

# PATENTS

# ICLG

The International Comparative Legal Guide to:

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A practical cross-border insight into patents law

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# Turkey

Gün + Partners

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## 1 Patent Enforcement

### 1.1 Before what tribunals can a patent be enforced against an infringer? Is there a choice between tribunals and what would influence a claimant's choice?

A patent can be enforced before competent Intellectual Property ("IP") courts. It is worth noting that IP courts are found only in larger cities. If there is no IP court in a city, a patent can be enforced before non-specialised civil courts of first instance in that city.

Article 137 of the Patent Law no. 551 ("Patent Law") regulates which courts are competent to deal with patent disputes. Accordingly, if the patent owner is willing to start legal proceedings, the competent court 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 patent attorney registered before the Turkish Patent Institute ("TPI") and, when this registration has been cancelled, the court where the headquarters of the TPI are located.

If there is more than one IP court in a city, the court which will hear the case is determined automatically by the distribution offices available in court houses. In other words, the plaintiff is not free to choose which IP court (e.g. first, second, etc.) will hear the case.

### 1.2 What has to be done to commence proceedings, what court fees have to be paid and how long does it generally take for proceedings to reach trial from commencement?

Before starting a legal proceeding, the patent owner may send a notarised letter to the potential infringer as per Article 136 of the Patent Law. However, this is not a pre-condition to start a proceeding before IP courts.

In order to commence proceedings, it is sufficient to file a plaintiff petition before the competent IP court. Court fees, including an advance on potential court expenses, should be deposited to the court to file an action. These fees amount to approximately TRY 650–700.

On the other hand, once a court action has been filed, the court notifies the action to the defendant party. If the defendant party is domiciled abroad, plaintiff petition and all evidences are translated into the official language of the defendant party, and thereafter, the defendant party will be notified officially. In practice, the

international notification proceeding may take from six months to one year. Once this notification proceeding is completed, the trial starts. After the parties exchange two sets of petitions and submit relevant evidence on which they base their petitions and allegations, the court reviews the file and sets a hearing date for the first hearing which is called the "initial examination hearing" in the Civil Procedural Law no. 6100 ("Procedural Law").

### 1.3 Can a party be compelled to disclose relevant documents or materials to its adversary either before or after commencing proceedings, and if so, how?

As per Articles 219 and 220 of the Code of Civil Procedure, the parties are obliged to submit the documents which they, or the opposing party, have cited as evidence, if they are in possession of such documents after the trial is commenced. If they fail or refuse to submit such documents, they shall give their excuses for such failure or refusal. In the event that they cannot give a plausible excuse for the situation, according to the circumstances of the case, the court may accept the statements of the other party to be true, as a sanction.

### 1.4 What are the steps each party must take pre-trial? Is any technical evidence produced, and if so, how?

Before initiating a negative declaratory action, in line with Article 149 of the Patent Law, the party claiming not to infringe a patent shall send a notarised letter to the patent owner. However, there are different interpretations of this provision. Indeed, some court decisions state that sending a notarised letter is a must before initiating negative declaratory action, while others interpret it to be an optional measure.

In patent infringement actions relating to pharmaceutical patents, the plaintiff is not obliged to produce any technical evidence before initiating the trial; since the technical and confidential information regarding the generic product is in control of the generic company only, it can be possible to examine such documents with confidential information relating to their product through filing an action, with an order of the court.

But if the pharmaceutical product subject to the action is already on the market, it is possible for patent owners to produce technical evidence via conducting technical analyses on samples available at the market. In such cases, patent owners work with private technical experts to produce supporting evidence to their actions to be presented during trial proceedings.

### 1.5 How are arguments and evidence presented at the trial? Can a party change its pleaded arguments before and/or at trial?

The parties have to submit all arguments and evidence until the initial examination hearing, which is held after the petition exchange phase is completed. At the initial examination hearing, the court grants the parties with two weeks' peremptory additional time to submit missing evidence.

According to Article 141 of the Procedural Law, the parties are allowed to change their arguments with their reply petitions. Moreover, at the initial hearing, if a party explicitly consents, the other party may change its claims or arguments. If one of the parties is not present at this initial examination hearing without any excuse, then the present party is allowed to change or extend its pleaded arguments freely.

