

【トルコ産業財産法】

INDUSTRIAL PROPERTY LAW

Law No. 6769 Approval Date:22/12/2016

BEGINNING PROVISIONS

Purpose, Scope, Definitions and Persons to Benefit from the Protection

Purpose and scope

ARTICLE 1- (1) The purpose of this Law is the protection of the rights regarding the brand, geographical indication, design, patent, utility model and traditional product names and thus contribute in the realization of technological, economic and social developments.

(2) This Law encompasses the applications regarding the brand, geographical indication, design, patent, utility model and traditional product names, registry and post-registry transactions and legal and punitive enforcements regarding the violation of these rights.

Definitions

ARTICLE 2-(1) In the application of this Law the following represents the corresponding meanings;

a) Emblem: The marking that shows the geographical marks and the traditional product names are registered in accordance with the provisions of this Law and created by the Institute; used together with the registered name on the product or packaging or in case, due to the specifications, it cannot be used on the product or packaging, applied by the title holders as easily visible and is mandatory to use regarding the geographical markings,

b) Plant species: The plant group residing in the smallest taxonomical section and that is defined by some properties arising from one or more genotype, differentiated from other genotypes in the same species via at least one typical property and accepted as a unit due to its appropriateness to be multiplied without change,

c) Biological material: Any item that contains genetic information and can reproduce by itself or can be reproduced in a biological system,

ç) Bulletin: The related publication, in which the issues indicated in this Law without any concern on the publication media,

d) Employee: The persons and public servants that, in accordance with a private legal contract or a similar legal relationship, are under service of another person and required to perform this service relationship against this other person in a personal dependence related to a certain job that is assigned by the employer,

e) Institute: Turkish Patent and Trademark Office,

f) Board: The Board within the Reevaluation and Examination Department,

g) Trademark agent: The persons who represent the title owners in the Institute in issues regarding the trademarks, design and geographical marks and traditional

product names,

ğ) Paris Convention: The Convention dated 20/3/1883 on Formation of an International Union for the Protection of the Industrial Properties that is acknowledged via the Cabinet Decree no. 7/10464, dated 8/8/1975 and the amendments duly put in force via Republic of Turkey related to this Convention,

h) Patent agent: The persons, who represent the title owners in the Institute in issues regarding patent, utility model and design rights,

ı) Industrial property right: Trademark, geographical indication, design, patent and utility model,

i) Registry: The recording medium, in which the information regarding the industrial property rights and traditional product names,

j) Fee: The fee, if any, including tax and dues, identified by the Institute according to the related to the legislation provisions regarding the services defined in the scope of this Law.

Persons to benefit from the protection

ARTICLE 3-(1) The following shall benefit from the protection provided by this Law;

a) Citizens of Republic of Turkey,

b) Real or legal entities residing or performing commercial activities within the borders of Republic of Turkey,

c) Persons with the application rights in accordance with the provisions of the

Paris Convention or Agreement Establishing the World Trade Organization,

ç) In accordance with the reciprocity principle, the persons in the nationality of the states that provide industrial property right protection for the Republic of Turkey nationals,

CHAPTER 1

Trademark

PART 1

Trademark Right and Scope

Marks that can be Trademarks

ARTICLE 4- (1) Trademark can be composed of any kind of marks, such as words, including human names, shapes, colors, letters, numbers, voices and shape of the goods or packages, provided that it provides the goods or services of an enterprise to be distinguished from goods or services of other enterprises and it can be represented in the registry as providing a clear and accurate understanding the subject of the protection provided to the trademark owner.

Absolute rejection reasons in trademark registration

ARTICLE 5-(1) The marks indicated below cannot be registered as trademarks:

- a) Marks that cannot be trademarks in the scope of Article 4.
- b) Marks with no distinctive qualification.
- c) Marks that contain marks and names exclusively or as main element, that

indicate type, kind, property, quality, amount, purpose, value, geographical source in commercial field or specify the time that the goods are produced, services rendered or indicate other properties of the goods or services.

ç) Marks that are same or indistinguishably similar to the trademarks that have been applied for registration on a previous date or registered related to the goods or services that are same or in the same type.

d) Marks that contain, exclusively or as main element, the marks or names that are used by everyone in commercial field or that are used to distinguish members of a professional, art or trade group.

e) Marks that are mandatory for acquiring the shape arising due to the goods' nature or its another property or a technical result or that contain exclusively a shape or another property which gives the good its real value.

f) Marks that will mislead the public in issues like quality, property or geographical source of the good or service.

g) Marks that will be rejected in accordance with the Paris Convention Article 6ter.

ğ) Marks that are beyond the scope of the Paris Convention Article 6ter however contain marks which are in concern of the public, other public marks regarding the historical and cultural values and badges, blazons or names that have not been permitted for registration by the authorities.

h) Marks that contain religious values or symbols.

i) Marks which are contradictory to public order and general ethics.

i) Marks that are formed of or contain registered geographical marks.

