he must inform his employee accordingly. At the employee's request and expense, the employer must assign the patent right to him and turn over to him any documents necessary to obtain a patent and to maintain same. An employer shall be entitled to surrender his rights resulting from an application for patent or a patent, where the employee does not reply within three months from receipt of the communication made to him in this respect.

Simultaneously with the communication made in the first paragraph, the employer can reserve to himself a non-exclusive right to use the service invention against a reasonable compensation.

Refraining from Filing an Application for Patent

Article 30 :

Where the interests of the enterprise so require, the employer may refrain from filing an application for patent, for inventions reported to him, which he believes, are legally patentable and keep them secret.

In determining the compensation for an invention under paragraph one of this present Article, account must also be taken of the potential economic losses/disadvantages that might affect the employee for not obtaining a patent for the invention.

Free Inventions and Obligation to Notify

Article 31 :

An employee who has made a free invention during the term of an employment contract shall notify the employer without delay. In the notification, the employer shall give the employer all the details concerning the invention and, if necessary concerning its realization, which the employer may need in order to assess whether it is in fact a free invention.

Where the employer does not contest, in writing, to the employee that the invention notified to him is a free invention within three months of the notification, he may not put forward the claim thereafter in that the invention is a service invention.

There shall be no obligation to notify the employer of a free invention where the invention is obviously not capable of being used in the employer's field of activity.

Obligation to Offer

Article 32 :

Before exploiting in another way a free invention further, during the term of his employment contract, an employee is under the obligation to make an offer his employer, on a non-exclusive basis to benefit from the invention on reasonable terms, where the invention falls within the field of activity of the employer's enterprise or where the employer's enterprise is making serious attempts to become active in the field of the invention. The employer may submit such offer together with the notification to be made in compliance with the provisions of Paragraph one of Article 31.

Where the employer does not reply to the offer within three months of its receipt, he shall lose his right of precedence on the matter.

Where the employer accepts the offer within the period prescribed in the paragraph above, but does not find the terms acceptable, the court shall determine the terms upon the request of the parties.

Where important changes come to affect the points taken into consideration in determining the amount and other conditions of the agreement, the employer or the employee may request from the court that the terms of the agreement be adapted to the new circumstances.

Technical Improvement Proposals

Article 33 :

In compliance with the provisions of this present Decree-Law, for technical improvement proposals which are not subject to protection by a letter's patent or a utility model certificate, the employer is under obligation to pay reasonable compensation to the employee provided he makes use of the proposal upon the written notification of his employee. The Provisions of Article 18 concerning the obligation to report and Articles 22 and 25 concerning the determining of compensation in respect of service inventions shall apply by analogy.

All other matters concerning technical improvement proposals shall be regulated under individual or collective employment contracts.

SECTION TWO

Common Provisions Concerning Employee's Inventions

Mandatory Nature of Provisions Concerning Employee's Inventions

Article 34 :

The provisions of this present Decree-Law relating to employees may not be modified to the detriment of same. Agreements concerning employee's inventions shall be permissible, in case of service inventions after the application for patent has been filed, or in case of free inventions and technical improvement proposals after their notification to the employer.

Condition to Comply With Equity

Article 35 :

Agreements between the employer and employee concerning service inventions, free inventions, or technical improvement proposals shall be null and void to the extent that they are manifestly inequitable, although they may not violate the mandatory provisions pertaining to employee inventions. This rule shall apply also to the amount of compensation.

Where objections as to the inequity of an agreement or the amount of compensation are not raised in writing within six month following termination of the employment contract, no objections as to inequity may be raised thereafter.

Obligation to respect Secrecy

Article 36 :

An employer shall keep confidential/secret the information/data concerning an employee's invention that has been reported or notified to him, for as long as required by the legitimate interests of the employee.

An employee must keep a service invention confidential/secret as long as it has not become free.

Persons other than the employer or the employee who have knowledge of an invention on the basis of this present Decree-Law may neither use the invention nor disclose it to others.

Effects of Obligations

Article 37 :

General obligations arising for the employer and employee under their employment relationship shall not be affected by the provisions concerning employee's inventions or technical improvement proposals unless further effects arise other than the invention becoming free.

The rights and obligations arising from provisions concerning employee's inventions and technical improvement proposals shall not be affected by termination of the employment relationship.

Employee's Right of Preemption

Article 38 :

Where the employer goes bankrupt and the trustee in bankruptcy of the estate wishes to dispose the invention independently of the enterprise, the employee shall have a right of preemption to acquire his own service inventions for which the employer has claimed full ownership.

The amount of compensation due, resulting from employee's inventions or technical improvement proposals shall be considered as privileged credit. Where, there are more than one such privileged credits, the trustee in bankruptcy shall distribute pro rata such credits.

SECTION THREE

Inventions Made by Employees in Public Service

Inventions and Technical Improvement Proposals of Employees in Public Service

Article 39 :

The provisions applying to inventions and technical improvement proposal of employees subject to private contractual relation, without prejudice to the privately agreed dispositions, shall apply, likewise, to the inventions and technical improvement proposals of employees

employed in state owned enterprises and other public establishments/bodies and their affiliates whether with general or added or private budgets.

Inventions of the Armed Forces Personnel

Article 40 :

The provisions relating to employees in public service shall apply, likewise, to inventions and technical improvement proposals made by members of the armed forces.

Inventions of University Staff

Article 41 :

In derogation from the provisions of Articles 40 and 41, inventions made by the *teaching staff of universities* during their scientific studies at universities or higher schools shall be free inventions.

Concerning such inventions the provisions of Articles 31, 32 and 34 shall not apply. The notion of *university teaching staff* shall be determined in accordance with the provisions the Law on Higher Education.

Where the subject educational body has made available specific equipment and means for the research work having led to the invention, the *university teaching staff* shall notify the educational body, in writing, of the exploitation of the invention and shall, upon request of the body, specify the modality of exploitation and the amount of proceeds achieved. Within three months of such written notification, the educational body may demand a reasonable share of the proceeds from the invention. The amount of such share shall however not exceed the expenses supported by the body.

PART FOUR

Granting a Patent

SECTION ONE

Application for a Patent and Requirements thereof

Application for a Patent and Annexes

Article 42 :

In order to obtain a patent, it shall be necessary to file an application complying with the form and scope of the Regulation and comprising the following;

- a/ application petition;
- b/ description specifying the invention;
- c/ claim(s) covering the elements of the invention for which protection is sought;
- d/ drawings referred to in the description, in the claim(s);
- e/ abstract;
- f/ receipt showing the payment of the application fee.

Where a patent-of-addition is to be filed in accordance with Article 121, the number of the (main) patent or the application for patent to which the addition refers shall be indicated.

The validity of an application for patent shall be subject to payment of the application fee prescribed in this present Decree-Law within seven days, at the latest, from the date of filing of the application, without the need to extend (to the applicant) any further notice to this effect. The application shall be deemed to have been withdrawn where the application fee remains unsettled within such time-period.

Any documents submitted to the Institute simultaneously with the filing of the application or thereafter shall be in accordance with the provisions of the Regulation of the present Decree-Law.

The description and claim(s) may be filed in English, French and German simultaneously with the application. A term of one month shall be given for translating them into Turkish and filing the Turkish translation before the Institute or an authority designated by it without the need to extend (to the applicant) any further notice to this effect. For the filing of the corresponding Turkish translation, the fee set forth in the Regulation shall be paid.

Fixing the Date of Application

Article 43 :

The date of filing of the application for patent becomes definite (is fixed) on the date, hour and minute when the applicant files before the Turkish Patent Institute or the authority designated by same the following documents drawn up in the form specified in the regulation :

- a/ an application petition, a description and one or more claim(s) in Turkish or in one of the foreign languages indicated in Article 42, even when they do not meet the formal requirements set forth in this present Decree-Law and in the regulation.
- b/ drawings referred to in the description, in the claim(s).

Where during the examination of the application for patent, the subject matter of the invention for which patent is requested is amended/changed, whether in whole or in part, **so as to expand out of the contents of the application as initially filed**, the date of application shall be deemed to be the date when the petition for such amendment/change is filed.

Obligation to Indicate in the Application the Inventor

Article 44 :

The inventor shall be indicated in the application. Where the applicant is not the inventor or the sole inventor, the applicant shall declare in the application how he has acquired, from the inventor or inventors the right to apply for a patent.

Where the inventor is not mentioned or no declaration is made as to how the applicant acquired the right to apply for a patent, the examination of the application shall not be initiated.

Unity of the Invention

Article 45 :

The application for patent consists either of one single invention or of a number of inventions realized around a principal inventive idea of general nature and related to each other by said principal inventive idea.

Applications not conforming to Paragraph one of this present Article are divided into divisional applications in accordance with the provisions set forth in the Regulation.

Each divisional application shall have the same date of filing as the initial application provided that their subject matter remains within the scope of same. Where priority is claimed for the initial application, each divisional application will benefit from the priority right or rights claimed for the initial application.

Explicitness of the Description

Article 46 :

The description must be written in a sufficiently explicit and comprehensive manner so as to enable a person skilled in the technical field of the subject matter to implement the invention.

Where the invention pertains to a microbiological process and the related microorganism is not accessible to those interested, the description shall only be deemed to fulfill the requirements specified under the Paragraph one of this present Article provided the following conditions are met:

- a/ the description contains the information regarding the characteristics of the microorganism;
- b/ the applicant has deposited, no later than the date of filing the application, a culture of the microorganism with an authorized institution, established in accordance with international conventions.

The said institution shall be mentioned in the publication in compliance with Paragraph two of Article 55.

Patent Claims

Article 47 :

The application should contain one or more claims.

The claim(s) shall define the elements of the invention for which protection is sought. Each claim shall be explicit and concise to the point. The claim(s) shall be based on the application. The claim(s) may not extend beyond the subject matter of the invention as specified in the description. The claim(s) shall be written/prepared in compliance with the provisions of the Regulation.

The applicant may write/prepare the claim(s) in compliance with the provisions of the Regulation or in another form.

Abstract

Article 48 :

The abstract serves the sole purpose to provide technical information and may not be used for other purposes.

Especially, the abstract may not be used to define the scope of the protection and to delimit the boundaries of the State-of-the-Art. The Institute may modify the abstract where it considers it necessary for providing better information to third parties. Such modification shall be notified to the applicant.

Priority Rights arising from applications filed according to International Conventions

Article 49 :

Natural or legal persons who are nationals of any State party to the Paris Convention, or when not nationals, who are domiciled or have an active business in these States, shall enjoy a right of priority of twelve months as from the date of filing an application for the grant of a patent or a utility model certificate before the authorised bodies of these States, for the purpose of filing an application for obtaining a letter's patent or utility model certificate in Turkey.

Priority rights not exercised within the time-period of twelve months prescribed in Paragraph one of this present Article are considered to be void.

Where an application claiming priority, within the time-period prescribed in Paragraph one of this present Article, is filed, all applications filed by third parties and patents and utility model certificates granted therefor in respect of the patent or utility model certificate subject to the priority right, shall be declared invalid as from the date of priority right.

Natural or legal persons who are nationals of countries benefiting from the reciprocity principle prescribed in Paragraph two of Article two shall enjoy, within the provisions of this present Article, priority right.

Where a natural or a legal person who is a national of a state party to the Paris Convention has filed a valid application in a state not party to the Paris Convention he shall enjoy within the provisions of this present Article priority right in respect of that application.

The priority right shall have effect as of the date of filing the application for patent or utility model certificate.

Rights Arising from Display in Exhibitions

Article 50:

Natural or legal persons specified in paragraph one of Article 49 who have displayed the products subject to a patent or a utility model certificate at national or international exhibitions held in Turkey or at, official or officially recognized, national or international exhibitions held in the states party to the Paris Convention, are entitled to claim a right of priority when the application for a patent or utility model is filed within a period of twelve months from the date of the display in the exhibition.

Where the product constituting the subject matter of a patent or utility model certificate has been displayed at the exhibition, before the official opening date, right of priority shall run from the date when the product was first displayed at the exhibition. The paragraphs two and three of Article 49 shall apply by analogy.

The authorized organs of the exhibitions held in Turkey, in accordance with paragraph one of this present Article, shall supply evidence to the persons displaying their products subject to a patent or a utility model certificate, by specifying the product subject to a patent or a utility model certificate clearly and comprehensively, including at least four photographs identifying same from the sides, the front, the rear and the bottom and indicating the type of the product and the date when same has been, visibly, displayed at the exhibition and the official opening date of the exhibition.

In order to enjoy the priority right of a product exhibited in foreign countries, it shall be necessary to submit evidence as specified in the third paragraph and to be obtained from the relevant authorities of the country where the exhibition was held.

Products subject to an application for patent or a patent or a utility model certificate cannot be prevented from being displayed at an exhibition held in Turkey and from being returned to their country of origin after the closing of the exhibition.

Where more than one applications have been filed for a patent or a utility model certificate with subject matter identical or similar to a product displayed in an exhibition, the applicant who first displayed such a product, and if displayed at the same time, the one who filed his application, firstly, shall enjoy the right of priority.

Effect of Priority Right

Article 51:

The effects of the priority rights ensuing from Articles 49 and 50, shall arise as of the date of filing of the application wherein priority is claimed.

Claiming and Evidencing of Priority

Article 52 :

An Applicant desiring to benefit from a right of priority shall file a claim of priority simultaneously with his application or within two months as from the date of filing his application. Where the right of priority is not documented within three months of the date of filing of the application, the claim to benefit from such priority shall be deemed not to have been made.