In addition, the parties have the right to correct/amend their case until the end of the investigation as per Article 176 of the Procedural Code. All the procedural actions taken after the time when the party requesting correction points out shall be deemed as not having been taken.

### 1.6 How long does the trial generally last and how long is it before a judgment is made available?

It takes generally one-and-a-half (1.5) years before the first instance courts, and about two (2) years before the Court of Appeals to have a judgment.

### 1.7 Are there specialist judges or hearing officers, and if so, do they have a technical background?

According to Article 146 of the Patent Law, specialised IP courts have jurisdiction for all of the actions and claims arisen out of this Patent Law. The judges having duty in Turkish IP courts have a deep understanding of IP law, even if they do not have technical backgrounds.

### 1.8 What interest must a party have to bring (i) infringement, (ii) revocation, and (iii) declaratory proceedings?

- (i) A patent holder whose rights are infringed, or who faces the danger of having its right being infringed, may file an infringement action as set forth under Article 137 of the Patent Law.
- (ii) Article 130 of the Patent Law regulates that persons adversely affected/prejudiced, or interested official authorities, acting through the Public Prosecutor, may request 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.
- (iii) Lastly, pursuant to Article 149/1 of the Patent Law, any interested person may institute proceedings against the holder of a patent to obtain judgment of non-infringement of rights conferred by the patent. In practice, generic companies willing to enter the market with a product which could be within the scope of a patent begin such declaratory proceedings.

### 1.9 If declarations are available, can they address (i) non-infringement, and/or (ii) claim coverage over a technical standard or hypothetical activity?

Yes, both declarations are available in Turkey.

Pursuant to Article 149/1 of the Patent Law, any interested person may file a declaration action against the patent holder to obtain a judgment of non-infringement of rights conferred by the patent.

As concerns point (ii), there is no specific provision regulating declaration actions for claim coverage; however, in practice, IP courts hear such actions within the scope of Article 149 of the Patent Law.

### 1.10 Can a party be liable for infringement as a secondary (as opposed to primary) infringer? Can a party infringe by supplying part of, but not all of, the infringing product or process?

Yes, a party can be liable for infringement as a secondary (indirect) infringer if a third person hands over to persons unauthorised to work the patented invention, elements and means related to an essential part of the invention, and the subject matter of the patent, and renders possible the implementation of the patented invention, as per Article 74 of the Patent Law. In order for this provision to be applicable, the concerned third party has to know that such elements and means are sufficient for putting the invention to use, and that they will be used to such effect, or that the circumstances render such situations sufficiently evident.

### 1.11 Can a party be liable for infringement of a process patent by importing the product when the process is carried on outside the jurisdiction?

Yes; importing an infringing product, even when the process is carried on outside of the jurisdiction, falls within the scope of the infringing acts regulated under Article 136 of the Patent Law. Namely, Article 136/1(c) stipulates that using the patented process or selling, distributing or commercialising in any other way, importing for such purposes, or using by applying the products directly obtained through such patented process, without the consent of the patent holder, are deemed as patent infringement.

As a note for process patents, the burden of proof is reversed, and it is for the defendant party to prove that the patented process is not infringed. In other words, the defendant party has to prove that its product does not fall within the scope of the process patent in question (Article 84 of the Patent Law).

### 1.12 Does the scope of protection of a patent claim extend to non-literal equivalents?

Yes, as per Article 83/5 of the Patent Law, at the time of an alleged infringement, in determining the scope of protection conferred by a patent application or a patent, all elements being equivalent to the elements as expressed in the claim(s) shall also be considered (doctrine of equivalence).

### 1.13 Can a defence of patent invalidity be raised, and if so, how? Are there restrictions on such a defence e.g. where there is a pending opposition?

Yes, a defence of patent invalidity can be raised either by filing a counteraction or a separate action.

The counteraction should be pursued within the time period of filing the first defence petition in the infringement action, as per Article 133/1 of the Procedural Law.

A separate invalidation action can be filed at any time.

There are no restrictions on such defences apart from previously rendered final judgments.

#### **1.14 Other than lack of novelty and inventive step, what are the grounds for invalidity of a patent?**

The grounds for the invalidity of a patent are ruled under Article 129 of the Patent Law. Accordingly, a patent should be declared invalid by the court in the 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 5 to 10 of the Patent Law (i.e. novelty, inventive step and applicability in industry);
- 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 the 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 (*unity of the invention principle*), or on an application filed in compliance with Article 12 (*Usurpation of the Right to a Patent*) and exceeds the scope of the same; or
- d) where evidence is brought in that the holder of the patent does not have the right to a patent in accordance with the Patent Law.

