

## PATENT PROTECTION IN TURKEY

**Any business inventing a new product or technique and having interest in Turkey should consider patent protection. Otherwise, competitors are free to copy such inventions.**

This information sheet provides some brief notes on what inventions may be patented, patent filing and prosecution stages, statistics as well as utility model protection in Turkey.

### WHAT IS PATENT

A Turkish patent is a set of exclusive rights granted by the TURKPATENT for an invention, whether a product or process -in any field of technology- that offers a new solution to a specific technological problem or provides a new way of doing something.



#### ▪ Applicable Law

Patents are subject to Industrial Property Law 6769 entered into force on January 10, 2017. For applications filed before the said date and still pending, Decree Law No. 551 on the protection of patents of 26 April 1995 is still valid. In practice, the Turkish patent system is now fully compatible with the provisions set out in the European Patent Convention.

#### ▪ International Harmonization

Turkey is a party to the following international treaties forming patent infrastructure:

- Paris Convention on the protection of industrial property (1925/ Stockholm 1995-1976);
- Patent Cooperation Treaty (1996);
- Strasbourg Agreement concerning the international patent classification (1996);
- Budapest Treaty on the international recognition of the deposit of micro-organisms for the purpose of patent procedure (1998); and
- European Patent Convention (2000/ EPC-2000 2007).

#### ▪ What rights does a patent provide?

A patented invention in Turkey cannot be made (partly or entirely), used, distributed, imported, sold, offered for sale, kept for, or put into commercial use in any other

way by others without the patent owner's consent. Patent owners can assign- or transfer by succession- the patent and conclude licensing contracts. Licensed rights cannot be extended or transferred to others without the patent owner's consent. Without patent protection, competitors are legally free to copy, produce and market the method or product in Turkey.

#### ▪ Protection Period

The patent grant lasts for a monopoly period of 20 years from the filing date of a patent application. No extension is available for any specific type of patented inventions (i.e. no SPCs for medicinal products)

#### ▪ Maintenance Fees

Renewal fees are due in respect of the end of second year and each subsequent year of the anniversary, calculated from the date of filing. Late payment up to six months after the due date is subject to an additional fee.

### WHAT MAY BE PATENTED

To qualify for a patent in Turkey, the invention must be novel, involve an inventive step, be capable of industrial application, and not be specifically excluded from protection as a patent. Besides, it must be fully disclosed in the patent application.

#### ▪ Novelty

In general, the invention must not have been a part of the state of the art -i.e. publicly known or used anywhere in the world- in order to meet the requirement of novelty. It is therefore important that no public disclosure of the invention is made before the patent application is filed.

#### GRACE PERIOD EXCEPTION TO NOVELTY

A patent application can be validly filed in Turkey within one year from the earliest date on which the invention is offered for sale, publicly disclosed, or publicly used. Because many foreign countries do not have such a one-year grace period afforded by Turkish IP Law, it is recommended to file a patent application before a public disclosure or use if foreign patent protection is desired.

### ▪ Inventive Step

The invention must involve an “inventive step” or “non-obvious”, which means that it must not have been obvious to a person skilled in the art (to a person having ordinary skill in the relevant technical field).

### ▪ Industrial Applicability

The invention must be capable of industrial application, meaning that it must be capable of being produced or used for any kind of industrial purpose (including agriculture) beyond a mere theoretical phenomenon.

### ▪ Non-Patentable Subject Matters

- Discoveries, scientific theories, and mathematical methods.
- Plans, rules and methods for performing mental acts, or conducting any business/ trading activity, or for playing games.
- Computer programs.
- Literary and artistic works, scientific works, and creations being of aesthetic character.
- The presentation of information.
- Inventions contrary to public order or to generally accepted principles of morality.
- Plant and animal varieties, and essentially biological processes for reproduction of plants and animals, other than microbiological processes and products resulting therefrom.
- Therapeutic, surgical and diagnostic methods for treating humans or animals.
- 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.
- 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, 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.

### ▪ Full Disclosure of The Invention

A patent application must provide a detailed description of the invention and of the manner of making and using it in such full, clear, concise, and exact terms that any person with an ordinary level of skill in the relevant technical field can replicate and use the same.