Multiple priorities may be claimed regardless of the fact that the application for a patent filed in foreign countries originates from different countries.

Multiple priorities may be claimed in an application for patent.

Where multiple priorities are claimed, the time-period runs from the earliest date of priority. Where one or more than one priorities are claimed, the right of priority shall comprise in its scope only those aspects contained in the application(s) originating the right of priority.

Even though the claims of the application, the priority originates from do not include certain elements of the invention, in the application filed claiming the priority of such an application, the priority right may still be granted for such claims provided, such elements (of the invention) are, explicitly and unequivocally indicated in the description of the application the priority originates from.

SECTION TWO

Examination of an Application

Rejection of an application

Article 53 :

The date of filing of an application becomes definite (is fixed) provided the application complies with the conditions set forth in Article 43 **and provided the application fee is paid**. The Institute shall reject an application and shall notify the interested party (applicant) of its decision of rejection when the application does not comply with the conditions set forth in Article 43 or when the application fee is not paid within seven days (following the date of filing of the application) or when the Turkish translations of the description and claim(s) submitted in one of the foreign languages mentioned in Article 42 are not filed within the subsequent one month.

Examination as to Formal Requirements,

Article 54 :

Upon the date of filing of an application becoming definite, the Institute shall examine the compliance of the application to the formal requirements set forth in Articles 42 to 52 and in the Regulation.

The compliance of the specification, claim(s) and drawing(s) to the patentability requirements is not comprised to be within the scope of this examination. The Institute shall examine the subject matter of the application, as of Articles 6 and 10 of this present Decree-Law, to determine whether or not it consists of an invention which is subject to patent protection and which is applicable in industry. The Institute after receiving/hearing the opinion to the contrary of the interested party (applicant) and, duly motivating its decision, shall reject the application when the invention, subject matter of the application, obviously and unequivocally lacks the characteristics of novelty and applicability in industry.

Where the examination results in that, the application suffers formal deficiencies, in terms of the provisions of Article 53, or that its subject matter is not an invention subject to patent protection, the examination procedure is suspended and the applicant is requested to remedy

the deficiencies or to notify the Institute his objections within the period set forth in the Regulation.

In the course of this procedure, the applicant may amend the claim(s) or divide the application into more than one divisional application(s).

The Institute shall reject the application, in whole or in part, in consideration of the claim(s), when it does not find acceptable the objections raised against its decision, according to which, the subject matter of the application is not an invention subject to patent protection or when the existing deficiency has not been remedied, in compliance with the conditions and formal requirements as set forth in the Regulation.

Where the examination conducted by the Institute according to this Article shows that there is no deficiency as to formal requirements or when any such deficiency has been duly remedied and completed in accordance with the requirements of this present Decree-Law, the Institute shall inform the applicant that the request, if not filed earlier, for conducting the Search on the State-of-the Art, is to be filed within the time-period set forth in Article 56.

Publication of an Application

Article 55 :

The application shall be open to public inspection upon its publication, in accordance with the provisions of the Regulation, after the elapsing of a period of eighteen months from the date of filing of the application or, if any, from the date of the priority claimed. The application is published subsequent to the conclusion by the Institute of the examination pertaining to the compliance with the formal requirements as of the provisions of Article 54 and subsequent to the filing, according to Article 56, of the request for conducting the Search on the State-of-the-Art.

The applications are published, periodically in the relevant Bulletin, to include the particulars of same under the form/modality and conditions as set forth in the Regulation.

At the request of the applicant, the application is published in accordance with the conditions set forth in this present Article, even when the period of eighteen months mentioned under paragraph one of this present Article has not expired.

Request for Conducting Search on the State-of-the-Art and Payment of the related Search Fee

Article 56 :

Within 15 months from the date of filing of the application, the applicant shall file before the Institute the request to conduct the Search on the State-of-the-Art and shall pay the relevant fee.

Where priority is claimed, such period (of 15 months) runs as from the date of priority.

Where the period prescribed in the first paragraph of this present Article has already expired, at the time when the notification, according to Article 54, paragraph six, is made, the applicant shall file the request to conduct the Search on the State-of-the-Art within the month following such notification.

Where the applicant does not file the request to conduct the Search on the State-of-the-Art in compliance with the provisions of this present Article, the application shall be deemed to have been withdrawn.

Conducting Search on the State-of-the-Art in respect of an application for a patent-of-addition can only be requested when such request is filed simultaneously with the application for the main patent or when a search has already been conducted or requested in respect of previous application(s) for patent-of-addition. The provisions of the first and fourth paragraphs of this present Article apply likewise to patents-of-addition.

Establishment, Notification and Publication of Search Report on the State-of-the-Art

Article 57 :

The Institute shall conduct the Search on the State-of-the-Art subsequent to the examination of the application in accordance with the provisions of Article 54 and to the request filed by the applicant, according to Article 56, for conducting the Search on the State-of-the-Art.

The Search Report on the State-of-the-Art shall include those elements of the State-of-the-Art for assessing/supporting the characteristics of novelty and inventive activity/step of the invention constituting the subject matter of the application.

The Search Report shall be established; in consideration of the specification, the drawing(s), if any, and the claim(s); by the Institute or by the Search Authority to be designated by the Institute from amongst the internationally recognized search authorities.

The Search Report shall be notified to the applicant after it has been established. The copies of the reference patents and publications cited in the Search Report are transmitted to the applicant together with the Report.

Following its notification to the applicant, the Search Report shall be published by the Institute, after the elapsing of a period of three-months as recognized to the applicant under the provision of Article **59**.

Of the systems for granting patent with or without (substantive) examination, the one which the applicant has opted for shall be published in the related Bulletin where the Search Report on the State-of-the-Art is published.

At the time, when the Search Report is established, had an application for patent not been published earlier, the Search Report shall be published together with the application for patent.

Impossibility to establish Search Report for reasons of deficiency

Article 58 :

Where lack of sufficient explicitness in the description or claim(s), prevents the establishment, in whole or in part, of the Search Report on the State-of-the-Art, the Institute shall ask the applicant to remedy such deficiency. Where the deficiency is not remedied, by the applicant, within the time-period set forth in the Regulation, the Institute shall notify the applicant its

decision in that the Search Report can not be established by pointing out to the right of the applicant to object. In case of partial deficiency, the Search Report shall be established for those claim(s) which are explicit enough.

Opting for the (Substantive) Examination System.

Article 59 :

The applicant shall declare to the Institute, within three months following the notification to him of the Search Report that he opts for the system for granting patent with (substantive) examination, to permit the Institute to examine the application as of the patentability requirements according to the provisions of Article 62. Where no such declaration is made within the said time-period, the system for granting patent without (substantive) examination shall be deemed to have been retained.

SECTION THREE

System for Granting Patent Without (Substantive) Examination

Granting a Patent Without (Substantive) Examination

Article 60 :

Third parties may submit to the Institute their observations on the contents of the Search Report within six months from the date of publication of same in the form prescribed in the Regulation by enclosing thereto the relevant documents.

Upon the expiry to the period allowing third parties to submit their observations on the search report, the Institute shall notify the applicant the written observations on the search report together with the documents in evidence thereof submitted by third parties..

The applicant may, within three months from the date of notification of the observations made by third parties according to paragraph two of this present Article, make the observations on the search report he deems relevant for opposing the observations of third parties on the search report and may, if he deems it necessary, amend the claim(s).

The Institute decides to grant the patent without (substantive) examination following the expiry of the time-period wherein the applicant may submit his observations against the State-of-the-Art Search Report established in accordance with Article 57, without taking into consideration the State-of-the-Art Search Report or, if any, the observations of third parties on the Search Report.

Upon the payment of the necessary fees in compliance with the decision reached, the Institute, shall issue the patent for a term of seven years and shall publish the issuance of same in the related Bulletin.

The documents pertaining to the patent, the State-of-the-Art Search Report and the observations submitted by third parties on said report shall be open to public inspection. Any amendment(s) in the claim(s) shall also be open to public inspection by indicating the date(s) of such amendment(s).

The state does not guarantee the very existence/reality and the usefulness/utility of the subject matter of a patent granted without (substantive) examination. Submitting to substantive examination the patent granted without (substantive) examination necessitates the filing of a request to this effect. This request shall be filed, by the patentee or by third parties, within seven years, at the latest, from the date of filing of the application. The (substantive) examination fee shall be paid by the party having filed the request for substantive examination.

When the request for substantive examination is not filed within seven years, at the latest, from the date of filing, the patent (right) shall expire. After the expiry of the period of seven years, no request for substantive examination may be filed.

The provisions of Article 62 pertaining to granting of patent with (substantive) examination shall apply where a request for substantive examination is filed within seven years, at the latest, from the date of filing of the application. In order to enable third parties to raise objections as of the patentability requirements, in accordance with the provisions of Article 62, paragraph two, the request for substantive examination filed in respect of a patent granted without (substantive) examination shall be published in the related Bulletin.

Publication and Printing of a Patent Granted Without (Substantive) Examination

Article 61 :

The issuance of a patent shall be published in the related Bulletin. The publication shall include the following particulars:

- a. The patent number;
- b. The classification code(s) of the invention;
- c. The title describing the subject matter of the invention;
- d. The name, nationality and domicile of the (applicant) patentee;
- e. The abstract;
- f. The number and date of issue or issues of the Bulletin in which the application for patent and the amendment(s) pertaining to the application was/were published;
- g. The date of issue of the patent;
- h. The statement announcing the possibility of inspecting the documentation concerning the granted patent, the relevant search report and the observations on the search report submitted by third parties and, if any, the observations to the contrary of the applicant;
- i. The statement announcing the grant of the patent without (substantive) examination;

Each patent is printed by the Institute in the form of a fascicule and distributed to those asking for it. In case of need, the printing may be realized by way of reproduction.

In addition to the particulars mentioned under paragraph one of this present article, each fascicule shall contain the description, the claim(s) and, if any, the drawing(s) in their entirety and the full text of the State-of-the-Art Search Report and the issue number of the Bulletin in which the decision to grant the patent without (substantive) examination was published.

SECTION FOUR

System for Granting Patent With (Substantive) Examination

Granting a Patent with (Substantive) Examination

Article 62 :

The provisions of Articles 42 to 58 pertaining to the (filing of the) application for patent and requirements therefor and the (formal) examination of the application, shall also apply to the system for granting patent with (substantive) examination.

Within six months following the publication of the State-of-the-Art Search Report, third parties may, in the form set forth in the Regulation, file objections to the grant of the patent by putting forward the non compliance with the patentability requirements, including the lack of novelty or the inventive activity/step or the inadequacy of the description. Documentary evidence, in support thereof, shall be enclosed to the objections (to be) made in written form.

Within six months following the publication of the State-of-the-Art Search Report, with a view to obtaining a patent with substantive examination, the applicant shall request the Institute to conduct the examination; in that the subject of the invention is comprehensively described, the invention is novel and involves inventive activity/step. For conducting such an examination, the time-period of six months allowing third parties to raise objections shall expire and the examination fee foreseen in the Regulation shall be paid. The examination fee may be paid, at any time, within the time-period prescribed in the second paragraph of this present Article.

When, objections are raised by third parties, according to paragraph two of this present Article, all such objections and their documentary evidence are instantly notified to the applicant. The applicant may respond to the objections raised within three months following the expiry of the time-period allowed for raising objection, and; upon his request for extension, within the time-period extending such term for three additional months; and may submit his motivated response destined to remove the objections raised, and, if he deems it necessary, may amend the description, the drawings and the claim(s).

The Institute shall engage the examination pertaining to the patentability requirements after the expiry of the time-period prescribed in paragraph four of this present Article. Failure of the applicant to respond to the objections raised within the prescribed time-period is not a bar for engaging the examination.

After examining the application, the Institute shall decide as to whether the application suffers deficiencies or sufficiently meets the patentability requirements. The Institute shall motivate its decision citing therein the grounds thereof. The Institute shall conduct such examination by keeping it restricted to the contents of the claim(s).

The Institute shall notify the applicant the examination report it has established as to the deficiency or meeting of patentability requirements of the application, by motivating same and

citing therein the grounds therefor, and shall grant the applicant six months for him to rectify the deficiency, or to amend the claim(s) and to object to it.

The applicant may submit his motivated observations destined to remove the unfavorable opinions expressed in the examination report of the Institute and may amend, if he deems necessary, the application.

The Institute shall examine the observations put forward by the applicant and, if any, the amendments made in the application. Where the Institute decides that the unfavorable/differing opinions of the examination report are to be upheld, the Institute shall notify the applicant its decision in this regard by duly giving the grounds therefor and shall grant the applicant a time-period of three months for submitting his opinions to the contrary.

The applicant may, at this stage of the examination, submit his observations with a view to removing the unfavorable opinions and may, if he deems necessary, amend the application.

The Institute shall reach its final decision after examining the applicant's observations and, if any, the amendments made in the application. The decision of the Institute may consist in granting the patent for all or part of the claims.

Where, as the result of the examination, the Institute determines that the application fulfills the patentability requirements and that no objections have been raised, the Institute shall decide to grant the patent and shall notify this decision to the applicant.

Upon the payment of the necessary fees in compliance with the decision reached, the Institute shall issue the patent applied for.

Under the system for granting patent with (substantive) examination, the State does not guarantee the very existence/reality and the usefulness/utility of the subject matter of the granted patent.

