

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

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Country Q&A | Law stated as at 01-Apr-2018 | Turkey

A guide to intellectual property law in Turkey. The Main IPRs Q&A gives an overview of the protection and enforcement of the following IPRs: patents, trade marks, registered designs, unregistered designs, copyright and confidential information.

To compare answers across multiple jurisdictions, visit the patents, trade marks, copyright and designs *Country Q&A tool*.

This Q&A is part of the global guide to IP law. For a full list of jurisdictional Q&As visit www.practicallaw.com/ip-guide.

Patents

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

The applicant has to prove the following to obtain a patent (*Article 82/1, Industrial Property Code (IPC)*):

- Novelty.
- Inventive step.
- Industrial application.

2. What categories are excluded from patent protection?

The following are not considered as inventions and therefore cannot be patented (*Article 82/2, Industrial Property Code (IPC)*):

- Discoveries, scientific theories, mathematical method.

- Plans, methods and rules in relation to mental acts, business and game activities.
- Computer programs.
- Literary and artistic works, scientific works, creations having an aesthetic characteristic.
- Delivery of information.

The following are accepted as inventions yet cannot be protected by a patent:

- Inventions violating public order or morality.
- Plant and animal varieties or species or biological processes for producing or breeding plants and animals (except microbiological processes or products of them).
- All treatment methods including diagnostic and surgical methods on humans or animals.
- Simple discovery of one of the elements of the human body, including a gene sequence.
- Human cloning processes, the use of human embryos for industrial or commercial purposes, certain processes for modifying the human genetic code.

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

Patent applications are examined and granted by the Turkish Patent and Trademark Office. Its website (www.turkpatent.gov.tr) provides guidance and its official YouTube channel, which is accessible from the official website, also provides visual guidance.

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

Third parties can object to a patent within six months as of the publication of the patent grant decision in the official Bulletin before the Patent and Trademark Office (post grant opposition procedure). The grounds of objection are as follows:

- Patent subject does not fulfil the patentability conditions.
- Invention has not been sufficiently disclosed.
- Patent subject exceeds the scope of the application.

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

Patent protection starts from the date of the application. The term of protection is 20 years.

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

The following acts are listed in the IPC as acts constituting patent infringement. In the presence of any of these acts, a patent infringement action can be brought:

- Imitation of a patented product by manufacturing it fully or in part without the permission of the patent or utility model owner.
- To sell, distribute or trade in any other way products manufactured in violation of ownership rights, or to import, keep for sale or use such products or to suggest a contract about such products, with knowledge that the products are complete or partial imitations or while in a position to know they are such imitations.
- To use an invented method without the permission of the patent owner or to sell, distribute or trade in any other way products that have been manufactured with direct use of the invented method without permission, or to import, keep for sale or use or suggest a contract about such products with knowledge that they were manufactured with the invented method without permission or while in a position to know they were manufactured in this way.
- Deforcement of the patent right.
- To extend contractual or compulsory licensing rights or to transfer such rights to third parties.

7. Which courts deal with patent infringement actions?

Patent infringement actions are dealt with by the specialised Courts of Industrial and Intellectual Property Rights in Istanbul, Ankara and Izmir. In other cities, the third Chamber of Civil Courts of First Instance (if there are fewer than three chambers, the First Chamber) deals with IP infringement actions.

8. What are the defences to patent infringement actions?

The most common defences to patent infringement actions include:

- Invalidity of the patent on the grounds that the:
 - subject matter of the invention does not meet the patentability requirements under the current law (*Articles 82 and 83, Industrial Property Code (IPC)*);
 - subject matter of the invention has not been described sufficiently to enable a person skilled in the relevant technical field to implement the invention;
 - subject matter of the patent exceeds the scope of the application;
 - holder of the patent does not have the right to the patent under Article 109 of the IPC.
- The product or process does not fall within the scope of the patent, for example, that another process has been used in the manufacture of the patented product or another formulation or technical system has been used.
- The disputed act is exempt from patent rights (*Article 85/3, IPC*), for example:
 - acts devoid of any industrial or commercial purpose and limited to private ends;
 - acts involving the invention for experimental purposes;
- Patent owner's right has expired.
- Prior user's right.