## APPLYING FOR PATENT PROTECTION

There are three routes of applying for a patent in Turkey – directly with TURKPATENT via domestic route, or through PCT National Phase Entry route, or via EPC route by

validating a granted European patent. Unitary patent protection is not applicable since Turkey is not a member of the European Union.



- An applicant with no domicile or business seat in Turkey should appoint a Turkish patent attorney registered before the TURKPATENT. Power of attorney is not required for patent applications
- A conventional/domestic application must contain:
  - a request for grant of a patent on the application form (paper or online form)
  - contact details for the applicant/s and inventor/s and a simple statement on the right to the invention from the inventor, to be written on the application form
  - a description of the invention, claims, an abstract, drawings illustrating the invention if needed, all known as the specification; and
  - a payment receipt of the official fee.

### BE CAREFUL !

You should prepare your patent application very carefully right from the start, as you have very limited possibilities to add or change any details in the patent specification later. It is recommended that description of the invention is made in clear language with enough details that a person with an average understanding of the technical field could use or reproduce the invention and claims are drafted by a patent attorney since they define the matter for which legal protection is sought.

- Patent applications should be filed in Turkish. The description and claims may be filed initially in one of the official languages of the states that are parties to the Paris Convention or the Treaty Establishing World Trade Organization or applying the reciprocity principle, but a Turkish translation should be submitted within two months of filing.
- Except for requesting search and examination together, no accelerated procedure is available for patent prosecution stages in Turkey. It may take two to four years to obtain a patent.

- The TURKPATENT should be asked to carry out a novelty search report, either when you apply or later in the process within 12 months of your filing (or priority) date. A search fee is payable. The search report is drawn up on the basis of the claims, with due regard to the description and any drawings. It mentions the prior-art documents which may be taken into consideration in assessing novelty and inventive step criteria.
- The applicant should request substantive examination together with the request of a search report, or otherwise, within three months from the notification date of receipt of the search report. A first examination fee is payable in either case. This examination stage involves considering whether the invention is novel and inventive, whether the invention is in an excluded area and whether the application complies with the various formalities of the patent legislation.
- If the examiner finds that the application does not comply with requirements, a first examination report (i.e. first office action) is issued. The applicant may respond to the objections by arguing in support of the application, or making amendments to the application to bring it in conformity, or may abandon the application. The process of objection and response can be repeated “two” times and each requires further examination fees and results subsequent examination reports until the patent is in a form suitable for the grant. In general, everything must be in written form, and thus oral proceedings/hearings or any verbal contact with the examiner is not available except for some extraordinary matters.
- 18 months after the filing date (or earliest priority date-if any), the complete application (and search results –if available) are published. Once it is published, third parties may file written opinions against the patentability of the invention for the examiner’s attention but cannot interfere further.



- If the application is successful, the patent is granted and published for oppositions. Otherwise, the applicant has the right to appeal it before the Specialized IP Court.

## OPPOSITIONS

- Post grant opposition proceedings are available and allows third parties to formally challenge the validity of a granted patent at the TURKPATENT. An opposition must be filed online or in writing within six months of the publication of the mention that the patent has been granted, and an opposition fee is payable.
- Opposition can only be based on the grounds that the subject-matter of the patent does not meet patentability requirements, and that the invention is not disclosed clearly and completely enough for a person skilled in the art to carry it out, and that the patent's subject-matter extends beyond the content of the application as filed.

## USE / WORK REQUIREMENT

- A patent owner must use the invention under patent protection and file a simple declaration of use (no evidence required) with the TURKPATENT within four years from the publication date of the application or three years from the publication date of the mention that the patent has been granted, whichever is the later.

## DIVISIONAL APPLICATIONS

- A divisional patent application can be filed anytime - before or after grant- upon the applicant's request. TURKPATENT can also ask applicant to divide the application if the requirement of unity of invention is not met. Subject-matter of such an application should not extend beyond the content of the original application.

## COSTS

- Despite TR official fees being reasonable, obtaining a patent may be costly depending on the patent attorney’s charges, translation requirements and patentability problems to be dealt during the prosecution stages.
- Allowance should also be made for patent annuities to be gradually increased during the 20-year period of the patent.