Publication and printing of a Patent Granted with (Substantive) Examination

Article 63 :

The issuance of a patent shall be published in the related Bulletin. This publication shall include the following particulars:

- a. The patent number;
- b. The classification code(s) of the invention;
- c. The title describing the subject matter of the invention;
- d. The name, nationality and domicile of the patentee;
- e. The abstract;
- f. The number and date of issue or issues of the Bulletin in which the application for patent and the amendment(s) pertaining to the application was/were published;
- g. The date of issue of the patent;
- h. The statement announcing the possibility of inspecting the documentation concerning the granted patent, the relevant search report and the decision of the Institute having conducted the substantive examination showing the results reached in terms of novelty, inventive activity/step and adequacy of the description and the objections raised in the course of the examination.
- i. The statement announcing the grant of the patent subsequent to substantive examination conducted as to the novelty and as to the inventive activity/step;

Each patent is printed by the Institute in the form of a fascicule and distributed to those asking for it. In case of need, the printing may be realized by way of reproduction

In addition to the particulars mentioned under paragraph one of this present article, each fascicule shall contain the description, the claim(s) and drawing(s) in their entirety and the full text of the State-of-the-Art Search Report and the number of the issue of the Bulletin in which the decision to grant the patent was published.

SECTION FIVE

Formal Procedure as to the Application for Patent

Amendment of Claims

Article 64 :

Except for the rectification of obvious errors such as spelling errors, providing of incorrect/inappropriate documents, the claim(s) may be amended only during the prosecution of the granting procedure and, only, where this present Decree-Law specifically permits such amendment.

The applicant may amend the claim(s) in accordance with the preceding paragraph without having to obtain the consent of those persons whose rights in the application are entered in the Patent Register.

The scope of the application may not be widened through the amendments in the claim(s).

Converting an Application for Patent into an Application for Utility Model

Article 65 :

The applicant may request that the subject matter of the application be protected by grant of utility model certificate provided he complies with the conditions set forth in the following subparagraphs:

- a/ Where grant of a patent without (substantive) examination is of question, such request may be filed until the expiry of the time-period allowed for submitting a response to the search report according to the first paragraph of Article 60.
- b/ Where grant of a patent with (substantive) examination is of question, such request may be filed until the expiry of the time-period set forth in Article 62, paragraph four for filing observations and objections in response against the substantive examination conducted by the Institute.

The protection of the subject matter of the application for patent by grant of utility model certificate, following the request for conversion, will take effect as from the date of filing of the first application for patent with the benefit of the same priority, if any such priority has been claimed under the first application for patent.

Following the (formal) examination conducted in accordance with the provisions of Article 54, the Institute may propose the applicant to convert the application with a view to issue a utility model certificate. The applicant is free to accept or reject such proposal. Where, upon

the proposal of the Institute to convert the application, the applicant does not specifically request such conversion, the proposal shall be deemed to have been rejected. In such case, the procedure shall continue for the grant of a patent to the subject matter of the application.

Where the applicant files a conversion request for obtaining a utility model certificate in lieu of a patent, the Institute shall notify the applicant that the application will be further prosecuted as an application for Utility Model Certificate and shall inform him of the documents needed to be submitted to this effect within the time-period set forth in the Regulation.

Where the applicant fails to submit the requested documents within the time-period set forth, the request for conversion shall be deemed not to have been made and the application will be further prosecuted as an application for patent.

The decision of the Institute accepting the conversion of the application reached subsequently to the publication of the application for patent shall be published in the related Bulletin.

Withdrawal of an Application

Article 66 :

An application for patent may be withdrawn, by the applicant, at any time before the patent is granted.

Where third parties have rights entered in the Patent Register, in an application for patent, the application can not be withdrawn without the consent of the holders of such rights.

Inspection Requirements of Files of Applications for Patent

Article 67 :

The files of applications for patent not yet published can not be inspected by third parties without the written consent of the applicant.

Third parties who can prove that the applicant intends to enforce against them the rights originating from his application for patent, may inspect the file of the application for patent, not yet published, without the consent of the applicant.

Where a divisional application filed according to Article 45, an application filed anew according to Article 12 or an application converted according to Article 65 is published, the file of the original application may be inspected by third parties before its publication and without the applicant's consent.

Subsequently to the publication of an application for patent, the file concerning the application or the patent may be inspected subject to the limitations set forth in the Regulations.

The files concerning applications for patent that have been refused or withdrawn before publication shall not be inspected by third parties.

Filing anew a Withdrawn Application

Article 68 :

Where an application for patent published in accordance with the provisions of Article 55 is withdrawn, a new application for patent pertaining to the same invention may not be filed.

Where an application for patent that has not been published in accordance with the provisions of Article 55 is withdrawn, the first applicant may file anew an application for patent pertaining to the same invention. However, the protection will run as from the last date of filing the of the application.

Obligation to Mark/Indicate the Number of an Application for Patent or of a Patent

Article 69 :

The person who wishes to enforce against third parties his rights originating from an application for patent or from a patent, is under the obligation to communicate to third parties in question, the number of the concerned application for patent or of the concerned patent.

In case where declarations appearing on a product, its labels or packagings or on promotional material or advertisements or printed matter under any form, give the impression that protection originating from an application for patent or a granted patent exists, the person making such declaration is under the obligation to indicate therein the number of the application for patent or the number of the patent.

SECTION SIX

Objections to Formal Deficiencies During Patent Granting Procedure Raised Subsequent to the Issuance of Patent

Objections to Formal Deficiencies

Article 70 :

To the exception of the provision of Article 45 pertaining to the unity of the invention, third parties shall be entitled to raise objections against the grant of a patent on grounds of formal deficiencies to comply with the procedural requirements provided under Articles 42 to 63. In order to raise such objection, third parties need not to have previously filed observations against the State-of-the-Art Search Report or have raised objections under the system for granting patent with (substantive) examination.

The lack of novelty or of inventive activity/step of the patent granted without (substantive) examination shall not constitute the subject of such objection.

Effect of the Objection to Formal Deficiencies

Article 71 :

To the exception of the matter of the Unity of the invention, where the Institute has failed, during the examination, to perform one of the actions to be formally effected according to the patent granting procedure or where the Institute has omitted to perform an essential formal procedural action, the decision of the Institute to rectify such deficiency in consideration of the objection raised shall have the effect to annule the administrative actions pertaining to the grant of the patent retrospectively to the stage of the procedure where the concerned deficiency

occurred and to reengage the procedure from that stage onwards so as to perform anew all such actions.

PART FIVE

Provisions Pertaining to Rights Conferred by a Patent

Term of a Patent

Article 72 :

The term of a patent granted with (substantive) examination shall be a non-extendible period of 20 years from the date of filing the application.

The term of a patent granted without (substantive) examination shall be seven years. Where the (substantive) examination request is made within the period of seven years and the patent is granted after such (substantive) examination is conducted, the term of the patent shall be completed to 20 years as of the date of filing the application.

Scope of Right Conferred By a Patent

Article 73 :

The holder of a patent shall benefit from the right it confers without differentiating between the place of the invention, its field of technology and whether the concerned products are imported or of domestic production.

The holder of a patent is entitled to prevent following actions by third parties performed without permission:

- a/ Production, sale, use, or importation of patented products or keeping them in possession for purposes other than for personal needs;
- b/ Use of a process that is the subject matter of the patent;
- c/ Offers made by third persons to others for the use of a patented process of which the use is known or should be known to be prohibited;
- d/ Putting to sale or making use or importing or keeping in possession for any such purpose other than for personal needs of products directly obtained through the patented process.

Article 73/A pertaining to “Penalties and Fines” added to the Decree-Law No. 551 with the enactment of Law No. 4128 as from November 7, 1995.

Article 73/A

- (a) Those making false declaration with respect to the declaration prescribed in Article 44; or those removing, without authority the sign indicating a patent right rightfully placed on a product or on its packaging; or those falsely presenting themselves as the right holder of an application for patent or of a patent shall be sentenced to an imprisonment term of between one and two years and to pay a fine of between three hundred million liras and six hundred million liras,**
- (b) Having committed the acts unrightfully and without authority or who should have known that they have no right to perform such actions, those transferring or placing**

as security or performing any other such action for utilising any one of the rights of transfer, placing of security, execution of levy and other such rights as provisioned under Article 86 and transferring to some other person the license pertaining to such right, and those affixing signs on a product or on its packaging, produced or put to sale by own self or by others, or on commercial documents or on advertising material in such a way that would convey the impression as if a relationship exists with patent under protection, or of using to the same effect writings, signs or expressions in the newspapers, advertisements and commercials without being the right holder of the invention under patent protection or after the expiry of the term of protection of patent or after the invalidation or after the termination of the patent on grounds specified under Articles 129 or 133 shall be sentenced to an imprisonment term of between two and three years and to pay a fine of between six hundred million and one billion liras,

- (c) Those who have committed any one of the felonies specified under Article 136 shall be sentenced to an imprisonment term of between two and four years and to pay a fine of between six hundred million and one billion liras, furthermore, judgment shall be ruled to close down the premises of their undertaking for a period not to be less than one year and to prevent them from practicing any commercial activity during the same period.

Where the felonies stated hereabove; are committed by those working in the undertaking, whether on their own initiative or under instructions, while carrying out their duties, the employees and the owner or the manager or their representative and the person who effectively manages the undertaking, under whatever title and authority, and who have not prevented the misdemeanor shall be punished in the same manner. Where the felonies specified under Article 136 have been committed during the execution of tasks related with a legal person, the legal person shall be jointly liable for the expenses and for the pecuniary fine. For accomplices, depending on the nature of the act, the provisions of Articles 64, 65, 66 and 67 of the Turkish Penal Code shall apply. Prosecution with respect to the felonies stated hereabove shall be subject to complaint.

Subparagraph 8 of paragraph one of Article 344 of the Code of Criminal Procedures No. 1412 shall not apply for the implementation of the provisions of this present Article. The right of complaint belongs to the person whose patent right has been infringed, and additionally belongs also to the Institute for all felonies, to the exception of those provisioned under Article 136, and to the Consumer Associations and to the establishments under the jurisdiction of Laws No. 5590 or No. 507 for falsely making the declaration, provisioned in Article 44, with respect to true identity of the patent right holder, and for affixing signs on a product or on its packaging produced and put to sale, by own self or by others, or on commercial documents or on promotional material in such a way that would convey the impression as if a relationship exists with a patent under protection, or of using to the same effect writings, signs or expressions in the advertisements and commercials, at the published and visual media, without being the right holder of the patent or after the expiry of the term of protection of the patent or after the invalidation or after the termination of the patent.

The complaint (with respect to such felonious acts) shall be made within two years as from the date when the act and the actor become known. The complaints with respect to acts falling within this scope shall be treated as of urgent matters. The provisions of Article 36 of the Turkish Penal Code and the related articles of the Code of Criminal Procedures shall apply for the seizure, or the confiscation or the destruction of the goods

and the means/equipment and machinery used to produce these goods which are subjects of acts of felony having infringed the rights conferred by an application for patent or a patent within the provisions of this present Decree-Law.

Use of Patent Elements by Third Parties

Article 74 :

The right holder of a patent is entitled to prevent third parties, from handing over to persons unauthorized to work the patented invention, elements and means related to an essential part of the invention, subject matter of the patent, and rendering possible the implementation of the patented invention. In order that this provision may apply, the concerned third parties have to know, that such elements and means are sufficient for putting the invention to use and that they know, that they will be used to such effect or that the circumstances render such situation sufficiently evident.

The provisions under Paragraph one of this present Article shall not apply, when the elements or means referred to in Paragraph one of this present Article are products commonly to be found on the market, unless third parties incite the persons concerned to commit such (prohibited) acts.

Persons committing the acts specified in subparagraphs (a), (b) and (c) of Article 75 shall not be deemed to be persons not authorized to make use of a patent within the meaning of Paragraph one of this present Article.

Limits of the Scope of Rights Conferred by a Patent

Article 75 :

The following acts shall remain outside the scope of rights conferred by a patent :

- a/ Acts devoid of any industrial or commercial purpose and limited to private ends/aims;
- b/ Acts involving, for experimental purposes, the invention, subject matter of a patent;
- c/ Extemporaneous preparations of medicines in pharmacies involving no mass production and carried out solely in making up a prescription and acts related to the medicines thus prepared;
- d/ Use of patented invention in the manufacture or operation of ships or spaceships or airplanes or land transportation vehicles of countries signatory of the Paris Convention or for satisfying the needs of these, provided that said vehicles happen to be, temporarily or accidentally, within the boundaries of the Republic of Turkey;
- e/ Where acts provided under Article 27 of the International Convention for Civil Aviation dated December 7, 1944 are related to an aircraft of a State, the provisions of this present Article shall apply likewise to said aircrafts.

Exhaustion of Rights Conferred by a Patent

Article 76 :

Rights conferred by a patent shall not extend to acts committed with regard to a product under patent protection after said product has been put to sale in Turkey by the right holder of the patent or with his consent.

Rights Conferred by Prior Use

Article 77 :

The right holder of a patent shall not have the right to prevent person or persons who, in good faith, between the date of filing of the application and the date of priority, had worked the invention in Turkey or had made serious and effective preparations to work the said invention; from continuing to work the subject matter of the patent, in the same manner as before, or from commencing its working as of the preparations made to this effect. However, third persons may continue working the subject matter of the patent, in the same manner as before, or commence its working as of the preparations made to this effect, only to the extent necessary for meeting the reasonable needs of their enterprise. Such right to work the invention shall only be transferable with the enterprise.

The rights conferred by a patent within the meaning of Article 76 shall not extend to acts related to products put to sale by persons indicated in Paragraph one of this present Article.

