

Turkey

Further protection and enforcement of IP rights

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Despite the economic problems in neighbouring Europe, Turkey had the second-fastest growing economy of all the major G20 economies, with an increase of 8.5% in 2011 on top of a 9% increase in 2010. Turkey stood strong during the 2008 financial crisis and its economy is expected to grow by more than 3.5% in 2012 due to bold reforms over the past decade.

Turkey's role as a rising star bridging Europe, Asia and the Middle East means that the protection and enforcement of IP rights are of great importance – not only for foreign investors, but also, and to a much greater extent, for domestic rights holders.

During 2011 patent, trademark and design applications increased dramatically (see Tables 1-3). The increase in the number of domestic applications breaks down as 26% for patents, 42% for trademarks and 20% for industrial designs compared to the previous year. Turkey is ranked first for trademark applications in Europe (approximately 118,000 filings), ahead

of France, Germany and the United Kingdom, and third for design applications.

IP rights legislation

As a result of efforts to adopt EU legislation on IP rights, and in accordance with its commitments under the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of IP Rights, Turkey's existing IP rights legislation is mostly in line with international standards.

Before the enactment of the EC-Turkey Customs Union in 1995, in Turkey IP rights matters were handled under laws dating back to the Ottoman era (the first trademark and patent laws were issued in the 1870s). Turkey's participation in international agreements, conventions and treaties is set out in Table 4.

Industrial property rights legislation in Turkey is composed of:

- Decree Law 544/1994 on the establishment and functions of the Patent Institute;
- Decree Law 551/1995 on patents;
- Decree Law 556/1995 on trademarks;
- Decree Law 554/1995 on industrial designs;

Table 1. Trademark applications filed between 2006 and 2011

Year	Domestic	Foreign Conventional/ direct applications	Madrid Protocol	Total	Grand total
2006	54,788	3,530	8,537	12,067	66,855
2007	58,713	3,925	9,995	13,920	72,633
2008	60,597	4,229	10,165	14,394	74,991
2009	59,838	3,624	8,142	11,766	71,604
2010	73,142	4,083	7,903	11,986	85,128
2011	103,747	4,724	9,252	13,976	117,723

Table 2. Patent applications filed between 2006 and 2011

Year	Domestic				Foreign				Grand total
	Direct	PCT	EPC	Total	Direct	PCT	EPC	Total	
2006	979	93	18	1,090	71	89	3,915	4,075	5,165
2007	1,747	60	31	1,838	71	139	4,141	4,351	6,189
2008	2,159	69	40	2,268	68	107	4,694	4,869	7,137
2009	2,473	74	41	2,588	69	105	4,479	4,653	7,241
2010	3,120	60	70	3,250	77	100	4,916	5,093	8,343
2011	3,962	43	82	4,087	120	100	5,934	6,154	10,241

Direct – Conventional/direct trademark applications

PCT – Patent Cooperation Treaty

EPC – European Patent Convention

Table 3. Design applications filed between 2006 and 2011

Year	Domestic		Foreign		Grand total	
	No of single and multiple applications	Total number of individual designs	No of single and multiple applications	Total number of individual designs	No of single and multiple applications	Total number of individual designs
2006	5,527	28,237	496	1,247	6,023	29,484
2007	5,998	29,109	546	1,289	6,544	30,398
2008	6,071	28,749	507	1,205	6,578	29,954
2009	5,927	26,312	404	847	6,331	27,159
2010	6,567	29,467	405	974	6,972	30,441
2011	7,524	35,451	465	1,127	7,989	36,578

- Decree Law 555/1995 on geographical indications;
- Law 4128/2004 amending the laws on patents, designs, geographical indications and trademarks; and
- Law 5147/2004 on protection of integrated circuits.

Subsequent amendments were made by Laws 4128 and 5194, and most recently on January 28 2009 by Law 5833. A new draft IP law to tackle some of the deficiencies in the existing legislation and to keep up to date with EU requirements is awaiting approval.

The Turkish legislation on patents, trademarks and designs provides for national exhaustion of distribution rights, which enables rights holders to prevent parallel importation of protected products put on the market in other countries.

The Copyright Law, as amended in 2004, provides deterrent penalties for copyright

infringement.

In 2006 Turkey passed data protection legislation to deal with one of the key IP concerns of research-based pharmaceutical companies: data exclusivity protection for confidential test data.

Non-registered rights are protected under the provisions of the Commercial Code concerning unfair competition.

Litigation and enforcement

Turkey is a civil law country. IP rights litigation can be classified under five basic categories:

- civil actions due to infringement of registered rights;
- criminal actions;
- invalidation actions against registered rights;
- actions for stating/determining non-infringement; and
- annulment actions against the Patent Institute's verdicts.

Civil actions may include (among others):

- requests for determination of infringement;
- cessation of the acts of infringement;
- seizure of counterfeited goods; and
- compensation of damages.

Criminal actions may attract penalties including:

- imprisonment;
- pecuniary punishment;
- closure of job sites; and
- prohibition of commerce.

Preliminary injunctions to stop infringement and seizure of infringing products can be claimed, but only before or alongside the civil proceedings.

Turkey has 23 specialised IP courts in cities including Ankara, Istanbul and Izmir; only appointed ordinary civil courts can hear IP matters in other cities. Civil and criminal proceedings cannot be heard by the same court. For criminal proceedings, a complaint must be

filed against the infringer with the public prosecutor.

Although timeframes depend on the complexity and type of IP right, in general, cases with little technical involvement (eg, trademark/industrial design infringement or unfair competition) take approximately two years; in contrast, patent infringement cases may take three years (or more for complicated cases), taking into consideration the completion of expert reports. If the first instance court's decision is appealed, the case moves on to the Supreme Court of Appeal, which takes a further 18 to 24 months.