9. What are the remedies in patent infringement actions?

The following remedies can be obtained as a result of patent infringement action:

- Preliminary injunction for seizure of the infringing products.
- Prevention of manufacturing, sale, import and export of the infringing products.
- Removal and destruction of infringing materials.
- Claim for pecuniary and non-pecuniary damages (in the case of intentional infringement).
- Publication of the court's decision.

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

There is no small-claims procedure for patent infringement actions.

A precautionary injunction application can be mentioned as a fast-track if the court agrees that the matter is urgent.

Anyone filing or intending to file an infringement action under Article 141 of the Industrial Property Code is entitled to ask the court for a preliminary injunction where there is evidence of use or intention to use the patent which would be an infringement of the claimant's right.

A request for a preliminary injunction, which can be filed before, after or at the same time as the main action, is examined separately before the infringement proceedings.

Trade marks

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

To be registered as a trade mark, a sign must (*Article 4, Industrial Property Code*):

- Be capable of being represented on the register in a manner which enables determination of the subject matter of protection clearly and precisely.
- Have distinctive character (the ability to distinguish the goods/services belonging to one undertaking from another).

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

It is both necessary and highly advisable to register trade marks, since the protection provided under the Industrial Property Code (IPC) is, in principle, gained by registration.

The IPC provides an exception to the registration requirement for prior and "genuine" ownership of unregistered trade marks and for unregistered well-known marks within the meaning of Article 6bis of the WIPO Paris Convention for the Protection of Industrial Property 1883 (Paris Convention).

However, "genuine" ownership is debatable, and the latest Court of Appeal precedents do not recognise genuine ownership if it is not obtained in Turkey. The Patent and trademark Office/IP Courts require submission of a large amount of evidence to support the genuine ownership claim and well-known status claim under the Paris Convention (*see above*). The genuine ownership and well-known status exceptions also mainly apply in cancellation or opposition proceedings, and do not extend to trade mark infringement claims.

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

Trade marks are registered at the Patent and Trademark Office. Its website provides guidance at www.turkpatent.gov.tr. The Patent and Trademark Office's official YouTube channel, which is accessible from the official website, also provides visual guidance.

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

The Patent and Trademark Office can reject an application for registration of a trade mark on absolute grounds after an ex-officio examination (*Article 5, Industrial Property Code (IPC)*) and relative grounds if raised by third parties as an opposition ground (*Article 6, IPC*). The absolute grounds for refusal are:

- Non-compliance with the legal requirements of the IPC (*see Question 11*).
- Existence of an identical or indistinguishably similar, earlier trade mark or trade mark application, covering the same or same type of goods or services (this absolute ground can be overcome by submitting a notarised letter of consent from the owner of the senior trade mark or trade mark application). The formalities for letters of consent are regulated under the Regulation on the Implementation of the IPC (Regulation) (*Article 10, Regulation*).
- Descriptiveness (indicating the kind, type, characteristics, quality, quantity, intended purpose, value, geographical origin and so on).

- If the mark has become customary in current and established trade practices.
- If the mark consists of a shape resulting from the nature of the goods, or necessary to obtain a technical result or which gives substantial value to the goods.
- Deceptiveness.
- No authorisation from the relevant authorities for the use of the mark.
- The mark involves armorial bearings, emblems or hallmarks with historical and cultural value which are of concern to the public, and the registration of which is not authorised by the relevant authorities.
- The mark involves religious values or symbols.
- The mark is contrary to public policy and public morals.
- The mark is composed of or contains a registered geographical indication.