Effects of Patents of Prior Date

Article 78 :

The holder of a patent may not invoke same in his defense in actions instituted against him for infringement of other patents that have an earlier date of priority.

Dependency of subject matters of Patents

Article 79 :

The fact that a patented invention can not be worked without using an invention, protected under a prior patent shall not be an obstacle to its validity. In such cases, neither the right holder of the prior patent, nor the right holder of the latter patent may use, the patent of the other party, without his consent, during the term of validity of his patent. However, the right holder of the latter patent may use, also, the prior patent where he has been authorized by the right holder of the prior patent to use same or has been granted compulsory license to use said prior patent.

Restrictions on the Use of a Patent

Article 80 :

A patented invention shall not be put into use, in any way, contrary to the Laws, or morality, or public order or public health, and its working shall be subject to the prohibitions and restrictions, whether temporary or permanent, established or to be established by Law.

Legal Monopoly

Article 81 :

Where a patent is granted for an invention that comes under a legal monopoly, the monopolist may only use the invention with the consent of the patent holder. The monopolist is under the obligation to put to use those inventions that involve notable technical progress in the field of industry he is engaged in by obtaining their right of use.

The monopolist shall have the right to request that he be authorized to work the patented invention. Where the monopolist makes such a request the patent holder may ask him to take over the patent. The amount to be paid by the monopolist for the right to work the patented invention or for acquiring of the patent shall be determined by agreement between the parties. In case no agreement is reached in this regard, the said amount shall be determined by the court.

Without prejudice to the provisions of Paragraph two of this present Article, where a monopoly has been established after a patent has been granted, the patent holder shall also have the right to ask the monopolist to acquire the enterprise or the equipment/installation with which the patented invention is worked, upon payment of an amount to be determined by the parties. In case, the parties can not reach an agreement on the amount of the compensation to be paid, such amount shall be determined by the court.

Patented inventions that cannot be put to use because of the existence of a legal monopoly shall not be subject to the payment of yearly annuity.

Effects of Publication of an Application for Patent

Article 82 :

The protection accorded to the right holders of patents granted under the provisions of this present Decree-Law shall be accorded likewise to the applicant of an application for patent as from the date of publication of the application for patent in the relevant bulletin and for as long as said application remains in the effect.

Where the person making use, without the permission of an applicant for patent, of the invention that is the subject matter of the application for patent, is informed of the (existence of) application for patent or of the scope of said application for patent, the protection, hereabove mentioned, shall be valid, likewise, for the period preceding the date of publication of the application for patent.

Where the subject matter of an application for patent refers to a process related to microorganism(s), the protection, hereabove mentioned, shall only commence when the microorganism has been made accessible to those interested.

An application for patent shall produce none of the effects provided for under Paragraphs one to three of this present Article when said application is or is deemed to have been withdrawn or when same has been rejected as a result of a final decision.

Scope of Protection Conferred by an Application for Patent or a Patent and the Interpretation of Claim(s)

Article 83 :

The scope of protection conferred by an application for patent or a patent shall be determined according to the claim(s). Claims shall be interpreted in consideration of the description and drawings.

Claims shall be interpreted in such a manner so as to permit, on the one hand, a fair protection for the right holder of an application for patent or of a patent, while, on the other hand, providing a reasonable degree of certainty to third parties on the scope of protection.

Where an application for patent has been filed for pharmaceutical or veterinary products/drugs and for chemicals destined to agriculture, the authorities issuing authorizations/licenses for the manufacture and sale of such products and requesting for this purpose information and test results, that were not disclosed to the public and the realization and accumulation of which requires considerable expenses and efforts, shall keep such information and test results secret/confidential. The authority asking for such information and test results shall take the necessary measures to prevent unjustified/unlegitimate use thereof.

Claims shall not be interpreted as being confined to their strict literal wording. However, for determining the scope of protection of the subject application for patent or of the patent, where those characteristics, though contemplated by the inventor, are not expressed in the claim(s) and where such characteristics can be only revealed from an interpretation of the description and drawings by a person skilled in that technical field, the claim(s) shall not be deemed to include/cover such characteristics.

At the time of an alleged infringement, in determining the scope of protection conferred by an application for patent or a patent, all elements being equivalent to the elements as expressed in the claim(s) shall be also considered.

Where, at the time when an alleged infringement is put forward, the equivalent element performs substantially the same function and performs such function in a substantially similar manner and gives the same result as the element as expressed in the claim(s), such element shall be, generally, deemed to be equivalent to the element as expressed in the claim(s).

In determining the extent of protection, due account shall be taken of any statement made by the applicant during the patent granting procedure or by the holder of the patent during the term of validity of the patent.

Where a patent contains examples of the embodiment of the invention or examples of the functions or results of the invention, the claims shall not be interpreted as being limited to those examples. In particular, the fact that a product or process includes additional features, not found in the examples, disclosed in the patent, lacks features expressed in such examples or does not achieve every objective or does not possess every characteristic expressed in such examples shall not remove the product or process from the extent of protection conferred by the claims.

Rights Pertaining to Process Patents

Article 84 :

Where a product, for which there is a patent in respect of its manufacturing process, is imported into Turkey, the patentee shall, in respect of the imported products benefit from the same rights as those recognized to him under this present Decree-Law for the obtention/manufacture of said product in Turkey.

Where a patent concerns a process for the manufacture of new products or substances, unless proof to the contrary, any product or substance having the same properties shall be deemed to have been obtained by using the patented process. The burden of proof lies with the persons claiming the contrary.

In case of legal proceedings regarding such a claim to the contrary as provided under paragraph two of this present Article, the legitimate interests of the defendant, in keeping undisclosed his manufacturing and business/trade secrets, shall be taken into consideration.

PART SIX

Legal Transactions upon an Application for Patent or a Patent

SECTION ONE

Relation of Joint Ownership

Article 85 :

Where an application for patent or a patent is owned, undividedly, by more than one person, the resultant joint ownership shall be governed by agreement among the parties or, in the absence, of such agreement, by the provisions of the Civil Code pertaining to joint ownership.

Independently from the others, anyone of the joint owners, may accomplish the following actions, in his own name :

- a/ dispose, freely, of the part belonging to him. In case the part is transferred to a third party, the Institute shall notify the other joint-owners, within two months, in order to enable them to exercise their right of preemption. The right of preemption shall be exercised within one month as from the date of notification of the Institute.
- b/ work the invention following the notification to the other joint owners;
- c/ take necessary steps to protect the application for patent or the patent;
- d/ institute civil or criminal action against third parties who violate, in any way, the rights conferred by the jointly filed application for patent or the jointly owned patent. The party initiating such legal proceedings shall notify the other right holders of the action taken within one month as from the date of institution of same, to enable them to join the action.

A licence, to a third party, to work the invention shall be granted upon decision made by all right holders jointly. However, for reasons of equity, in consideration of particular circumstances, the court may decide that one of the parties alone should be authorized to grant such licence.

SECTION TWO

Establishment of Right on an Application for Patent and on a Patent

Article 86 :

An application for patent or a patent may be transferred to some other party, may be inherited or the right to use same may be subject to license. An application for patent or a patent may be pledged. The provisions of the Civil Code, related to pledging, shall apply.

Transaction between living persons on an application for patent or a patent shall be in writing.

Indivisibility

Article 87 :

For the purpose of transfer or of establishing a right thereon, an application for patent or a patent shall be indivisible; even when joint ownership, on them, by several persons is of question.

Contractual License

Article 88 :

The right to work/use an application for patent or a patent may be the subject of a license agreement to have effect within the entirety of the national boundaries or in a part thereof. Licenses may be exclusive or non-exclusive.

The rights conferred by a patent or an application for patent may be exercised through a court action instituted by the patent right holder against the licensee who violates the terms of the license agreement, prescribed in paragraph one of this present Article.

Unless the agreement includes a provision to the contrary, the licence is non-exclusive. The licensor may grant other licenses for the same invention to third persons and may work the patented invention himself.

Exclusive licenses shall prevent granting of licenses to others and the licensor may put the patented invention to use only when he has specifically reserved such right (in the agreement).

Unless the agreement includes a provision to the contrary, holders of contractual licenses may not transfer their rights conferred by a license to other parties nor grant sub-licenses.

Unless the agreement includes a provision to the contrary, holders of contractual licenses shall have the right to perform all acts/actions for putting to use the patented invention within the entirety of the national boundaries, for the whole term of the patent.

Obligation to Provide Information

Article 89 :

Unless the agreement includes a provision to the contrary, the assignor or the licensor of an application for patent or a patent is under the obligation to provide to the assignee or licensee the technical data/information that is necessary to work the invention satisfactorily.

The assignee or the licensee to whom confidential data/information has been given shall be obliged to take the necessary measures to prevent their disclosure.

Obligation Arising from transfer of a Right and Grant of a Licence

Article 90 :

A person, who, having transferred rights conferred by an application for patent or a patent or having granted a license, either against a consideration or without, is subsequently understood to have no authority to perform such actions, shall be liable for the situation resulting therefrom against the persons involved.

Where an application for patent is withdrawn or refused or a court rules to invalidate a patent, the provisions of Article 131 of this present Decree-Law shall apply, unless the parties provide by agreement, for increased liability of the transferor or licensor.

The transferor or licensor shall be liable, at any time, for their acts effected in bad faith. Bad faith shall be deemed to exist where the other party has not been informed of the existence of reports or decisions in the Turkish or foreign languages available or known to the transferor or licensor concerning the patentability of the invention that is the subject matter of the application for patent or of the patent; (to be) transferred or licensed; or where the documents including declarations on such reports or decisions have not been specifically mentioned in the contract.

The time-period within which a compensation may be claimed according to the provisions of this present Article shall run as from the date when the court decision upon which it is based becomes res judicata. The provisions of the Law of Obligations on prescription of time-period shall apply.

Joint Liability

Article 91 :

Where third persons suffer damage/prejudice due to a defect in the invention constituting the subject matter of a patent or of an application for patent that was assigned or for which a license was granted, the assignor and the assignee, the licensor and the licensee shall be jointly responsible.

Unless the agreement includes a provision to the contrary the assignor or licensor bearing the liability as of the provision of the preceding paragraph may reflect to and claim such liability from the assignee or licensee. Such liability may be reflected to and claimed from the assignee or licensee when the assignor or licensor has not acted in bad faith and when, for reasons of equity, the assignee or licensee should bear all or part of the compensation due for damages.

Entry in the Patent Register and Effects of same

Article 92 :

Applications for patent and patents are entered in the Patent Register in compliance with the provisions set forth in the Regulation .

With the exception of the provision of the first paragraph of Article 13 pertaining to the usurpation of the patent, transfers and licenses related to applications for patent or to patents or other acts whether voluntary or compulsory affecting applications for patent or patents shall have effect against third parties, in good faith, as from the date of their entry in the Patent Register.

Rights conferred by an application for patent or a patent may not be invoked against third parties unless and until they are duly entered in the Patent Register.

Rights conferred by an application for patent or a patent may not be announced/marked on the products as being under patent protection until their entry in the Patent Register. The Institute will see to it that the transactions entered in the Patent Register and appearing on official documents are carried out in due conformity with the law, and are valid and effective. The patent register shall be (open to) public.

Abuse of Competition

Article 93 :

Where a patentee commits an act in violation of the general provisions on unfair competition while putting his patent (application) to use, the court may condemn the patentee to offer his patent for licensing.

SECTION THREE

Offer for Licensing

Patentee's Offer for Licensing

Article 94 :

Where the patentee makes no use of the patented invention according to the provision of Article 96, he may announce by applying in writing to Institute, his willingness to authorize the use of the invention under license to any party, interested to put the invention to use.

Where a legal action has resulted in the change of ownership of a patent, with the entry in the Patent Register of the new patent holder, in accordance with the provisions of Article 12 of this Decree-Law, the offer for licensing, made previously, shall be deemed to have been withdrawn.

The Institute shall enter in the Patent Register and shall publish the offer for licensing. The offers for licensing are open to public inspection. The Institute shall take appropriate measures to permit such inspection.

The patentee may withdraw, at any time, his offer for licensing provided no person has demanded the patentee for the grant of a license (to use the invention). Withdrawal of the offer shall take effect from the date of filing before the Institute of the petition for the withdrawal of same.

Where the license has been entered in the Patent Register as an exclusive license, the patentee can not additionally offer licenses to others.

Any person entitled to use the invention as licensee, upon the offer for licensing, shall be considered non-exclusive licensee and the license granted in accordance with the provisions of this present Article shall be deemed to be a contractual license.

When an offer for licensing has been made, no application to enter an exclusive license in the Patent Register shall be permitted unless the offer for licensing has been withdrawn or is acknowledged to have been withdrawn.

Acceptance of the Offer for Licensing

Article 95 :

Any person who wishes to obtain a license by taking up the offer for licensing, shall inform the Institute of his intention in writing, in triplicate, also indicating therein the manner by which (s)he is to make use of the invention. The Institute shall send a copy of it to the patentee, while a second copy is to be returned to the applicant. Both copies shall bear the seal of the Institute and the same date of dispatch.

In case, the parties fail to reach agreement on the license fee, upon request by either party, the competent court shall, after hearing both parties, determine the license fee.

The court may modify the (license) fee when the amount on which the parties had agreed has become inappropriate. Request for modification of license fee may be made only after a period of one year, at least, has elapsed subsequent to the determination of the license fee by the court.