#### **1.15 Are infringement proceedings stayed pending resolution of validity in another court or the Patent Office?**

Under the Patent Law or the Procedural Law, there is no specific provision requiring the courts to stay infringement proceedings due to a pending validity matter before another court or Patent Office such as the EPO proceedings.

It is at the courts' discretion to stay infringement proceedings in order to wait for the invalidity question to be resolved. It can be said that most IP courts either stay the infringement proceedings or decide for the consolidation of the infringement and invalidation proceedings and evaluate both aspects together.

With regard to EPO proceedings, in practice, if the subject patent is a validation of a European patent, depending on the status of the EPO proceedings, courts may decide to wait for the outcome of the EPO Appeal Board decision if the appeal proceeding is close to being finalised. In addition, courts generally do not prefer to wait for the EPO proceedings if the proceeding is at the opposition stage, due to the length of proceedings.

#### **1.16 What other grounds of defence can be raised in addition to non-infringement or invalidity?**

Procedural grounds of the Procedural Law can be raised in addition to the non-infringement and invalidity defences. (For example, as per Article 114 of the Procedural Law, the court must have jurisdiction, the plaintiff must have legal benefit to file the action, etc.)

As concerns declaratory action for non-infringement, as per Article 149 of the Patent Law, prior to filing such a declaratory action, a

warning shall be served through the notary public to the attention of the patent owner, 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. There are two court decisions where the court accepted that this warning is a condition (*sine qua non*) to file such declaratory action and rejected actions because the plaintiffs failed to notify to the patent owner before initiating the court proceedings.

Moreover, once the infringement action has been filed, the defendant party is not allowed to file a declaratory action for non-infringement afterwards (Article 149/4 of the Patent Law). Therefore, declaratory action cannot be used as a defence after an infringement action.

#### **1.17 Are (i) preliminary, and (ii) final injunctions available, and if so, on what basis in each case? Is there a requirement for a bond?**

In Turkey, preliminary injunctions are available, and such injunctions are in force until the judgment to be rendered in the main action becomes final. Under Turkish law, there is no distinction such as preliminary and final injunctions.

According to Article 151 of the Patent Law, persons who have commenced, or will commence, legal proceedings under this Law, can request for a Preliminary Injunction ("PI") in order to ensure the effectiveness of the infringement action, on conditions that they bring evidence as to the existence of actual use of the patent in Turkey or serious and effective preparations to use the patent in question. The PI requests are accepted when any delay might cause irreparable and significant damage.

The success in a PI request totally depends on the quality of evidence. In practice, the courts refer the file to the expert panels and obtain an expert report before rendering a PI decision.

The bond requirement is within the discretion of the court. The court evaluates the characteristics of each case to decide whether or not a bond is required. If the court decides that the party requesting PI shall deposit a bond, then it is obligatory to deposit said bond requirement so that the PI decision can be enforced. If it is not deposited, the decision cannot be enforced, and the PI decision will be revoked *ex officio*.

The security can be in the form of cash or a letter of guarantee. The court determines the amount according to the particulars of the case, i.e. the sales of the product, whether there are other generics in the market, etc.

#### **1.18 On what basis are damages or an account of profits assessed?**

There are four bases to ask for damages. Three of them are set forth under Article 140 of the Patent Law, whereas the fourth one arises from the unfair competition provision regulated under the Turkish Commercial Code no. 6102 ("TCC").

1. Article 140(a) of the Patent Law: the damages claim is calculated according to the income which the patent owner might have possibly generated if the competition of the infringing party did not exist. The court-appointed expert panel would examine the patent holder's commercial books and records along with the infringer's, in order to determine the loss of profit.
2. Article 140(b) of the Patent Law: the damages claim is calculated according to the income which is generated by the

infringing party from the use of the patent. In this option, the expert examination would be conducted on the infringer's commercial records.

3. Article 149(c) of the Patent Law: the damages claim can be calculated according to a licence fee that would have been paid if the party infringing the patent would have lawfully utilised the patent under a licensing contract.
4. Article 56(d) of the TCC: the patent owner may claim the income which the infringing party may have possibly generated due to unfair competition.

