

Turkey

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Intellectual property

1 Intellectual property law

Under what legislation are intellectual property rights granted? Are there restrictions on how IP rights may be exercised, licensed or transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

The rights that are protected by registrations are as follows;

- Decree-Law 544/1994 on establishment and functions of the Turkish Patent Institute;
- Decree-Law 551/1995 on patents;
- Decree-Law 556/1995 on trademarks;
- Decree-Law 554/1995 on industrial designs;
- Decree-Law 555/1995 on geographical indications;
- Decree-Law 4128/2004 on the Amending Law on Patents, Designs, Geographical Indications and Trademarks; and
- Decree-Law 5147/2004 on protection of integrated circuits.

IP rights are registered with the related authority and procedures such as transfer of an IP right, granting licences, etc, are regulated by special procedural rules administered by the competent authority (the TPI; see question 2).

In 1994, Turkey and the EU accelerated the negotiations for Turkey becoming a member state of the EU. As a part of this process IP regulations were harmonised with the EU. Therefore, Turkish IP law is fully in line with WTO agreement and TRIPs. Also, the legislator and other related institutions are currently working on a new trademark code.

The rights that are protected without registration of 'copyright' are governed by:

- Law No. 5846 on Intellectual and Artistic Works; non-registered rights such as copyrights are subject to this code; and
- the Turkish Commercial Code; unfair competition provisions can also be applied. However, these are general articles and regulate more than IP rights.

2 Responsible authorities

Which authorities are responsible for administering IP legislation?

The Turkish Patent Institute (TPI) was established in June 1994. It is a financially and administratively independent authority. The TPI is the authorised association for registering trademarks, patents, utility models, industrial designs, geographical indication and integrated circuit topography. The TPI is located in Ankara and any information concerning applications can be found at the website of the TPI (www.turkpatent.gov.tr).

IP courts were established in 2001 with competent judges who have specialised in IP law after intensive education programmes in Turkey and abroad, particularly in Brussels. The aim of establish-

ing specialised IP courts is to solve IP disputes promptly and effectively. These courts have two divisions; IP civil courts and IP criminal courts. Civil courts basically resolve indemnification and other civil claims and criminal courts execute the punitive sanctions related to violations of IP rights. Non-registered and registered IP rights can be brought before the IP courts where there is an infringement. At present, IP courts are located only in Istanbul, Ankara and Izmir.

3 Proceedings for enforcing IP rights

What types of legal or administrative proceedings are available for enforcing IP rights?

Trademarks, patents and similar rights must be registered with the TPI in order to benefit from the protection that is granted by the above-mentioned Decree-Laws. The Decree-Laws can only be applied where these rights are registered with the competent authority. Classification systems that are defined by international agreements are also applied in Turkey when registering trademarks, patents or designs.

The owner of artistic work right does not need to register that right with any administrative institution. In practice, there are professional associations that work according to a membership system where members can submit their artistic work to the association to prove their right over the artistic work. Such associations have the function of protecting their members' rights from any infringement.

4 Remedies for infringed IP rights

What remedies are available to a party whose IP rights have been infringed?

The rights owner should directly apply to IP court to get compensation or other temporary injunctions. If that infringement also establishes a criminal activity then the rights owner can apply to the public prosecutor to start a criminal investigation.

5 IP legislation and competition

Does IP legislation make any specific mention of competition or contain provisions on the anti-competitive or similar abuse of IP rights?

No specific provision on competition in IP legislation exists. However the Turkish Commercial Code, article 56, defines 'unfair competition' and in article 57 illegal or deceptive use of IP rights is defined as a type of 'unfair competition' and is subject to indemnification by the party who abuses the IP right.