At the expiration of each quarter of the calendar year, the licensee is under obligation to inform the patentee of the use he has made of the invention and to pay the license fee. Where, the licensee does not fulfill those obligations, the licensor may request the licensee to carry out his obligations within the month. Should the court establish that the licensee has failed to fulfill his obligations within this period, the license shall be annulled.

SECTION FOUR

Obligation To Work/Use

Obligation to Work/Use

Article 96 :

The patentee or the person authorized by him is under obligation to put to use/work, the invention under patent protection. The obligation to put to use/work must be realized within three years as from the date of publication in the relevant bulletin of the announcement related to the issue of the patent.

Market conditions are (to be) taken into consideration when/for assessing use/working.

Evidence of Use

Article 97 :

The patentee or the person authorized by him shall prove his use of the invention by an official certificate to be filed before the Institute. The official certificate attesting the use of the patent shall be established according to the general criteria and rules foreseen in the Regulation by the authority designated therein.

The certificate (of use) is issued at the conclusion of the inspection of the production in the industrial premises where the invention is being put to use/worked. The certificate (of use)

shall confirm the fact that the patented invention is being implemented or that the (goods) object of the invention is offered for sale.

The certificate (of use) must be prepared within three months as from the date of filing the relative application before the concerned authority. The certificate shall cover the data relative to the actual/effective use of the patented invention.

The certificate of use is entered in the Patent Register.

Acceptance of Use

Article 98 :

When working of the patented invention is attested (before the Turkish Patent Institute) by documentary evidence, the patented invention shall be deemed to have been put to use in compliance of Article 97, unless proof to the contrary is brought through court action.

PART SEVEN

Compulsory License

SECTION ONE

General Requirements for Compulsory License

Requirements for granting Compulsory Licensee

Article 99 :

Compulsory license is (to be) granted where no offer for licensing offer has been made and where any one of the following situations/conditions materializes:

1. Failure to put to use/work the patented invention in accordance with Article 96;
2. Dependency of subject matter of patents as mentioned in Article 79.
3. On grounds of public interest as mentioned in Article 103.

Request for Compulsory License

Article 100 :

Any interested person may after the expiration of the period foreseen in Article 96, request the granting of a compulsory license on the grounds that the patent, at the time of the request, was not put to use or that the delay in the use thereof was not due to justifiable/legitimate reasons or

that the use thereof had been suspended during an uninterrupted period of 3 years without justifiable/legitimate reason.

Technical or economic or legal reasons of an objective nature shall be deemed to constitute legitimate excuses for the inability to put the patent to use. The reasons accepted to be in the nature to constitute obstacles for using/working the patented invention are those which are beyond the control and will of the patentee.

Compulsory license in case of dependency between Patents

Article 101 :

Where the patented invention can not be put to use without infringing the rights conferred by a prior patent, the latter patentee, by bringing evidence that his patent, with reference to the prior patent will serve a different industrial purpose or achieves significant technical improvement, may request the court to grant license for using the patent of prior date.

Where patented inventions, dependent in the sense of Article 79, serve the same industrial purpose and where a compulsory license has been granted in favour of one of the dependent patents, the patentee of the dependent patent upon which compulsory license is granted may request from the court that a compulsory license be granted in his favour on the other dependent patent.

Where the subject matter of a patent concerns a process aiming to obtain a patented chemical product or substance related to pharmacology, and where said process patent achieves a significant technical improvement, with respect to the patent of prior date both the patentee of the process patent and the patentee of the product patent may request from the court the grant of compulsory license for using the patented invention of the other party.

The scope of compulsory license granted for reasons of dependency between patents in the sense of Article 79, permits use of the concerned patented invention. In case when one of the dependent patents is invalidated or expires, the decision on compulsory license shall remain without effect.

Exportation as ground for Compulsory license

Article 102 :

The exportation (situation/possibility) of the patented invention shall not be accepted to constitute a ground for compulsory license.

Compulsory license on grounds of Public Interest

Article 103 :

The Council of Ministers may decide that the invention subject matter a patent or an application for patent be put to use on grounds of public interest by means of compulsory license where putting the invention to use, increasing its or, generally spreading, its usage or improving same for a useful end are of great importance for public health or national defense purposes, public interest shall be deemed to be involved.

Situations where the non use of the invention or its insufficient use in terms of quality and quantity, causes serious damage to the country's economic or technical development shall be deemed to also involve public interest.

The concerned Ministry proposes to the Council of Ministers to issue a decree pertaining to the grant of compulsory license. In case, where the use of the invention is important for national defense or public health, the proposal is prepared jointly by the concerned ministry, and the Ministry of National Defense or the Ministry of Health.

The decision to grant compulsory license, may, restrict the use of the invention to one or some enterprises on grounds of its importance for national defense.

In case when the patentee can realize to put the invention to use for public interest without having the need to generalize/spread the use thereof or to grant the use thereof to a person other than the patentee, the patented invention may be, conditionally, subjected to compulsory license. In such a situation, on the basis of the Decree of the Council of Ministers, the Court shall decide that the patentee shall put the invention to use for a period it will set, not longer than one year, in such a manner to sufficiently satisfy public interest, to develop/spread and enhance the actual use made of it.

The court shall decide on the period it will deem appropriate or subject the patented invention to compulsory license after taking into consideration the viewpoint of the patentee. The court shall decide, whether use has been made of, in the public interest, or not, after the expiry of the period prescribed. Where the court rules that use had not been made of in the public interest, it shall subject the patented invention to compulsory license.

Request for Mediation

Article 104 :

A person desirous to apply for a compulsory license may in the first instance resort to the Institute asking for its mediation with a view to obtaining a contractual license for the same patent.

For applying to the Institute for mediation the following particulars shall be indicated in the application and the fee set forth in the regulation shall be paid :

- a/ Information about the applicant;
- b/ Information on the patent, subject for mediation and the patentee;
- c/ Conditions justifying the grant of compulsory license;
- d/ Scope of the license requested; reasons for such a request;
- e/ Information sufficient enough for deciding whether the applicant is capable to effectively and efficiently make use of the invention and whether he can supply a reasonable guarantee required by the patentee for granting the license.

The following documents shall, furthermore, be attached to the request for the mediation of the Institute:

1. Documents constituting the grounds for the request;
2. Document attesting to guarantee that the applicant will pay the transaction costs in the amount set forth in the Regulation;
3. A Copies each of the application and of the documents attached to it.

Mediation by the Institute

Article 105 :

The Institute shall decide on the request for mediation within one month as from the date of application.

The Institute shall accept to mediate when from the application for mediation and the documents attached to it, and after due investigation, it is convinced that there is in fact a situation requiring the grant of compulsory license, that the applicant is solvent and that has all the necessary means for putting the invention to use.

The Institute shall notify its decision about the mediation to the applicant and also to the patentee with a copy of the application for mediation.

Institute's procedure of mediation

Article 106 :

When the Institute agrees to comply with the mediation request, it shall make a call without delay for the participation of the parties in the contractual license negotiations in which it will act as mediator. The negotiations shall not last longer than two months.

Where, within despite the two months term, following the notification to the parties of the acceptance of the mediation request, it has not been possible to conclude a contractual license, the Institute shall declare that its mediation and examination activities have come to an end and notify the interested parties thereof.

If the Institute is convinced that that the license agreement can indeed be concluded, it may accept the request for an extension of term to be filed jointly by the parties, even though the two months term may have expired.

Prior to the final decision to be reached by the Institute, only the parties are entitled to have access to the documents related to the procedure of mediation and ask for copies thereof against a fee. The parties and the staff of the Institute shall observe the secrecy of the contents of the documents.

Effects of the Institute's Mediation Activities

Article 107 :

Where the negotiations in which the Institute has acted as mediator result in that the parties conclude an agreement on the license to use the invention, subject matter of the patent, the licensee is given a term to start putting the invention to use.

The term given (to the licensee) for starting to put the invention to use shall not exceed one year and the following conditions shall be required for the activity of mediation to come to an end :

1. The license agreed upon by the parties shall be an exclusive one and shall not constitute an obstacle for being subject to compulsory license;
2. Filing of documents evidencing that the person, having applied for mediation, possesses the equipment/installation and materials necessary for putting the invention to use and that as of its subject matter, a term is needed to start putting the invention to use;

3. Supply of a guarantee, in the amount set forth in the Regulation, to cover the liability to arise should the applicant for mediation fail to start making use of the invention within the term foreseen;
4. Payment of the fee set forth in the Regulation for this purpose.

Where on the basis of the documents submitted by the parties, the Institute comes to a firm conviction that the requirements set forth in the preceding paragraph are met and that the parties have the will to immediately take action for putting the patent to use, it will finalize the mediation procedure and enter the license granted, as a result of the mediation, in the Patent Register.

The applicant for mediation is under the obligation to notify the Institute of the preparations relative for starting to put the invention to use and of the prevailing situation. The Institute is entitled to inspect, if it deems it necessary.

The licensee having obtained the license through the mediation of the Institute may request the court to suspend the procedure relative to the grant of compulsory license for the patent in question within the time-period granted for putting the invention to use.

Upon bringing evidence; that the decision for suspending the procedure for the grant of compulsory license has been reached on the basis of a considerable deceit or, on an opinion according to which the parties could not be in a position to carry out on a serious and continuous basis the activity for putting the invention to use within the set term, the court may rescind the decision of suspension.

When at the conclusion of the term, the licensee having obtained the license through the mediation of the Institute, fails to start using the invention, the Institute may decide on the payment of a fee by the licensee to the licensor. The fee shall be calculated according to the license fee, the licensee has to pay the patentee in a license agreement of a term equivalent to the term during which the invention was not used.

Request for Compulsory License

Article 108 :

Upon expiry of a term of three months, as from the expiry of the term foreseen in Article 106 or as from the date of the decision of the Institute refusing the request for mediation, or when the parties fail to agree to conclude the license agreement within the term of the mediation activity conducted by the Institute, the court may be asked to grant compulsory license.

The applicant for compulsory license may claim on the basis of the precedingly conducted mediation procedure and the documents submitted to this effect that the conditions for the grant of compulsory license are fulfilled. The applicant shall, furthermore, indicate the equipment/installation and materials he disposes for effectively putting the invention to use and the guarantee he will be in a position to produce in case the license is granted.

The following documents shall be enclosed to the application for compulsory license :

- a. Documents substantiating convincingly the application for compulsory license, in case documents related to the precedingly conducted mediation procedure are not available;
- b. Documents attesting to guarantee the amount set forth in the Regulation for meeting the costs of the compulsory license transactions;

- c. Document attesting the payment of the fee set forth in the Regulation.
- d. Copies each of the application and of the documents submitted.

Engaging the procedure for compulsory license

Article 109 :

Where the conditions provided under Article 108 are fulfilled, the court shall engage the procedure pertaining to the application for compulsory license. A copy of the application and copies of each of the attached documents shall be sent to the patentee. The patentee may raise objections against said documents, within one month at the latest, as of the date of receipt of same.

Where an application for compulsory license has been filed as a consequence of the Institute's refusal of the request for mediation, the term given to the patentee for raising objections shall not be shorter than two months.

In the objection raised by the patentee the documents related to the mediation procedure precedingly conducted by the Institute shall be taken into consideration and the evidences which have been put forward with regard to said procedure, but which are not to be found among said documents shall also be submitted. Copies of the evidences shall be sent by the court to the applicant.

Compulsory License Decision

Article 110 :

The court shall notify the objection raised by the patentee, to the applicant for compulsory license and shall rule within one month either to reject the application or to grant the compulsory license. This term shall not be extended. Where the patentee has raised no objection against the application for compulsory license, the court shall rule without any further delay to grant the compulsory license.

The decision to grant the compulsory license shall include the following:

The scope, the fee, the term of the license, the guarantee produced by the licensee, the date when the use is to commence and the measures for an effective and serious use of the patent.

When the court decision is appealed against, in case where the evidences put forward by the patentee for suspending the execution of same are deemed adequate by the court, the use of the invention shall be postponed until the decision on license is finalized. The appeal shall not postpone the execution of the finalized decision.

Costs related to the Decision on Compulsory License

Article 111 :

The decision to grant compulsory license shall indicate the expenses payable by each of the parties. Joint expenses shall be shared between the parties by half.

Any of the parties having acted in bad faith or having committed a fault, may be enjoined to bear the expenses in whole.

Suspending the Procedure for Compulsory License

Article 112 :

Following the filing of the application for compulsory license, the court shall engage the necessary procedure for reaching decision to grant a license. The court can suspend the procedure for a maximum period of three months, at any time, and only for once, upon the duly motivated request, made jointly by the patentee and the applicant.

Upon the expiry of said term, the court, shall notify the parties thereof and shall resume the procedure.

Notification to the Patent Agent for Persons Domiciled Abroad

Article 113 :

Where the patentee is not domiciled in Turkey, the correspondence and notifications referred to in this section shall be addressed to the Patent Agent representing him.

SECTION TWO

Compulsory License System

Legal nature of Compulsory License

Article 114 :

Compulsory license shall not be exclusive. Only, the compulsory license on grounds of public interest according to Article 103, may be granted as an exclusive license. However, exclusivity shall not be contradictory to the purpose of compulsory license and must be necessary for economically valourising the invention under patent protection.

In case a compulsory license is granted, the licensee has no right in principle to import the subject matter of the patent. However, the subject matter of the patent may be imported only when the compulsory license has been granted to the licensee on grounds of public interest and when the licensee has been specifically authorized to import. Such authorization to import shall be issued but on a temporary basis and shall be limited to meeting the demand.