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

Third parties can oppose an application for the registration of a trade mark based on absolute grounds and relative grounds for refusal. The relative grounds for refusal are:

- Likelihood of confusion (the application is identical to or similar with an earlier trade mark registration or application and covers identical or similar goods or services, and there is likelihood of confusion among the relevant consumers including likelihood of association).
- Unauthorised application for an identical or indistinguishably similar trade mark by the agent or representative of the trade mark owner in their own name, without valid justification.
- Prior and genuine ownership by a third party of the mark applied for.
- A well-known mark under Article 6bis of the Paris Convention (the application is identical or similar with an unregistered well-known mark and covers identical or similar goods and services).
- An earlier trade mark registration or application well-known in Turkey (the later application is applied for different goods and services, without valid justification, and its registration would take unfair advantage of or be detrimental to the distinctive character or well-known status of the earlier trade mark).
- The application contains the name, trade name, photograph, copyright or industrial property right of a third party.
- The application is identical or similar to a trade mark registration, the protection period of which has ended due to non-renewal, and covers identical or similar goods/services, if the application is filed within two years of the end of the protection period of the earlier registration and the earlier registration is put to use within this two-year period.
- The application is filed in bad-faith.

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

The term of protection of a registered trade mark is ten years from the date of filing of the application. Registration is renewable for further periods of ten years perpetually.

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

A trade mark infringement action can be brought on the following grounds (*Articles 7 and 29, Industrial Property Code*):

- Unauthorised use of a sign identical to a registered trade mark for identical goods or services for which the trade mark is registered.
- Unauthorised use of a sign identical or similar to a registered trade mark for identical or similar goods or services for which the trade mark is registered and which creates a likelihood of confusion.
- Unauthorised use of a sign identical or similar to a well-known registered trade mark for goods or services not covered by the trade mark, which would take unfair advantage of or be detrimental to the distinctive character or well-known status of the trade mark.
- Imitation of a trade mark through use of an identical or indistinguishably similar trade mark without authorisation from the trade mark owner.
- Sale, distribution or release on to the market of products bearing an infringing trade mark, and the party knows or should know that the trade mark is infringing, or importing, exporting, possessing them for commercial purposes or offering the products for sale.
- Unauthorised expansion or assignment of the rights granted by the trade mark owner through licensing.

18. Which courts deal with trade mark infringement actions?

Trade Mark infringement actions are dealt with by the specialised Courts of Industrial and Intellectual Property Rights in Istanbul, Ankara and Izmir. In other cities, the third Chamber of Civil Courts of First Instance (if there are fewer than three chambers, the First Chamber) deals with IP infringement actions.

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

The defences to trade mark infringement actions are:

- Claim of non-use (as a defence).
- Nullification claim against the trade mark (as a counterclaim).
- The trade mark owner knew of the use of the same or similar trade mark by the counterparty for more than five years, or co-existence of the trade marks for a long period of time. This five-year term was established by Court of Appeals case law and is now regulated under a separate provision in the Industrial Property Code.
- Exhaustion of owner's right.
- Fair use.
- Descriptive use.
- Private/non-commercial use..

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

The remedies in trade mark infringement actions are:

- Preliminary injunctions.
- Prevention and prohibition of infringing acts.
- Compensation for material and moral damage (where the infringer is at fault and there is damage).
- Confiscation of infringing products and/or equipment (the trade mark right owner can also request ownership of the confiscated products and/or equipment).
- Removal and destruction of infringing products and/or equipment (if essential to stop the infringing acts).
- Publication of the court's decision.
- Criminal remedies

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

See [Question 10](#).

Copyright

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

Works which qualify for copyright protection must be (*Law No. 5846 on Intellectual and Artistic Works (Copyright Law)*):

- Original.
- A work of one of the following:
 - science and literature;
 - music;
 - fine art; or
 - cinema.

23. Can copyright be registered?

Registration is not required to establish rights.

Cinematographic and musical works must be registered to exploit rights and facilitate proof of ownership, but not for creation of the rights. Copies for sale of cinematographic, musical and literary works (except for periodicals) must carry a label from the Ministry of Tourism and Culture to prove their authenticity.

The registration authority is the General Directorate of Copyrights, part of the Ministry of Culture and Tourism.