#### **1.19 What other form of relief can be obtained for patent infringement? Would the tribunal consider granting cross-border relief?**

In practice, reverse PI decisions are available as another form of relief that can be obtained for patent infringement. Indeed, we have observed that the IP courts may order PI decisions where the potential infringer (e.g. a generic pharmaceutical company) is allowed to enter into the market, provided that he pays a guarantee amount corresponding to the potential damages of the patent holder. At the end of the proceedings, if the patent infringement is determined, the patent holder may refer to this guarantee amount and also ask for further damages exceeding the guarantee amount.

Turkish courts do not consider granting cross-border relief; their decisions usually involve measures concerning the Turkish market.

#### **1.20 How common is settlement of infringement proceedings prior to trial?**

Settlement of infringement proceedings prior to trial is very rare and virtually non-existent.

#### **1.21 After what period is a claim for patent infringement time-barred?**

A claim for patent infringement can be raised as long as the infringement continues (and within the duration of the patent protection). After the infringement has ceased, the general provisions of the Turkish Code of Obligations determine the period after which a claim for patent infringement will become time-barred. According to these provisions, after 10 years as of the occurrence of the act, a claim for patent infringement becomes time-barred.

It is important that damages occur with each and every infringing act; therefore, lapse of time is renewed with every infringing action.

#### **1.22 Is there a right of appeal from a first instance judgment, and if so, is it a right to contest all aspects of the judgment?**

Yes, the decision of the first instance court can be appealed in fifteen (15) days as of the service date of the reasoned decision. The parties are allowed to challenge all aspects of the first instance judgment.

Apart from this, there is a recent decision of the General Assembly on the Unification of Judgments regarding the appeals against the PI decisions during discovery of evidence proceedings (and not a substantive action). According to this recent judgment, the decisions as to the refusal or acceptance of PI decisions cannot be appealed.

On the other hand, a new appeal system will enter into force on July 20, 2016. In this system, it will be possible to challenge the

decisions rendered by first instance courts regarding the PI and discovery of evidence requests. For further information, please see question 8.1.

#### **1.23 What are the typical costs of proceedings to first instance judgment on (i) infringement, and (ii) validity? How much of such costs are recoverable from the losing party?**

The main costs arising in a typical patent case including both infringement and validity would be judicial costs (i.e. expert fees) and a fixed attorney fee. Courts set up an expert panel composed of three experts. The fee for each expert is around TRY 1,000 (approximately EUR 312). A second panel of experts is also likely to be appointed if the first one's report is not found to be satisfactory. The attorney fee which is determined in line with the annual tariff declared by Turkish Bar Union is TRY 2,600 (approximately EUR 812). Therefore, the total costs for such litigation is around EUR 3,000 to EUR 4,000. The losing party shall bear judicial cost and the fixed attorney fee; however, the losing party shall not bear the rest of the fees of lawyers.

#### **1.24 For jurisdictions within the European Union: What steps are being taken in your jurisdiction towards ratifying the Agreement on a Unified Patent Court, implementing the Unitary Patent Regulation (EU Regulation No. 1257/2012) and preparing for the unitary patent package? For jurisdictions outside of the European Union: Are there any mutual recognition of judgments arrangements relating to patents, whether formal or informal, that apply in your jurisdiction?**

There is no mutual recognition of judgments arrangements relating to patents that apply in Turkey for the time being.

## **2 Patent Amendment**

#### **2.1 Can a patent be amended *ex parte* after grant, and if so, how?**

In Turkey, there is no mechanism allowing patent amendments after a patent is granted. Indeed, Article 64 of the Patent Law stipulates that except for the rectification of obvious errors, such as spelling errors and the provision of incorrect/inappropriate documents, the claim(s) may be amended only during the prosecution of the granting procedure, and only where this Law specifically permits such amendment.

Otherwise, the patent holder cannot amend its patent's claims after registration; he can only abandon the claim(s). It is worth noting that it is possible to abandon claims any time.

#### **2.2 Can a patent be amended in *inter partes* revocation/invalidity proceedings?**

Please refer to the question 2.1.

Additionally, as Turkey is a contracting state of the EPC, if a patent is revoked before the EPO, Turkish validation of such a European patent is automatically revoked in Turkey too.