In case of a compulsory license the patentee shall be paid an economically reasonable fee. The license fee shall be determined especially by taking into consideration the economic importance of the invention.

Violation of the Relationship of (mutual) confidence

Article 115 :

Where the relationship based on mutual confidence between the patentee and the licensee is violated by the patentee, the licensee, according to the role played by the violation in the valourisation of the invention, may request that a reduction be accorded from the license fee the patentee may ask for.

Scope of compulsory license for Patent-of-Addition

Article 116 :

Compulsory license covers the addition(s) to the existing patent, at the date of the acceptance/grant of the license. Where after grant of compulsory license patent(s)-of-addition to the patent have newly issued and where such patent(s)-of-addition serve the same industrial purpose as the patent, subject of the license, the licensee may request from the court that the patent(s)-of-addition be also included within the scope of the compulsory license.

Where despite the mediation of the Institute, the parties can not agree on the license fee and other terms/conditions of the license whose scope has been enlarged with the patent(s)-of-addition, these shall be determined by court.

Transfer of Compulsory License

Article 117 :

A compulsory license may validly be transferred on the condition that it is transferred together with the business or the premises/part of the business where it is being valourized. The Institute shall enter the transfer in the register. Where the compulsory license is granted for reasons of dependency between patents, the license is transferred together with the dependent patent.

The beneficiary of compulsory license is not permitted sub-license. Any act/actions performed to this effect shall be deemed to be invalid.

Request for modifying the terms/conditions

Article 118 :

The licensee or the patentee may request from the court to modify the fee or the terms/conditions of compulsory license on grounds of events occurring, at a later date, and justifying such modification. Especially, when the patentee has subsequently concluded a contractual license, under conditions, more favourable compared to those of the compulsory license, confers the right to request such modification.

Where the licensee seriously violate his obligations arising from the compulsory license or where he continuously fails to fulfill them, the court may, upon request of the patentee cancel the license, without prejudice to patentee's right for compensation of damages.

Applicability of the Provisions pertaining to Contractual License

Article 119 :

Unless in contradiction with the provisions foreseen under Articles 114 and 118, the provisions related to contractual licenses under Article 88 shall also apply to compulsory license.

SECTION THREE

Incentive to Apply for Compulsory License

Measures of Incentive for Compulsory License

Article 120 :

The Institute shall take measures of incentive to encourage filing of application for license in relation with the patents, candidate for grant of compulsory license. To this end, the Institute shall regularly announce such patents by way of publication.

Where use of patented inventions acquires importance, the Council of Ministers, shall take financial, economic and other measures of incentive with a view to encourage undertakings at filing application for compulsory license, on grounds of public interest, for determined patents.

PART EIGHT

Patents-of-Addition and Secret Patents

SECTION ONE

Patent-of-Addition

Application for a Patent-of-Addition

Article 121 :

The right holder of a patent or an application for a patent may apply for a patent-of-addition for protecting inventions, which in the sense of paragraph one of Article 45, have unity with the subject matter of the main patent and which improve or develop the invention, subject matter of the main patent.

Until the date when the decision to grant the patent is reached, applications may be filed for patent(s)-of-addition to an application for patent, even when the same is not accepted to issue as a patent.

Surpassing the State-of-the-Art (involving inventive activity/step) mentioned under Article 9 does not apply to patent(s)-of-addition.

Date of priority of Patents-of-Addition

Article 122 :

The date of priority of patents-of-addition is determined according to the date of filing of the application.

The patents-of-addition have the same term than the term of the main patent and shall not be subject to the payment of yearly annuities.

Unless otherwise foreseen in this present Decree-law the patent-of-addition is a complementary part of the main patent.

Conversion of Patent-of-Addition into Main Patent

Article 123 :

At the request of the applicant, the application for a patent-of-addition may at any time, during the prosecution of the application; be converted into an application for an independent (main) patent. The same possibility may also be made use of, within the time-period of three months

following the notification to the applicant for a patent-of-addition of the fact that the application for a patent-of-addition does not have the necessary connection/link with the main patent, as a result of the examination conducted by the Institute.

Patents-of-addition accepted for grant may be converted into main patent provided the patentee surrenders the right to the main patent.

Where a request is filed for converting a patent-of-addition into an independent (main) patent, subsequent patent(s)-of-addition shall be deemed to constitute the additions of the new (main) patent on the condition that they show the requested unity and comprehensiveness.

Patents-of-addition converted into main patents shall be subject to the payment of the yearly patent annuity fees as of the date of their conversion while their term of protection shall be the same as the term of protection of the main patent.

Application to Patents-of-Addition of provisions pertaining to Patents.

Article 124 :

Unless the contrary is specifically foreseen and unless they are incompatible with the characteristics of patents-of-addition the provisions of this present Decree-Law pertaining to patents shall also apply to patents-of-addition.

SECTION TWO

Secret Patent

Term and Conditions for keeping under secrecy

Article 125 :

The contents of an application for patent shall be kept secret, for a time-period of two months, as from the date of filing of the application unless the Institute decides to disclose same earlier.

The Institute may extend the time-period during which the application for patent is kept under secrecy up to five months as from the date of filing of the application, if it comes to consider that the invention, subject matter of the application, is of importance for national defense. The Institute shall notify the situation in writing to the applicant and shall instantly inform the Ministry of National Defense by forwarding them the copy of the application.

For the purposes mentioned under the paragraphs one and two of this present Article, the Institute and the Ministry of National Defense shall cooperate and shall determine the inventions held to be of importance for national defense. The Ministry of National Defense has authority to examine, beforehand, all applications for patent, under the condition to respect the obligation to secrecy.

When national defense interests are of question, the Ministry of National Defense, by request made (in writing) before the expiry of the said period of 5 months, may ask the Institute that the application for patent be prosecuted under secrecy and that the applicant be kept informed of such situation.

Where the application for patent or the patent is kept under secrecy, the applicant or the patentee shall have to shun such acts as might convey information about the contents of the invention to unauthorized persons.

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

Register for Secret Patents, Extension of Secrecy Period and Rescinding Secrecy

Article 126:

The patent issued under the rule of secrecy is entered in the, secretly held, Register for Secret Patents, and shall be kept under secrecy for the length of one year as from the date of issue. The secrecy period may be extended by period(s) of one year. The patentee shall be kept informed in case of such extension.

Yearly extension of secrecy period shall not be implemented during war and until one year after cease fire.

Upon the authorization of the Ministry of National Defense, the Institute, may, at any time, rescind, the secrecy under which the patent or the application for patent has been placed.

Annuities and Compensation regarding Patents under Secrecy

Article 127 :

The payment of the yearly patent annuities shall not be mandatory, for secret patents.

The right holder of patent may claim compensation from the State for the length of the time-period during which the patent is kept under secrecy. The compensation shall be claimed, at the end of each (calendar) year, during which the patent has remained under secrecy, for the said year. If no agreement is reached on the amount of compensation, the said amount shall be determined by the court. The compensation shall be calculated taking into consideration the importance of the invention and the income estimate in case the right holder of patent can make free use of it.

Where the invention, subject matter of the secret patent is disclosed by a fault on the part of the patentee, no right to claim compensation shall arise.

Obtention of authorization to file an Application in a foreign country for Patents under Secrecy

Article 128 :

Where an invention made in Turkey is subject to the provision of Article 125, no application for patent can be filed, in any foreign country, for the said invention, without the Institute's permission and before the expiry of a time-period of two months as from the date of filing of the application for patent before the Institute. Permission to file an application in any foreign country shall not be issued without the specific authorization of the Ministry of National Defense.

Where the inventor is domiciled in Turkey, until proof to the contrary, the invention shall be deemed to have been realized in Turkey.

PART NINE

Invalidation of a Patent and Termination of a Patent Right

SECTION ONE

Invalidation of a Patent

Invalidity

Article 129 :

A patent shall be declared invalid by the court in following situations :

- a) where evidence is brought in that the subject matter of the invention does not meet the patentability requirements as specified under Articles No. 5 to 10 of this present Decree-Law;
- b) where evidence is brought in that the subject matter of the invention has not been described in a sufficiently explicit and comprehensive manner so as to enable a person skilled in the concerned technical field to implement same;
- c) where evidence is brought in that the subject matter of the patent exceeds the scope of the application or is based on a divisional application filed in compliance with Article 45 or on an application filed in compliance with Article 12 and exceeds the scope of same;
- d) where evidence is brought in that the holder of the patent does not have the right to a patent in accordance with Article 11.

Only the inventor or his successors in title shall have the right to invoke that the holder of the patent does not have the right to a patent in accordance with Article 11. In such a case, Article 12 of this present Decree-Law shall apply.

Where the grounds for invalidity concern, only, part of a patent, a partial invalidation of same shall be ruled by cancellation of the claim(s) pertaining to such part. An individual claim may not be partially invalidated.

Where, as the result of a partial invalidation, the claim(s) of the patented invention which are not canceled conform with the provisions of Articles 5 to 7 of this present Decree-Law, the patent shall be valid for that part.

Application for a Declaration of Invalidity

Article 130 :

Persons adversely affected/prejudiced or interested official authorities, acting through the Public Prosecutor, may request from the court the invalidation of a patent. Moreover, the invalidity of a patent may, also, be put forward by persons entitled to claim the right to the patent in accordance with subparagraph (d) of paragraph one of Article 129.

The Court action for the invalidation of a patent may be instituted during the term of protection of same or within five years subsequent to the termination of patent right.

The Court action for the invalidation of a patent shall be instituted against the person who, at the time when the action is instituted, is entered in the Patent Register as the holder of patent.

Notification shall be served to the persons entered in the Register as right holders of the patent, to enable them to join the court action.

Effects of Invalidity

Article 131 :

A (Court) Decision ruling that the patent is invalid, shall have retroactive effect. Thus, within the context of invalidation, the legal protection secured for an application for patent or for a patent under this present Decree-Law shall be deemed not to have been borne at all.

The retroactive effects of invalidity, without prejudice to claims for compensation for damage caused by acts of bad faith on the part of the holder of the patent, shall not extend to/affect the following situations :

- a) Any final decision for infringement of the patent reached and enforced prior to the decision of invalidity;
- b) Contracts concluded and executed prior to the decision of invalidity. However, reimbursement, in whole or in part, of sums paid under the contract may be claimed on grounds of legitimate reasons and of equity to an extent justifiable by the circumstances.

A decision of invalidity having become *res judicata* shall produce effect against all..

Effects of Invalidity on Patent-of-Addition

Article 132 :

The decision of invalidation of a patent shall not necessarily entail the invalidation of the patents-of-addition. However, where no application is filed for the conversion of the patents-of-addition to independent (main) patents within three months as from the date of the notification of the decision of invalidation, the invalidation of a patent shall result in the invalidation of the patents-of-addition as well.

SECTION TWO

Termination of a Patent Right

Causes for Termination

Article 133 :

A patent right shall terminate upon:

- a) expiry of the term of protection;
- b) surrender, by the holder of a patent, of the patent right;
- c) non-payment of yearly annuities and additional fees, within the prescribed time-periods.

The subject matter of a patent right having terminated shall become public property as from the moment when the ground for termination materializes. Such situation is published, by the Institute, in the relevant bulletin.

In case of non-payment of yearly annuities, the ground for termination of a patent right shall be deemed to materialize as of the date when the payment is due.

Non-payment of yearly annuities for reasons of Force Majeure

Article 134 :

Where a patent right terminates for non-payment of yearly annuities; with the holder of the patent bringing evidence of force majeure for reasons of which the said fee could not be paid, the patent shall be revalidated.

The claim related to force majeure shall be put forward within six months as from the publication, in the bulletin, of the announcement pertaining to the termination of the patent right.

The patentee's claim related to force majeure is published in the bulletin. The parties interested may express their observations on the matter within one month as from the date of publication.

The patent shall be revalidated upon the decision of the Institute. The revalidation of a patent shall not affect the acquired rights of third parties who have secured such rights as a result of the termination of the patent right. The rights of third parties and the scope of such rights shall be determined by the court.

Where a patent is revalidated, the holder of the patent shall be obliged to pay the fees he failed to pay and the additional fees.

Surrender of Right to a Patent

Article 135 :

The holder of a patent may surrender his right to the patent, in whole or in part for one or more patent claim(s).

Where the right to a patent is surrendered in part, the patent remains in force for the claim/s which have not been surrendered, provided such claim(s) do not constitute the subject matter of another patent and the surrender of right does not result in extending the scope of the patent.

The surrender shall be declared in writing to the Institute. The surrender shall have effect as of the date of entry in the Patent Register.

The holder of a patent cannot surrender his right to the patent without having the consent of the licensees or holders of rights entered in the Patent Register.

Where a third party claims the ownership of a patent, surrender of right to the patent cannot be requested without the consent of the concerned third party.

PART TEN

***Infringement of Rights Conferred by a Patent and
Legal Proceedings in Case of Infringement***

SECTION ONE

Situations of Infringement

Acts constituting infringement of Rights conferred by a Patent

Article 136 :

The following acts shall be considered infringement of rights conferred by a Patent:

- a/ Imitating; by producing in whole or in part of a product, subject of the invention, without the consent of the patent holder;
- b/ Selling, distributing or commercializing in any other way, or importing for such purposes of products or keeping them in possession for commercial purposes or using by applying such products, manufactured as a result of an infringement, where the person concerned knows or should know that such products are imitations in whole or, in part;
- c/ Using the patented process or selling, distributing or commercializing in any other way or importing for such purposes or using by applying the products directly obtained through such patented process; without the consent of the patent holder;
- d/ Enlarging the scope of the rights granted by the patent holder on the basis of a contractual license or granted by compulsory license or transferring such rights to third persons, without permission;
- e/ Participating in acts foreseen in subparagraphs 1 to 4 of this present Article, or assisting or inducing/encouraging them or facilitating, in any way and under any circumstances, their occurrence/perpetration;
- f/ Refraining from declaring the source from where and the manner how the products, found in possession and manufactured or commercialized, unlawfully, were obtained.