### OFFICIAL FEES

Schedule of all fees for patents and utility models as well as for other types of IP filings is regularly published and updated by the TURKPATENT, and available in English and Turkish at:

<http://www.turkpatent.gov.tr/>

## UTILITY MODELS

As another type of legally enforceable protection for technical inventions in Turkey, utility models are closely tied to the Turkish patent system and support inventions that fall short of complying with the “inventive step” requirement for receiving patent protection.

### ▪ Applicable Law

Utility models are subject to the Industrial Property Law 6769 entered into force on January 10, 2017, and both patent and utility models almost enjoy the same provisions under the Book IV of the Law, unless stated otherwise.

### ▪ Subject matter

A utility model protects an invention which has practical utility in any field of technology, and may cover virtually any apparatus and article of manufacture similar to those under patents, but not applicable for chemical, biological, biotechnological or pharmaceutical products, or methods of making or using the same in Turkey.

### ▪ Requirements for application

The requirements for filing a utility model application are the same as those for a patent application.

### ▪ Grantability requirements

Unlike patents, only novelty and industrial applicability criteria apply to utility models. Consequently, only the essential features of a utility model are considered when assessing novelty.

### ▪ Protection Period

The protection period of a utility model patent is 10 years from the filing date provided that annuities are paid.

### ▪ Search & Examination

For all utility model applications filed after January 10, 2017, the TURKPATENT should be asked (online or in paper form) to carry out a novelty search report, either when filing the application or later in the process within 2 months of the filing date. A search fee is payable. Besides, a utility model is subject to both formal examination and, after the search report- examination on the merits (to see whether the invention is eligible for protection) without any further cost.

### ▪ Opposition & Invalidation

Post-grant opposition proceedings are not applicable to utility models. Third-party observations against the grantability of a utility model application may only be filed with the TURKPATENT within three months from the publication of search report. Utility models can only be challenged -in full or in part- before the IP courts.

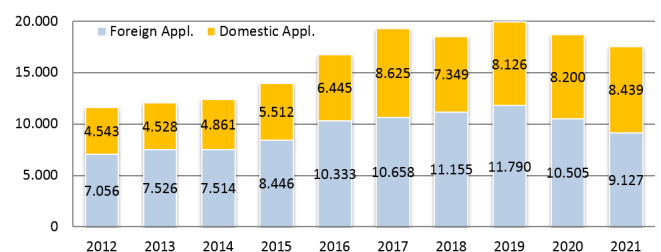
### ▪ Conversion

It is possible to convert a utility model application into a patent application within 3 months from the notification of search report or vice versa any time before the grant decision. The latter makes sense if a patent application does not appear to meet the inventive level requirement.

## STATISTICS

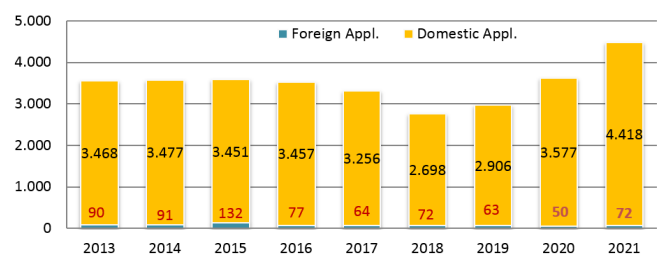
Turkey is now a steady patent market, with an average annual patent filings of about 18K over the past five years. Foreign share of which was about 57% (i.e. patent filings from foreign applicants into Turkey). About 3% increase is expected for patent filings from domestic applicants in 2022. Number of granted patents is about 13.120 on the average for the same period.

Patent Applications (TR)



Number of utility model applications rises up, with an average annual increase rate of 12% over the past 3 years, i.e. utility model filings reached up to 4.490 in 2021, foreign share of which was negligible.

Utility Model Applications (TR)



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### KORDINAT

The information in this update is intended to be general information about Turkish Patent Practice only and not comprehensive. It is not to be relied on as legal advice nor as an alternative to taking professional advice.

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