

CERTAIN ASPECTS OF NATIONAL/REGIONAL PATENT LAWS

(TURKEY)

Law No. 6769 of December 22, 2016, on Industrial Property was published in the Official Gazette on January 10, 2017 and entered into force as of this publication.

Pursuant to the decision of the Standing Committee on the Law of Patents (SCP), at its twenty-fifth session which was held in Geneva from December 12 to 15, 2016 (paragraph 6 of document SCP/25/5), Turkey would like to kindly inform (WIPO) regarding updated information on certain aspects of the applicable patent law in TURKEY , available at:

http://www.wipo.int/scp/en/annex_ii.html

Name of the national industrial property office was previously known as the Turkish Patent Institute (TPI) and recently renamed as the Turkish Patent and Trademark Office (TURKPATENT).

Prior Art:

1. Anything made available to the public by a written or oral description, use, or in any other way before the filing date (priority date).
2. Contents of certain Turkish, European and international patent applications with an earlier filing date (priority date) published on or after the filing date (priority date).

The content of Turkish patent and utility model applications as filed, the dates of filing of which are prior to the filing date of the application and which were published on or after that date, shall be considered as comprised in the state of the art.

European Patent applications in which Turkey was designated and the related fee was paid according to subparagraph two of Article 79 of European Patent Convention

PCT application shall be considered as comprised in the state of the art if are entering the national level in accordance with the conditions specified in the regulation according to Articles 22 and 39 of Patent Cooperation Treaty.

Novelty:

An invention shall be considered to be new if it does not form part of the state of the art. The state of the art consists of anything made available to the public by a written or oral description, use, or in any other way before the filing date (priority date), and the contents of certain Turkish, European and international patent applications with an earlier filing date published on or after the filing date (priority date).

Inventive Step (Obviousness)

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. The state of the art consists of anything made available to the public by a written or oral description, use, or in any other way before the filing date (priority date).

Grace Period:

(1) Disclosure not to be taken into account in determining patentability if it occurred within 12 months before the filing date (priority date):

a) the disclosure is made by the inventor;

b) the disclosure is made by an authority to which the application for a patent was made and the information released by this authority;

1) is mentioned in the inventor's other application and the mentioned application is revealed by the related authority even though it was required not to be revealed;

2) is mentioned in the application that was filed by a third party who obtained the information directly or indirectly from the inventor without the inventor's permission.

c) The disclosure regarding the invention is made by a third party who obtained the information directly or indirectly from the inventor.

(2) According to paragraph 1, everybody who has a right to demand a patent or utility model at the filing date shall be considered as the inventor.

(3) The results led by the conduction of the paragraph 1 shall not be subject to time limit and can be alleged anytime.

(4) The party who alleges that the paragraph 1 should be conducted shall be obligated to prove the fulfillment of conditions or prove that it is expected to be so.

Sufficiency of Disclosure:

An application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Exclusions from Patentable Subject Matter:

1. Discoveries, scientific theories and mathematical methods as such

2. Schemes, rules and methods for performing mental acts, playing games or doing business as such

3. Programs for computers as such.

4. Aesthetic creations, literary and artistic works and scientific works as such

5. Presentations of information as such.

6. Inventions of which would be contrary to "ordre public" or morality.

7. Plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof,

8. Methods for the treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body.

9. The human body, at the various stages of its formation and development, including germ cells, and the mere discovery of one of its elements, including the sequence or partial sequence of gene.
10. Processes for cloning human beings and for modifying the germ line genetic identity of human beings, uses of human embryos for industrial or commercial purposes.
11. Processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

Exceptions and Limitations of the Rights:

1. Acts for non-industrial and non-commercial purposes.
2. Acts done for experimental purposes relating to the subject matter of the patented invention.
3. Acts done for experimental purposes relating to the subject matter of the patented invention including registration of drugs and the necessary tests and experiments needed for this purpose;
4. Extemporaneous preparation of prescribed medicines in pharmacies, and acts concerning those medicines.
5. Certain uses concerning foreign aircraft, land vehicles or vessels which temporarily or accidentally enter national territory.
6. Acts done for aircrafts of a country in which Provisions of Article 27 of International Civil Aviation Agreement which is approved by the Law dated 06.05.1945 and numbered 4749 are being applied
7. Farmers who acquired plant propagated material placed on the market by the patentee or with his consent may propagate on own farm the harvested product obtained from such material.
8. Farmers who acquired animals or animal reproductive material placed on the market by the patentee or with his consent may reproduce on own farm the animal raised from such acquired animals or material.
9. Continued prior use by a person who, in good faith before the filing date (priority date), was using the invention domestically or had made serious and real measures for that purpose.
10. Governmental use of the patented invention which are arising from projects funded by the government
11. Compulsory licenses (fail to perform obligation to use invention, dependency of patented inventions, public interest, farmers' and/or breeders' use of patented inventions, anti-competitive practices, exportation of drugs produced under compulsory licensing to countries without manufacturing capacity under Paragraph 6 of the Doha Ministerial Declaration on the TRIPS Agreement and Public Health.

In accordance with the Circular C.8653 dated March 16, 2017 we would like to also kindly submit updated information on

(i) national/regional laws on opposition systems and other administrative revocation and invalidation mechanisms, available at: http://www.wipo.int/scp/en/revocation_mechanisms/

Law No. 6769 on Industrial Property

Law No. 6769 on Industrial Property introduce a post-grant opposition. Third parties may oppose to the decision of granted national Turkish patents within six month of the date of the publication of the grant of a patent in the Official Patent Bulletin.

Notice of opposition shall not be deemed to have been filed if the opposition fee has not been paid or if the opposition is not fulfilled the according to Regulations within six month of the date of the publication of the grant of a patent

According to Article 99 of the Law No. 6769 on Industrial Property the opposition may be filed on the grounds that:

- (a) the subject-matter of the patent is not patentable under Articles 82 to 83;
- (b) the patent does not disclose the invention in accordance with Article 92 (in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art);
- (c) the subject-matter of the patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed under Article 110(b), beyond the content of the earlier application as filed.

The Office shall communicate the notice of opposition to the proprietor of the patent and shall give him the opportunity to file his observations and to amend, where appropriate, the description, claims and drawings within three months as of the date of this notification.

If the Board is of the opinion that at least one ground for opposition prejudices the maintenance of the patent, it shall revoke the patent and in this case, consequences of nullity which are specified in Article 139 will appear. Otherwise, it shall reject the opposition.

If the Office is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates

- (a) meet the requirements of this Law, it shall decide to maintain the patent as amended,;
- (b) do not meet the requirements of this Law, it shall revoke the patent.