Where the patent is obtained for a process for the production/preparation of a product, all products, possessing the same properties, shall be deemed to have been produced/manufactured by the patented process. The defendant claiming that the manufactured/produced the product without infringing the patented process shall have the burden of proving such claim.

Where the application for patent is published in accordance to Article 55 of this present Decree-Law, the applicant is entitled to institute before the courts, civil and criminal, proceedings, on grounds of infringement of the invention. Where the infringer is notified of the existence of the application or of its scope, the application need not to have been published. Where the court rules that the infringer is in bad faith, the infringement shall be deemed to have existed even prior to the publication.

SECTION TWO

Legal Proceedings

Appeals/Claims of the Proprietor of a Patent and Competent Courts.

Article 137 :

A proprietor of a patent whose rights are infringed may, in particular, appeal for the following at the Court:

- a) for the cessation of the acts in infringement of right conferred by a patent,
- b) appeal for remedies of infringement and request for compensation of material and moral damages/prejudices incurred,
- c) request the confiscation of products manufactured or imported, in infringement of rights conferred by a patent, of means directly used in manufacturing such products and of means permitting the use of a patented process,
- d) appeal for the proprietorship over the products and means confiscated in accordance with subparagraph three of this present paragraph. In such case, the value of said products shall be deducted from the amount of compensation awarded. Where the value of said products happen to be above the amount of compensation awarded, the proprietor of the patent shall repay the excedentary balance to other party.
- e) appeal for precautionary measures for preventing the continued infringement of rights, conferred by a patent, especially modifying the shapes of the products and means, or, where inevitable for the preclusion of acts of infringement, the destruction of the products and means confiscated according to subparagraph three of this present paragraph.
- f) request the disclosure by means of publication, to the public and to those related, of the court's judgment rendered against the party infringing the rights conferred by a patent who shall bear the costs for such publication.

The competent court, for the institution of legal proceedings, by the proprietor of a patent against third parties, is the court of the domicile of the plaintiff or of the place where the offence was committed or of the place where the act of infringement produced effect.

Where the plaintiff is not domiciled in Turkey, the competent court is the court of the location of the business premises of the empowered registered agent and when the agent's entry in the register has been canceled, the court where the headquarters of the Institute are located.

The Competent Court, for the institution of proceedings by third parties against the applicant or the proprietor of a patent, is the court of domicile of the defendant. Where the applicant or patent right holder is not domiciled in Turkey, the provisions of the third paragraph shall prevail.

Where several courts are competent, the court before which the proceedings are first initiated shall be the competent court.

Compensation

Article 138 :

A person who, without the consent of the proprietor of a patent, produces, sells, distributes or puts in commerce under any form or imports for these purposes or keeps in possession for commercial purposes, a product under patent protection or makes use of a process under patent

protection shall be liable to remedy the unlawful situation and to compensate the prejudice/damages he has caused.

A person using, in any way, an invention under patent protection, who has been informed by the proprietor of the patent, of its existence and of the infringement of same, and who has been requested to stop such infringement, or where such use constitutes a faulty behaviour, shall be liable to compensate the damages/prejudice he has caused.

Documents Evidencing Infringement

Article 139 :

The proprietor of a patent may request from the infringing party the documents related with the use without his consent of the patent, for the evaluation of the damage/prejudice suffered resulting from the infringement of the patent.

Non-realized Income

Article 140 :

The damage/prejudice suffered by the proprietor of the patent includes, not only the value of the effective loss, but also includes the income non-realized because of the infringement of the patent right.

The non-realized income shall be calculated in accordance with one of the following evaluation methods, on the option of the proprietor of the patent who has suffered damage/prejudice :

- a) According to the income that the proprietor of the patent might have possibly generated if the competition of the infringing party did not exist;
- b) According to the income generated by the infringing party from the use of the patent;
- c) According to a license fee that would have been paid if the party, infringing the patent right, would have lawfully utilized the patent under a licensing contract.

In calculating the non-realized income, circumstances having effect on the case, such as, in particular the economic value of the patent, the term of protection remaining at the time of infringement, the type/nature and number of licences granted in respect of the patent shall be taken into consideration.

Where the court is of the opinion that the right holder of a patent, has not fulfilled his obligation to work the patent, in compliance with the provisions of this present Decree-Law, the non-realized income shall be calculated according to subparagraph (c) of paragraph two, of this present Article.

Increasing the non-realized Income

Article 141 :

Where the person right holder of a patent has selected one of the evaluation options specified in the paragraph two, sub-paragraphs (a) or (b) of Article 140, in calculating the non-realized income, the Court may add on a reasonable extra amount when, in court's opinion, the patent

contributes substantially, from an economical aspect, to the manufacturing of the product or to the use of the process.

The assessment of the patent's contribution to the economic value of the product shall be grounded on the verification that the patent constitutes the determining factor in creating the demand for the product.

Reputation of the Invention

Article 142 :

The proprietor of a patent may request extra damages where the reputation of the invention, subject matter of the patent, is harmed/prejudiced from the manufacturing in a bad or the marketing in an improper manner of the patented invention, by the party violating the rights conferred by the patent.

Reduction of Compensation

Article 143:

Where the amount of compensation to be paid to the right holder of a patent, happens to be higher than the amount he receives from other persons, for their use of the invention in another manner, the compensation allowed shall be reduced in consideration of such amount.

Persons Against whom no compensation may be claimed

Article 144 :

The proprietor of a patent may not institute proceedings, under the provisions of this present Section of this Decree-Law, against those persons using the products put on the market, by the person who has paid compensation for damages, to the proprietor of the patent.

Prescription of Time-Limit

Article 145 :

The provisions of the Code of Obligations on prescription of time-limit shall have effect concerning the time-periods for appeals/claims, under civil provisions, relating to violations of rights conferred by a patent.

SECTION THREE

Specialized Courts

Competent Courts

Article 146 :

Special courts to be established by the Ministry of Justice shall have jurisdiction for all of the actions and claims provisioned by this present Decree-Law.

Upon the request/invitation of the Ministry of Justice, the High Council of Judges and Prosecutors shall determine which of the Commercial Courts of the First Instance and the Criminal Courts of the First Instance shall have competence as special courts and indicate their respective jurisdictions.

For actions instituted against all of the Institute's decisions taken in respect of the provision of this present Decree-Law and for actions instituted against the Institute by third parties having been damaged/prejudiced from the decisions of the Institute, the special court referred in the first paragraph shall have competence.

Publication of the Court's Decision

Article 147 :

Where a court judgment becomes *res judicata*, provided it has a legitimate ground or interest the successful party may request the publication, in full or in summary, of the final judgment in a daily paper, or by similar means, the costs of which are to be met by the other party.

The nature and extent of the publication shall be determined in the judgment. The right of publication shall be void, if not exercised within three months after the judgment becomes *res judicata*.

SECTION FOUR

Special Provisions

Claims by the Licensee and requirements therefor

Article 148 :

Unless provided otherwise by the contract, the holder of an exclusive license may, in the case of an infringement of the patent rights, institute in his own name all legal proceedings which have been made available to the proprietor of the patent by this present Decree-Law. Holders of non-exclusive licenses do not have the right to institute legal proceedings.

In the case of an infringement, the holder of a (non-exclusive) license not having the right to Institute proceedings according to paragraph one may give notice, through a notary public requesting the proprietor of the patent to institute such proceedings as required.

In the event the proprietor of the patent right refuses to initiate or within three months of the reception of the notice fails to institute proceedings, the (non-exclusive) license holder shall have the right to institute proceedings, in his own name, by enclosing thereto, his notice to the (proprietor) in this regard.

The licensee may, in the face of likelihood of serious damage (where elapsing of time cannot be remedied), request the court to issue an injunction for precautionary measures without waiting until the elapsing of said (3 months) period.

The licensee who has instituted proceedings in accordance of paragraph three, shall notify the proprietor of the patent that the proceedings have been initiated.

Claiming of Non-infringement of a Patent and Requirements therefor

Article 149 :

Any interested person may institute proceedings against the proprietor of a patent to obtain a judgment of non-infringement of rights conferred by the patent.

Prior to the institution of proceedings, referred in the first paragraph, a notice shall be served through the notary public to the attention of the proprietor of the patent, to enable, the patent right holder, to express his observations on whether industrial/manufacturing activity engaged in Turkey or the serious and effective preparations made for such purpose, by the requesting party constitute infringement of the rights conferred by the patent.

Where the proprietor of the patent upon receiving such a notice does not respond within one month of receiving the notice, or the content of the response is not found acceptable by the requesting party, the appealing party shall have the right to institute proceedings according to the first paragraph.

Persons, against whom action of infringement has been instituted in respect of the patent right, cannot institute proceedings according to paragraph one of this present Article.

Institution of proceedings shall be notified to all right holders entered in the Patent Register.

The actions referred to in this Article may also be instituted jointly with an action claiming invalidity.

Action for Determination of Evidences

Article 150 :

Any person entitled (legally) to bring action against the infringement of patent right, may appeal the court to determine and secure the acts which may/can be considered to infringe such (patent) rights.

Precautionary Measures

Article 151 :

Persons who are to institute or who have instituted proceedings as prescribed by this present Decree-Law, in order to ensure the effectiveness of the (main) action, may appeal the court to order precautionary measures provided that they bring evidence as to the existence of acts of actual use in Turkey of the patent or serious and effective preparations to use the patent against which the action is instituted, which would constitute an infringement of the plaintiff's patent right.

The request for precautionary measures may be filed before or with the institution of proceedings or filed later. The request for precautionary measures shall be examined separately from the main action.

Nature of Precautionary Measures

Article 152 :

Precautionary measures shall be in nature to enable of securing fully the effectiveness of the judgment and particularly provide the following measures:

- a) cessation of the acts infringing the patent rights of the plaintiff;
- b) injunction to seize within the borders of Turkey, wherever they are seen/found including the customs, free ports or free trade areas and keep in custody the goods produced or imported in infringement of rights conferred by the patent or means used in implementing the patented process,
- c) ordering the placement of security/guarantee for damages to be compensated.

Code of Civil Procedures

Article 153 :

With respect to other matters for securing of evidences and for precautionary measures the provisions of the Code of Civil Procedures shall have effect.

PART ELEVEN

Utility Model Certificates

Inventions Protected by Granting Utility Model Certificates

Article 154 :

Inventions which are novel according to Article 156 of this present Decree-Law and applicable in industry in the sense of Article 10 of this present Decree-Law shall be protected by grant of Utility Model Certificate.

Inventions and subject matter non-patentable by Grant of Utility Model Certificate

Article 155 :

No Utility Model Certificate shall be granted for subject matters mentioned in Article 6 of this present Decree-Law as well as for processes and products obtained by such processes and for chemical products.

Novelty

Article 156 :

The invention, subject matter of the application for utility model certificate, shall not be deemed to be novel when prior to the date of filing the application, it has been rendered accessible to the public, whether in Turkey or in the world, by disclosure in writing or in any other way or when it has been put to use within the country, whether regionally or nationwide.

Disclosure, whether by publication or in any other way or use, by the applicant for utility model certificate or his predecessors, twelve months prior to the date of filing of the application or to the date of priority, if any, shall not be deemed to be destructive of the novelty of the invention, subject matter of the application.

Applications filed in Turkey for patents or for utility model certificates prior to the date of filing the application for Utility Model Certificate shall be deemed to be destructive of the novelty of the application for Utility Model Certificate even when they are published subsequently to the date of filing of the application for Utility Model Certificate.

Right to Apply for a Utility Model Certificate

Article 157 :

The right to apply for a utility model certificate shall belong to the inventor or to his successor in title and shall be transferable.

Where the invention, subject matter of the Utility Model Certificate, has been made, jointly, by more than one person, the right to apply for a utility model certificate shall belong to them jointly, unless the parties decide otherwise. On this subject the joint ownership provisions of the Civil Law shall apply.

Where the same invention, subject matter of the Utility Model Certificate, has been made, at the same time, by more than one person, independently from each other, and one of them has filed an application, the provisions of Article 11 and 12 of this present Decree-Law shall apply for determining the person entitled to the right to apply for a utility model certificate.

Rights May not be invoked Against Third Persons

Article 158 :

Where the core of the invention, subject matter of the utility model certificate, has been taken/copied from the description, drawings and models, equipment and installation of third party(ies) without their authorization, the holder of the utility model certificate may not invoke the protection conferred by the utility model certificate granted under this present Decree-Law against said third parties.

Until the court action for cancellation instituted in accordance with the provisions of Article 156 against him comes to a conclusion, the holder of the utility model certificate may not invoke the rights conferred by that certificate against third parties. For this reason, the related parties shall apply to the Institute for the entry in the register of the instituted court action and the resulting decision and their publication in the related Bulletin. The right of the holder of the utility model certificate to claim compensation remains reserved.

Application for Utility Model Certificate

Article 159 :

In order to obtain a utility model certificate, the documents cited in Article 42 of this present Decree-Law shall be filed before Institute with the application, stating clearly that protection by grant of utility model certificate is requested.