The rules and procedures for recording and registration, fees and other issues are set out in Regulation published in the Official Gazette No. 26171 on 17 May 2018 (*On the Recording and Registration of Intellectual and Artistic Works*).

Applications for registration must be made to the General Directorate with an application form and other relevant documentation including a declaration acknowledging ownership of the copyright and accepting criminal and other liability if proved otherwise.

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

Copyright protection starts from creation of the work (starting from the first communication of the work to the public) and lasts for 70 years after the author's death.

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

Under the Copyright Law (see Question 22), an infringement action can be brought where the moral and/or material rights of the author are infringed by:

- Unauthorised reproduction, distribution or communication of the work.
- Unauthorised adaptation of the work (derivative works).
- Breach of the author's moral rights:
 - to disclose the work;
 - of attribution to the work;
 - to the integrity of the work.

26. Which courts deal with copyright infringement actions?

See [Question 7](#).

27. What are the defences to copyright infringement actions?

The most common defences are as follows:

- Personal use.
- Use for educational purposes in schools or other educational institutions.
- Use within "freedom of quotations".
- Expiration of copyright (the work is in the public domain).
- Influential use to create an original and independent work.
- Use due to public order, or in the interest of the community.

28. What are the remedies in copyright infringement actions?

For civil remedies, see [Question 9](#). In addition, criminal remedies, such as dawn raids and penalties including imprisonment and fines are available.

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

See [Question 10](#).

Registered designs

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

The legal conditions for obtaining a registered design right are (*Article 56, Industrial Property Code (IPC)*):

- Novelty.
- Individual character.

The following are excluded from protection (*Article 58, IPC*):

- Designs which do not comply with public morality or public order.
- Visual characteristics of products that are compulsory due to technical function.
- Visual characteristics of products that must be manufactured in a certain form and dimension so that the product can be mechanically assembled or connected to another product.
- Use of armorial/heraldic bearings, within the meaning of Article 6bis of the Paris Convention and the inappropriate use of religious, historical and cultural values emblems, hallmarks and so on.

31. Which authority registers designs?

The Patent and Trademark Office registers designs. There is no guidance on its website for design registration. An application is made by filing a form including the following:

- Details of the applicant.
- A representation of the design, showing it visually, suitable for reproduction.
- The name of the product in which the design is intended to be incorporated or to which it is intended to be applied.
- The identity/identities of the designer/s.
- The information as to how the right to apply have been obtained from the designer/s.
- If applicable, postponing request.

- If available, the attorney's details.

A single application can be filed for multiple designs.

The Patent and Trademark Office examines whether the formal conditions have been met and the design's compliance with public morality or public order and under the Industrial Property Code conducts novelty examination. If registration is granted based on the initial examination it is temporary, subject to opposition by third parties.

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

Third parties can oppose a registered design application on the following grounds (*Article 67/2, IPC*):

- Lack of legal conditions for obtaining a registered design right (novelty or individual character).
- Existence of the conditions that exclude the design from protection (*see Question 30*).
- Unauthorised filing against the will of the genuine owner.
- Bad faith.
- Infringement of another IPR.

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

Registered design protection starts from the filing date and lasts for five years. It can be renewed for four consecutive periods of five years, up to 25 years in total.

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

A design infringement action can be brought on the following grounds (among others):

- Making, producing, putting on the market, selling, using, offering, keeping for commercial purposes, or importing an identical or significantly similar version of the registered design without the consent of the design right holder.
- Transferring to third parties or expanding rights acquired by a licensing contract.
- Infringing the design right.

35. Which courts deal with registered design infringement actions?

See *Question 7*.

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

The most common defences are as follows:

- Cancellation claim against the registered design (as a counterclaim).
- Use of the design as a technical necessity.
- Personal use.
- Use for experimental, educational or repairing purposes.

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

For the civil remedies, see [Question 9](#).

There are no criminal remedies for registered design infringement.

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

See [Question 10](#).

Unregistered designs

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

Unregistered designs are protected under the IPC, provided that the unregistered design is:

- Novel.
- Individual.
- Made available to the public for the first time in Turkey.

