

# BUSINESS BRIEF: TURKEY

## Patents

*How do you register or secure patent rights, and is national or international coverage most appropriate?*

The current law governing patent practice in Turkey is Decree-Law No. 551 pertaining to the protection of utility models and patent rights in Turkey, which has been in force since June, 1995. To secure a patent, applicants can apply to the Turkish Patent Office and in order to protect an invention under patent law, the invention must be novel, advance the state of the art and be industrially applicable.

*What are the costs for obtaining and defending a patent?*

Patent grant procedure costs may vary depending on the time and effort put into the application process. However, the average patent attorney's fee is approximately €4,500, to which the official patent office fees will be added (approximately €300). Renewal costs increase throughout the life of the patent and range between €60 and €740.

Litigation costs in Turkey are low. First, the claimant will pay basic charges of approximately €300 to €350 when a suit is filed. During the trial, there are fixed charges and expertise costs, but they are low when compared to those of other European countries. The cost for one expert is approximately 1,000 Turkish lira (€450). There are normally three experts on the expert panel, and the judge will usually refer to it three times before the final award, depending on the complexity of the case. The total cost for a typical patent infringement lawsuit ranges between €100 and €1,500.

*Where can you find information on existing patents in your jurisdiction?*

Information on existing patents is available on the website of the Turkish Patent Office at [www.tpe.gov.tr](http://www.tpe.gov.tr). There is also an English language option. Jurisprudence including patents may be found in online databases such as [www.kazanci.com](http://www.kazanci.com).

*Is there anything unusual about the patent law that companies should be aware of?*

According to the current patent system, there are two different systems for granting patents: one for granting patents without substantive examination, and one for granting patents with substantive examination. Protection of patents with substantive examination is granted for 20 years; protection for patents without substantive examination is granted for seven years. According to the new draft patent law, the system granting patents without substantive examination is to be abolished.

*What are the key threats to patent owners, and what is the best strategy if you suspect someone is infringing your patent?*

Patent holders have the right to file a suit against the infringer according to Art. 136 of the decree-law, according to which without the consent of the patent holder, the following are considered infringement:

- Imitating by producing in whole, or in part of, a product;
- Selling, distributing or commercialising 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;
- Using the patented process or selling, distributing or commercialising in any other way or importing for such purpose; and/or
- Enlarging the scope of the rights granted by the patent holder on the basis of a contractual licence.

Besides the possibility of a civil lawsuit, a criminal action against the infringer is another option for the patent holder. A criminal lawsuit, regulated by Art. 73/A of the decree-law, has a very deterrent effect due to the penalties and fines rendered by the criminal court.

*Have there been any changes to the patent law(s) in the last 12 months?*

No.

## Trademarks

*How do you register or secure trademark rights, and what protection does it grant?*

A trademark can be registered, provided that is capable of distinguishing the goods and services of undertakings. An application for registration of a trademark shall be filed to the Turkish Patent Office. Trademark is registered for a period of 10 years from the date of filing of the application. Registration may be renewed for further periods of 10 years.

*What are the costs registering and defending a trademark?*

The registration fee is €60 for each designated class. The registration fees shall depend upon the number of selected classes. Renewal fee of the trademark is €250. Litigation costs in Turkey are not expensive, and the total amount of the litigation shall not exceed €5,000 to €10,000.

*What are the key threats to trademark owners and what is the best strategy for dealing with infringement?*

The key threats to a trademark are use of the same, or a confusingly similar, trademark without the consent of the proprietor, and selling, distributing, importing, exporting and also using counterfeited items. The best strategy for dealing with infringement is filing a suit against the infringer. In this context, the trademark holder may pursue a civil (Art. 60 of the decree-law) or a criminal (Art. 61/A of the decree-law) lawsuit. However, a criminal lawsuit has more of a deterrent effect due to the penalties and fines rendered by the criminal court.

*Have there been any changes to the trademarks law(s) in the last 12 months?*

No.

## Copyright

*What are the key challenges to copyright holders in your jurisdiction?*

The biggest problem is imitation of the work, because ideas are not protected by copyright law. Copyright protects original works of authorship including literary, dramatic, musical and artistic works. Despite the fact that copyright law does not protect facts, ideas, systems, or methods of operation, the concrete expression of an idea or a concept is protected. The idea must take on a tangible, physical, visible form; for this reason—because of different manners of expression of the same idea—a lot of lawsuits arise.

Inspiration is not prohibited by copyright, but imitation is. Sometimes it may be difficult to draw the border between the two. Especially in Turkey, there are some problems concerning cinematographic rights. For instance, the plots of movies, soap operas, and commercials are considered as ideas, so they are not protected by copyright law. But then, when a lot of people create their works around the same idea, the problem of inspiration/imitation arises. It must be borne in mind that not every similar work is an infringing one.

*How should people ensure they are protected against copyright infringement?*

There is no formal requirement for a work to be copyrighted. It is protected according to copyright law after the creation of the work. The best way to be protected against copyright infringement is to be able to prove the earlier rights on that work.

*What is the best way to deal with infringement, and what are the costs associated with it?*

The best way to deal with infringement is to file a lawsuit. There are civil and criminal lawsuit options for infringement. Any person whose moral and economic rights have been infringed may bring an action against the infringer. If a work is being exploited by reproduction without permission of

**“THE TRADEMARK HOLDER MAY PURSUE A CIVIL (ART. 60 OF THE DECREE-LAW) OR A CRIMINAL (ART. 61/A OF THE DECREE-LAW) LAWSUIT. HOWEVER, A CRIMINAL LAWSUIT HAS MORE OF A DETERRENT EFFECT.”**

the author, it may be claimed that the reproduced copies, films, moulds and similar devices enabling the reproduction must be destroyed or be surrendered to the right holder in return for equitable remuneration not exceeding their cost. Alternatively, the copyright holder may claim the payment of three times the amount that would be determined if a contract had been concluded between the author and the infringer.

*Have there been any changes to the copyright law(s) in the last 12 months?*

No.

## Counterfeiting

*How big a problem is counterfeiting in your jurisdiction?*

Counterfeiting is a serious problem in Turkey. A lot of actions have been taken against infringers.

*What industries are particularly at threat?*

The textile industry is particularly subject to counterfeiting; publishing and cinematographic industries are also vulnerable as duplication of books and DVDs is quite easy.

*What are the best strategies for dealing with the problem?*

Even if it's difficult to prevent the infringement before it starts, there are different remedies if the infringement occurs. There are prevention actions, actions for cessation, for damages and criminal actions. ■

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**Hamdi Yasaman** worked for 26 years in Istanbul University, and continued his academic career at Galatasaray University faculty of law's commercial law department. He was also dean of the law faculty of the same university. Yasaman has published numerous books and articles in corporate law, commercial enterprise law, security exchange law, capital market law, banking law and intellectual and industrial property.



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