The provisions of Articles 43 and 53 of this present Decree-Law shall apply for rendering definite (fixing) the date of filing of the application for Utility Model Certificate.

Examination of the Application as to Formal Requirements and its Publication

Article 160 :

Upon the date of filing of the application becoming definite, the Institute shall examine the compliance of the application to formal requirements set forth in Articles 42 to 53 and in the Regulation.

Where the examination of the Institute shows that the application suffers formal deficiencies or that the subject matter of the application does not possess the characteristics permitting the grant of utility model certificate in compliance with the provisions of Article 154 and 155, the procedure shall be suspended. The Institute shall notify the applicant of its motivated decision by citing therein the grounds therefor and shall grant the applicant a time-period of three months, as from the notification of its decision, to rectify the deficiencies, to amend the claim(s) or to object to it.

After consideration of the observations of the applicant and of the amendments in the application, if any, the Institute shall take its final decision. The final decision of the Institute may consist in granting the utility model certificate for all or part of the claims.

Where the examination concerning the compliance to formal requirements results in that there is no deficiency preventing the grant of protection or that such deficiency has been satisfactorily rectified, the Institute shall notify the applicant of the favorable decision to further publish the description, claim(s) and the drawings, if any, in accordance with the provisions set forth in the Regulation. The applications are published in the related Bulletin under the form and according to requirements prescribed in the Regulation.

The State-of-the-Art Search Report foreseen to be established by the Institute in respect of patents shall not be established for utility model certificates. However, upon filing the private request of the applicant or registrant of the utility model certificate, before the Institute for the establishment of the Search Report on the State-of-the-Art, such report shall also be established for the Utility Model Certificate.

Opposition by Third Parties

Article 161 :

Within three months following the publication of the application, any person or body/institution, with an interest, may oppose the application for the grant of the utility model certificate by giving the motives/grounds therefor. The opposition shall be motivated by putting forward that the requirements for the grant of the Utility Model Certificate are not fulfilled; in particular, the lack of novelty in accordance with Article 156 or the inadequacy of the description not being explicit and comprehensive enough to enable the implementation of the invention.

Documentary evidence in support thereof shall be enclosed to the opposition (to be) made in written form.

Upon the expiry of the period for opposition, the Institute shall notify the applicant the oppositions raised.

Within three months following the notification of the oppositions raised, the applicant may put forward his motivated observations against the oppositions raised or may amend the claim(s), if he deems it appropriate or may request the Institute to issue the certificate without taking into consideration the oppositions raised.

Courts have competence in respect of claims according to which the applicant is not entitled to request a utility model certificate. Oppositions made to the Institute having regard to such claims shall not be accepted.

Decision of the Institute, Grant of a Utility Model Certificate and its Publication

Article 162 :

Where the applicant has filed his observations against the objections raised or has effected the requested amendments or the time-period granted to the applicant to respond to the objections has lapsed, the Institute shall decide to grant the utility model certificate without taking into consideration the objections raised by third parties and notifies the applicant of its decision by requesting the payment within three months of the relevant fee set forth in the Regulation.

Where the prescribed fee is not paid within three months from the date of notification or no request for an extension of said period is filed, the utility model certificate shall not be issued and the application shall be deemed to have been withdrawn.

The description referred to in Article 61 of this present Decree-Law shall not be published for utility model certificates.

The State does not guarantee the very existence/reality and the usefulness/utility of the subject matter of the utility model certificate.

The issuance of a Utility Model Certificate shall be published in the related Bulletin. The publication shall include the following particulars:

- a- The number of the certificate,
- b- The Classification Code(s) of the Invention,
- c- The title clearly describing the subject matter of the invention,
- d- The name, nationality and domicile of the holder of the certificate,
- e- Abstract,
- f- The date and number of the issue of the Bulletin in which the application for utility model certificate is published,
- g- The date of issue of the certificate,
- h- The statement announcing the possibility of consulting/inspecting the documentation concerning the (granted) utility model certificate and the objections raised and the observations against these objections.

Objections as to the Formal Deficiencies Subsequent to the Grant of a Utility Model Certificate

Article 163 :

To the exception of the provision of Article 45 pertaining to the unity of the invention, third parties shall be entitled to raise objections before the Institute against the grant of Utility Model Certificate on grounds of formal deficiencies to comply with the procedural requirements provided under Articles 42 to 52. In order to raise such an objection there is no need to have previously objected following the publication of the application for Utility Model Certificate.

To the exception of the matter of unity of the invention, where the Institute had failed during the examination to perform one of the actions to be formally effected according to the

procedure for granting Utility Model Certificate as set forth in Article 42 to 51, or where the Institute has omitted to perform an essential formal procedural action, the decision of the Institute to rectify such deficiency in consideration of the objection raised shall have the effect to annule the administrative actions pertaining to the grant of the Utility Model Certificate retrospectively to the stage of the procedure where the concerned deficiency occurred and to reengage the procedure from that stage onwards so as to perform anew all such actions.

Form and Term of Protection

Article 164 :

The holder of a utility model certificate benefits from the same protection conferred to the patent holder.

The Utility Model Certificate is granted for a period of 10 years as from the date of filing of the application. This term shall not be extended.

Within the meaning of Article 121 of this present Decree-Law, certificates-of-addition to utility model certificates shall not be granted.

Invalidation of a Utility Model Certificate

Article 165 :

The invalidity of the Utility Model Certificate shall be decided by the competent court under to the following situations:

- a/ where evidence is brought in that the subject matter of the utility model certificate does not comply with the provisions of Articles 154, 155 and 156 of this present Decree-Law;
- b/ where evidence is brought in that the invention, subject matter of the utility model certificate, has not been described in a sufficiently explicit and comprehensive manner so as to enable its implementation by a person skilled in that field;
- c/ where evidence is brought in that the subject matter of the utility model certificate exceeds the scope of the application filed for utility model certificate or, in that the subject matter of the utility model exceeds the scope of the application as originally filed, in case where the utility model certificate is based on a divisional application filed according to Article 45 or on an application filed according to Article 12;
- d/ where evidence is brought in that the holder of the utility model certificate does not have the right to a Utility Model Certificate in accordance with Article 157.

The invalidation of the utility model certificate can be requested by third parties suffering damages/prejudices or by the interested official authorities/bodies, acting through the public prosecutor, or by those persons entitled to request the utility model certificate in accordance with paragraph one (d) of this present article.

In order to qualify to request the invalidation of the utility model certificate, third parties suffering damage/prejudice and the interested official authorities/bodies must have raised opposition in compliance with the provisions of Article 161.

The invalidation of the utility model certificate may be requested, at any time, during its term of protection.

The claim that the holder of the utility model certificate is not entitled to apply to obtain such certificate in compliance with Article 157 may only be invoked by the inventor or by his successors in title. In such case, Article 12 of this present Decree-Law shall apply.

Where the grounds for invalidation affect only part of the utility model certificate, it shall be decided to partially invalidate same through the cancellation of the claim or claims related to the concerned part. An individual claim may not be partially invalidated.

Where the invalidation is partial, the utility model certificate shall remain in force in respect of claim(s) having not been invalidated, provided that these claim(s) comply with the provisions of Articles 5 to 7 of this present Decree-Law.

Where the utility model certificate is issued without taking into consideration the motivated oppositions raised by third parties and where, on grounds of causal relation with the opposition raised, the court has decided to invalidate the utility model certificate, according to this present Article, third parties having raised opposition and suffered damage/prejudice shall have the right to claim compensation from the holder of the invalidated Utility Model Certificate.

Application of Provisions pertaining to Patents

Article 166 :

In the absence of provisions specifically applicable to utility model certificates, the provisions pertaining to patents as set forth in this present Decree-Law shall apply likewise, for utility model certificates, provided that they are not incompatible with the characteristic of utility model certificates.

Converting an Application for Utility Model Certificate into an Application for Patent

Article 167 :

The applicant for a utility model certificate may request the Institute to convert the concerned application in to an application for patent prior to the decision of the Institute to grant the utility model certificate.

Within one month from the date of such request, the Institute shall notify the applicant that the application for Utility Model Certificate will be further prosecuted as an application for patent and shall inform him of the documents required to be submitted to this effect. The applicant shall file the requested documents within one month from the date of notification of the Institute. Where the applicant fails to file the required documents within this time-period, the request for conversion shall be deemed not to have been made and the subject application shall be further prosecuted as an application for a utility model certificate.

When the application for utility model certificate is converted into an application for patent, the application for utility model certificate shall remain without effect.

When the application for utility model certificate is converted into an application for patent the priority right(s), if any, claimed under the application for utility model certificate shall benefit

likewise to the application for patent which will be effective as from the date of filing of the application for utility model certificate.

Following the filing, by the applicant, of the documents requested, according to paragraph four of this present article, the conversion of the application for utility model certificate into an application for patent shall be published in the Bulletin. The date and number of the issue of the Bulletin wherein the application for utility model certificate and enclosures have been published shall also be mentioned in this publication.

Converting an Application for Patent into an application for Utility Model Certificate

Article 168 :

The provisions of Article 65 of this present Decree-Law shall apply for converting an application for patent into an application for utility model Certificate.

Registration of subject matter of Utility Model Certificate as an Industrial Design

Article 169 :

The subject matter of a utility model Certificate may also be registered as an industrial design. In such case, the provisions of the related act shall apply.

Impossibility to Concurrently Grant a Utility Model Certificate and a Letter's Patent for the same Invention

Article 170 :

A Letter's Patent and a Utility Model Certificate shall not be concurrently granted for an invention involving the same subject matter. The conversion of an application for patent or an application for utility model Certificate into the other, can be effected only in compliance with the provisions of Articles 65, 167 and 168.

PART TWELVE

Persons Authorized to Act (Before the Institute) and Agents

Persons Authorized to Act (Before the Institute)

Article 171 :

The following persons have capacity to act before the Institute :

- a) natural or legal persons,
- b) patent agents entered in the records of the Institute.

Legal persons may be represented by those person(s) duly empowered by their authorised bodies/organs.

The persons domiciled abroad can only be represented by patent agents.

Where an agent has been appointed, all procedures are executed through the agent. All notices made to the agent shall be deemed to have been made to the principal.

PART THIRTEEN

Payment of Fees and Legal Effects thereof

Payment of Fees and Legal Effects thereof

Article 172 :

The fees relating to an application for patent and to a patent as set forth in the Regulation shall be paid by the applicant or by the right the holder of the patent or by the patent agent.

The time-period for the payment of all fees as required and set forth in the Regulation shall be notified, in advance, by the Institute, to the applicant or to the right holder of the patent or to the patent agent.

Where a fee of a particular formality is not paid within the time-period set forth in the Regulation, the said formality shall not produce any effect and result, as from the date when the situation is notified by the Institute to the applicant.

Where the prescribed fees for the grant of a patent have not been paid within the time-period provisioned by this present Decree-Law, the application for the patent shall be deemed to have been withdrawn.

Yearly Annuities

Article 173 :

The annuities as set forth in the Regulation and necessary for maintaining the validity of an application for patent or of a patent shall be paid yearly, in advance, at each anniversary date, during the term of protection of patent. The said annuities are due for payment each year on the month and day corresponding to the month and day of the date of filing of the application.

Where the annuities are not paid within the time-period prescribed in paragraph one of this present Article, same may be paid within the subsequent (grace) period of six months by paying an extra fee.

Where the annuities are not paid within the time-period prescribed in paragraph one of this present Article, the patent right shall expire on the last day when such payment is due.

PART FOURTEEN

LAST PROVISIONS

Provisions Repealed

Article 174 :

Article 174 has been repealed as of the following provision of Law No. 4128 dated November 7, 1995.

“The Patent Act dated March 10, 1296 (March 23, 1879) and its additions and amendments and Article 174 of the Decree-Law have been repealed”.

Entry Into Force

Article 175 :

This present Decree-Law shall enter into force on the day of its publication.

Implementation

Article 176 :

This present Decree-Law shall be implemented by the Council of Ministers.

TRANSITIONAL PROVISIONS

Application of Previous Provisions

Transitional Article 1 - For applications for patent filed prior to the entry into force of this present Decree-Law, the provisions of the act in force on the date of filing the application shall have effect.

Without prejudice to acquired rights in respect of all acts of transfer, inheritance and licensing contracts concluded and registered prior to the entry in force of this present Decree-Law, for any further actions and for all changes on such matters, the provisions of this present Decree-Law shall prevail.

Establishment of the State-of-the-Art Search Report until the setting up by the Institute of the organization necessary for establishing such reports

Transitional Article 2 - The State-of-the-Art (Standard) Search Report which is to be established by the Institute according to the provisions of this present Decree-Law, shall be established by the internationally recognized Search Authorities, until the time, when the Institute completes its organization permitting it to establish such reports.

Payment of Yearly Annuities

Transitional Article 3 - With regard to applications for patent having lapsed for non-payment of the yearly annuities and fees within the prescribed time-period, the patent right shall be restored/reinstated when the fees, due for payment in previous years, are paid, as set forth in the Regulation, by paying an additional fee amounting to twice the amount of the concerned fees, within six months as from the date of notification of the Institute. This provision shall only apply when the term of protection of the patent has not already expired.

Protection of Pharmaceutical Products and of Processes for their Production/Preparation

Transitional Article 4 - The protection provided by letter's patent within the scope of this present Decree-Law pertaining to pharmaceutical and veterinary products/substances and to their process of preparation/production shall commence on January 1, 1999.

Transitional Article 4 as amended by the Decree-Law No. 566 dated September 22, 1995.