As concerns amendments, if a European patent is amended, for instance at the opposition stage, such amendment will be reflected in the Turkish validation patent, and if at that stage there is a pending

invalidation action in Turkey, such amendment should be taken into account. Therefore, it is very important that Turkish courts stay the invalidation proceedings if there is a pending opposition or appeal process before the EPO.

### 2.3 Are there any constraints upon the amendments that may be made?

Please refer to the question 2.1.

## 3 Licensing

### 3.1 Are there any laws which limit the terms upon which parties may agree a patent licence?

Licensing a patent is described under Patent Law. There are no provisions limiting the terms upon which parties may agree for a patent licence.

### 3.2 Can a patent be the subject of a compulsory licence, and if so, how are the terms settled and how common is this type of licence?

Yes. According to Article 99 of Patent Law, compulsory licence is (to be) granted, where any one of the following circumstances exist and no licence offer was made for the relevant patent:

- there is a patented invention, which cannot be worked without using an invention protected under an earlier patent;
- there is a public interest in the use/licensing of the patent; or
- the patentee does not use the invention protected through the patent within three years starting from the date of the publication of the notice about the grant of the patent on the official bulletin.

Pursuant to Article 104/1 of the Patent Law, the person who intends to apply for a compulsory licence may, in the first instance, resort to the TPI asking for its mediation to obtain a contractual licence for the same patent.

If the TPI refuses the request of mediation, or if the parties fail to agree to conclude the licence agreement within the term of the mediation activity conducted by the TPI, the court may be asked to grant a compulsory licence. As these procedures are very burdensome, compulsory licensing is very rarely used. We could detect only one case back in 1974 about granting a compulsory licence in a matter related with national security.

In addition to the above, Turkey has signed the Doha Declaration on the TRIPs Agreement and Public Health. The protocol amending TRIPs was accepted in Turkey as of 22 May 2013 through the Law no. 6471 for the Acceptance of the Protocol Amending the TRIPs Agreement.

Following the law on acceptance of the TRIPs protocol and to fulfil constitutional requirements, a decree of council of ministers has been published on the official gazette on 15 March 2014, and thereby Article 31*bis* of TRIPs has directly entered into force in Turkey.

## 4 Patent Term Extension

### 4.1 Can the term of a patent be extended, and if so, (i) on what grounds, and (ii) for how long?

The patent term cannot be extended in Turkey.

## 5 Patent Prosecution and Opposition

### 5.1 Are all types of subject matter patentable, and if not, what types are excluded?

According to Article 6 of the Patent Law, the following, not being inventions as of their nature, shall remain outside the scope of this Law:

- a) discoveries, scientific theories, and 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 aesthetic characteristic, and computer programs;
- d) methods involving no technical aspect, for collecting, arranging, offering/presenting and transmitting information/data; and
- e) methods of diagnosis, therapy, and surgery applying to the human or animal body.

Point (e) above shall apply neither to the products and compositions (*per se*) used in connection with these methods, nor to their process of manufacturing.

Patents shall not be granted for inventions in respect of the following subject matter:

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

### 5.2 Is there a duty to the Patent Office to disclose prejudicial prior disclosures or documents? If so, what are the consequences of failure to comply with the duty?

No, there is no duty to the TPI to disclose prejudicial prior disclosures or documents. However, the patent file submitted to the TPI and registered with the TPI Registry becomes publicly available as per Article 92 of the Patent Law, and persons are allowed to examine these TPI Registry records.

### 5.3 May the grant of a patent by the Patent Office be opposed by a third party, and if so, when can this be done?

First of all, it is important to note that one of the fundamental differences between the Turkish and European patent systems is that the Turkish Patent Law does not have a post-grant opposition system. While oppositions may be filed with the EPC after a patent has been granted, in the Turkish patent system, oppositions are filed and the prosecution process is concluded prior to the approval of a patent. Third parties are allowed to file their oppositions at the prosecution stage. As a result of this discrepancy, oppositions filed

with the EPO after a European patent has been granted could be grounds to file an invalidation action against that same European patent which was validated in Turkey.

According to Article 62/2 of the Patent Law, 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 issued by the TPI, file objections to the grant of the patent by alleging the non-compliance with the patentability requirements, including the lack of novelty or inventive step, or the inadequacy of the description. Documentary evidence, in support thereof, shall be enclosed to the objections made in written form.