Expert reports play a great role in IP rights judgments; a panel of independent experts is appointed by the court for the examination of all technical and legal facts. Each panel includes three academic professionals, lawyers and trademark/patent attorneys.

Turkey's customs measures are in line with EU requirements: the Customs Regulation (October 7 2009) deals with *ex officio* and

Table 4

Name	Year Turkey joined
Paris Convention on the Protection of Industrial Property, Stockholm Act	1925
Berne Convention for the Protection of Literary and Artistic Works	1952
Convention Establishing the World Intellectual Property Organisation (WIPO)	1976
Convention Establishing the WTO	1995
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations	1995
Patent Cooperation Treaty	1996
Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of Registration of Marks	1996
Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	1996
Strasbourg Agreement Concerning International Patent Classification	1996
Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purpose of Patent Procedure	1998
Locarno Agreement Establishing an International Classification for Industrial Designs	1998
Madrid Protocol	1999
European Patent Convention	2000
Hague Agreement for the International Registration of Industrial Designs (Geneva text)	2005
Trademark Law Treaty	2005
International Union for the Protection of New Varieties of Plants	2007
WIPO Copyright Treaty and Performances and Phonograms Treaty	2008

export controls. Turkey provides for a simplified procedure and a centralised system which allows applications for action to be filed with a single authority throughout Turkey.

According to a 2011 progress report on Turkey by the European Commission, the Directorate General for Copyrights in the Ministry of Culture and Tourism has pursued technical studies to improve the quality, transparency and legal predictability of the use of banderols, recording and registration services with regard to literature, music and films. Tracking of piracy has improved as a result of training organised jointly by the Ministry of Culture and Tourism, the Ministry of Interior (police), anti-piracy commissions and the judiciary. Anti-piracy commissions work efficiently, and specialised IP rights police units have conducted successful operations in the fight against piracy.

Although there has been much legislative harmonisation to date, the implementation and enforcement of the *acquis communautaire* (the body of EU law) still need to be strengthened. The key issues that must be dealt with in order to bring about a more efficient and effective IP rights enforcement system in Turkey are as follows:

- The adoption of updated draft laws regulating intellectual and industrial property rights, including deterrent criminal penalties, is still pending.
- At present, judges are obliged to appoint independent experts examining all legal and technical facts even in simple cases of the first instance, which delays proceedings.
- The appeal stage before the Supreme Court is extremely long.
- The number of trained personnel is still insufficient, although many judges, prosecutors, police forces and customs officers were trained in IP rights issues.
- There are many court actions against infringers based on their bad-faith similar trademarks and industrial design registrations.

Patent Institute

The Patent Institute was established in 1994. It is the main administrative body responsible for granting patents and utility models, registering designs and dealing with trademarks, circuits

topographies and geographical indications. Approximately 350 people work in the institute, including 50 trademark examiners and 32 patent examiners (including assistant examiners).

Within the framework of an EU twinning project between the Patent Institute and the German Foundation for International Legal Cooperation, more than 150 informative activities have taken place, such as conferences, seminars and workshops in order to increase IP knowledge and awareness in 2011. The institute has increased the number of information and documents units to 46 throughout Turkey. In addition, an orientation committee was founded together with 30 Turkish universities and the European Patent Office.

Thanks to its enhanced technical infrastructure, more than 28.5 million online searches and 63% of IP filings took place through the institute's official website in 2011.

As filing numbers are constantly increasing, the workload associated with official trademark similarity searches and opposition proceedings has reached a challenging level for examiners. Nevertheless, the institute does its best to handle this heavy workload and to minimise inconsistent decisions by trademark examiners. Recently published trademark examination guidelines are available in both Turkish and English.

Recent developments

A new industrial property law package is expected to be issued in the near future. For that purpose, the institute, in consultation with stakeholders, has prepared a new draft law which will amend the existing decree laws on patents, industrial designs and geographical indications and the law on the establishment and functions of the institute on its website. The draft law is designed to:

- keep pace with the national programme to comply with EU regulations and developments worldwide;
- improve the filing system; and
- eliminate the recent legal void in criminal enforcement after the invalidation of the related provisions in the IP rights decree laws by the Constitutional Court.

With regard to copyright and related rights,

adoption of the draft Law on Intellectual and Artistic Works is still pending.

The Ministry of Justice recently announced a new judicial reform package that introduces extra measures to lighten the judiciary's workload and to produce a "revolutionary outcome" under which the average length of trials would drop to one year for civil proceedings and between 18 months and two years for criminal proceedings, including appeals, within a period of about two years. Further details and the effect on trademark proceedings will be understood when the package is fully effected.

In 2011 the European Union and Turkey established an IP rights working group to discuss and resolve specific issues in order to overcome inconveniences in the Turkish IP rights climate. The working group meets at least once a year and comprises high-level delegates (ie, from the Ministries of Justice, Culture and Tourism, Economy, Food Agriculture and Livestock, Customs and Trade, Interior, Development and Health, the Patent Institute, the Copyright Department, the Scientific and Technological Research Council and the Union of Chambers and Commodity Exchanges).

Another positive development is the ongoing elaboration of new (and first) examination guidelines for the registration of patents, designs and trademarks. In 2011 trademark examination guidelines were produced in close cooperation with judges from the German Federal Patent Court and experts from the Office for Harmonisation in the Internal Market.

The Patent Institute has amended its practice concerning Class 35 as from October 19 2011 in line with the *Praktiker* judgment of the European Court of Justice and the corresponding practice of the European Union for the registration of trademarks for merchandising services. **iam**



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