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

Unregistered design protection starts from the moment the design is made available to the public in Turkey and lasts for three years.

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

An unregistered design infringement action can be brought on the grounds that the unregistered design has been copied identically or significantly.

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

The most common defences are:

- That the defendant's use is based on a registered right.
- That the design lacks the requirements that entitles it to be protected (novelty and so on).

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

For the civil remedies, see *Question 9*.

There are no criminal remedies for unregistered design infringement.

Trade secrets and confidential information

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

Trade secrets or confidential information are not specifically regulated by law. The terms "trade secret" and "confidential information" are not yet defined in legal regulations but can be generally understood to be any information or documents that are:

- Generally unknown.
- Difficult to acquire and if acquired by competitors, bearing the possibility of being damaged.
- Providing economic benefit to its owner.

All trade secrets must satisfy these requirements. Trade secrets will be defined according to the Draft Law on Trade Secret, Banking Secret and Client Secret, if it is accepted and enters into force.

In addition:

- The information must be confidential. For example, a trade secret is expected to be unknown to other colleagues or enterprises in the same sector.
- Its owner is expected to make reasonable efforts to preserve the secrecy of the information.
- Obtaining such information is expected to be difficult and it should not be accessible through lawful means.
- The information must possess an economic value in itself, independent of the value of the enterprise or company. This can be determined through the availability and willingness of third parties to pay the owner for learning and using the information.

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

Trade secrets or confidential information are generally protected by unfair competition provisions in the Commercial Code. After recent revisions to the Commercial Code, there are now clauses relating to the protection of trade secrets or confidential information which explicitly state that disclosing such information causes unfair competition.

In addition, depending on the nature of the unauthorised use, the Constitution, Criminal Code, employment laws and the Code of Obligations may also provide grounds for protecting trade secrets or confidential information.

Unfair competition includes (*Article 54 and following, Commercial Code*):

- Benefiting from another's work or products without authorisation.
- Unfairly disclosing production or trade secrets, for example by using or transmitting trade secrets obtained in bad faith and without permission, or through other unlawful means.
- Non-compliance with legal or contractual rules for employees or competitors in relation to trade secrets.

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

Most trade secret or confidential information disputes relate to unfair competition and non-compliance with the agreement (confidentiality agreement). Actions arising from acts of unfair competition and non-compliance with the agreement are filed before the Civil Commercial Courts of first instance.

Criminal actions based on Article 239 of the Criminal Code are brought before the criminal courts of first instance if a public prosecutor decides, after an investigation, that an offence has been committed.

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

Defences include:

- Obligatory disclosure of the information in the public interest.
- The information is not confidential.
- Prior disclosure of the information by the owner.

It is debatable whether ex-employees can use confidential information known to them throughout their employment after that employment ended. Such use is commonly prevented by non-competition agreements between employers and employees and most actions for unauthorised use arise from the breach of those agreements. A common defence is to assert that the agreement or a specific term of it is not breached.

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

Anyone whose clients, credit rating, professional reputation, commercial activities or other economic interests are damaged by unfair competition can apply to a court for (*Article 56, Commercial Code*):

- A ruling of unfairness.
- Prevention of the unfair competition.
- Removal of the financial situation resulting from the unfair competition.
- Correction of incorrect or misleading statements which have caused the unfair competition.

Fines or imprisonment can also be imposed for criminal liability under Article 62 of the Commercial Code at the judge's discretion.

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

A precautionary injunction application can be fast-tracked and prioritised by the court if it decides the matter is urgent.

The regulatory authority

Turkish Patent and Trademark Office

W www.turkpatent.gov.tr

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

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

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- *Invalidity Attack Blocks Precautionary Injunction Demand, IAM - International Report, Author, 20.03.2018.*
- *Patent Use and Compulsory Licences, Managing IP - International Briefings, Author, 19.03.2018.*
- *Examining the Implications of EPO Opposition Proceedings, Managing IP - Turkey Focus 2018 13.03.2018*

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