Additionally, Article 70/1 sets forth that third parties shall be entitled to raise objections against the grant of a patent on grounds of formal deficiencies. In order to raise such objection, third parties do not need to have previously filed observations against the State-of-the-Art Search Report or have raised objections under the system for granting patents with substantive examination.

#### **5.4 Is there a right of appeal from a decision of the Patent Office, and if so, to whom?**

The decisions of the TPI can be appealed firstly before the TPI's higher Board, the Re-Examination and Re-Evaluation Board, and the decision of the higher Board can be challenged before the Ankara IP courts.

#### **5.5 How are disputes over entitlement to priority and ownership of the invention resolved?**

Where a patent has been granted to a person other than the rightful owner, the person claiming to be rightfully vested with such right may file an 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 filed claiming joint ownership on the patent.

The right to raise such a claim and file such a court action as described above shall be exercised within two years following the date of publication of the patent or, in cases of bad faith, until the expiry of the term of protection of the patent.

At the request of the interested party, the court action and the claims put forward therein, the final ruling or any other action concluding the court action shall be registered in the Patent Register in order to have effect against third parties (Article 13 of the Patent Law).

#### **5.6 Is there a "grace period" in your jurisdiction, and if so, how long is it?**

There is no grace period in Turkey.

#### **5.7 What is the term of a patent?**

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

The term of a patent granted without substantive examination is seven years. Where the substantive examination request is made within the period of seven years and the patent is granted after such examination is conducted, the term of the patent shall be completed to 20 years as of the date of filing the application (Article 72 of the Patent Law).

## **6 Border Control Measures**

### **6.1 Is there any mechanism for seizing or preventing the importation of infringing products, and if so, how quickly are such measures resolved?**

Yes, the patent owner may apply to the Customs Office for seizing or preventing the importation of infringing products, which is very common but not always easy to achieve a result, because Customs staff are more familiar with trademark-related matters, and it is difficult for them to understand and detect patent infringement.

## **7 Antitrust Law and Inequitable Conduct**

### **7.1 Can antitrust law be deployed to prevent relief for patent infringement being granted?**

IP courts do not handle antitrust law-related arguments. Interested parties may deploy antitrust law before the Turkish Competition Authority, or claim damages action based on Competition Act before commercial courts.

### **7.2 What limitations are put on patent licensing due to antitrust law?**

To the extent of our knowledge, there has not yet been any case where patent licensing is limited due to antitrust law.

## **8 Current Developments**

### **8.1 What have been the significant developments in relation to patents in the last year?**

The new draft Patent Law has been prepared to replace the Patent Law and introduce a legal basis for the protection of patent rights, and is expected to be enacted soon.

Another major development is the new appeal system which will be put into practice in July 2016. The new Procedural Law has introduced this system in 2011; however, it has not entered into practice until now.

In the current system, there are two instances, the first being the local courts, and the second being the Court of Appeals. With the new system, there will be a secondary instance between local courts and the current Court of Appeals. As a result, the current Court of Appeals will function as a "court of cassation". After the local courts render a final decision, the parties will be able to appeal and bring the case before the new Courts of Appeal. These Courts of Appeal will have the jurisdiction to examine the decision on procedural grounds and merits of the case, and will be able to repeat certain procedural steps, as opposed to the current Court of Appeals, which can only examine the case over the file.

In this new appeal system, the parties will still be able to challenge all aspects of the first instance judgment.

### **8.2 Are there any significant developments expected in the next year?**

We are awaiting the new appeal system and how it will be transferred into practice, as well as the enactment of the Patent Law.

The new Patent Law will be a big influence, and will bring major changes on many topics, such as the application of the doctrine of international exhaustion of IP rights to all IP rights, and the inclusion of compulsory licensing provisions in the patent section. The most significant change introduced by the new Patent Law is the opportunity to raise an opposition after a patent is granted.

### 8.3 Are there any general practice or enforcement trends that have become apparent in your jurisdiction over the last year or so?

The Procedural Law, which came into force on 1 October 2011, had a significant effect on the patent litigation. Indeed, this law

introduced cross-examination to our civil procedural law system, and accordingly, the court-appointed experts can be cross-examined for the time being. Considering the fact that the judges in Turkey have no technical background, and therefore, the reports of the experts are mainly the basis for their judgments, the cross-examination opportunity is a very important improvement in terms of the enforcement of patents.

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