(2) If a trademark is used before the application date and as a result of this use it gained distinguishing property regarding the goods and services subject to application, the registration of this trademark shall not be rejected in accordance with the Clause 1 Items (b), (c) and (d).

(3) A trademark application shall not be rejected in accordance with the Clause 1 Item (ç), in case that a notary public approved document indicating that the previous trademark owner has given consent for the registration of the application is submitted to the Institute. The procedures and principles regarding the deed of consent are defined by a regulation

Relative rejection reasons in trademark registration

ARTICLE 6- (1) In case of a trademark applied for registration, due to the sameness or similarity in the goods or services of a trademark applied on a prior date, there is a possibility for confusion, including the a possibility of association by the public with an already registered or previously applied trademark, then upon objection the application shall be rejected.

(2) The application by the commercial agent or attorney in his/her/its name for the registry of same or indistinguishably similar of the trademark without the consent of the trademark owner and a rightful reason shall be rejected upon the objection of the trademark owner.

(3) If there is a right acquired for an unregistered trademark or another sign used during commerce before the date of application or date of privilege, if any, upon the objection of the owner of this sign the trademark application shall be rejected.

(4) The applications for the trademarks in same or similar quality with the known trademarks in the scope of the Paris Convention Article 6bis shall be rejected due to the same or similar goods or services.

(5) For a registered or previously applied for registration trademark, in case that a unjustified benefit shall be gained due to the recognition level reached in Turkey, the reputation of the trademark can be damaged or the distinguishing character may be harmed, the application of the same or similar trademark shall be rejected, reserving the case of depending on a valid reason, upon the objection of the previously dated trademark owner without concerning that the application is done in same, similar or different goods or services.

(6) In case that the trademark applied for registration contains person name, commercial title, photograph, copyright or any intellectual property rights of another person, the application shall be rejected upon the request of the proprietor.

(7) The application for trademark is same or similar to the joint trademark or guarantee trademark, submitted within three years from the protection period expiration due to not renewal of the joint trademark or guarantee trademark, and comprises same or similar goods or services, shall be rejected upon the objection of the owner of the previous trademark

(8) The application for trademark is same or similar to a trademark, submitted within two years from the protection period expiration due to not renewal of the

trademark, and comprises same or similar goods or services, shall be rejected upon the objection of the owner of the previous trademark, provided that the trademark is used within these two years period.

(9) Trademark application submitted with bad faith shall be rejected upon objection.

Scope of the rights due to trademark registration and exceptions

ARTICLE 7-(1) The trademark protection provided by this Law is acquired via registration.

(2) The rights due to trademark registration are solely of the trademark owner. Trademark owner has right to demand prevention of the acts indicated below, in case that they are performed without consent:

a) Any mark that is same with the registered trademark is used in goods and services within the scope of registration.

b) Usage of any mark that is same or similar to the registered trademark comprises the goods or services that are same or similar to the goods or services which are under the scope of the registered trademark and thus there is potential of confusion, including the possibility of association by the public with the registered trademark.

c) Without a justified reason, usage of any mark which is same with or similar to the registered trademark, regardless of whether it is in same, similar or different goods or services, and which can gain unfair benefit from the reputation of the trademark due to its recognition level reached in Turkey or shall harm its

distinctive character.

(3) The cases indicated below can be banned in accordance with the provision of the Clause 2, in case that the mark is used in commercial field:

- a) Marks to be placed on a good or its package,
- b) The goods baring the mark to be launched into market, offered to be delivered, stocked for these reasons or services under the mark to be rendered or offered to be rendered,
- c) Export or import of the good baring the mark,
- ç) Mark to be used on the business documents and advertisements of the enterprise.
- d) Usage of same or similar of the mark on internet media as domain name, directing code, key word or similar ways in order to create a commercial effect, provided that the person using the mark has no rights or legal connections regarding the usage of the mark,
- e) Mark to be used as a trade name or business title,
- f) Mark to be used in comparative advertisements in an illegal way.

(4) The rights the trademark provides to its owner are in effect against the third parties as of the publishing date of the trademark registration. However, application owner has right to file a claim for damages due to the acts that are performed after the trademark application is published in the Bulletin and would be banned if the trademark registration would have been declared. The court shall not decide regarding the validity of the claims before the publication of the

registration.

(5) Trademark owner cannot forbid the third parties using the trademark honestly and within the natural flow of the commercial life, in the cases indicated below:

- a) Indication of the name and addresses of the real persons
- b) In declarations regarding the type, quality, amount, purpose of usage, value, geographical source, production or presentation time or other qualities of the goods or services.
- c) Especially in accessory, spare part or equivalent parts products, usage in the cases that the purpose of the good or service needed to be indicated.

Inclusion of trademark in works of reference

ARTICLE 8- (1) In case that a registered trademark is used in the dictionary, encyclopedia or another consultation work presented in paper or electronic format, without indicating that it is registered and as in a way to create an impression that it is a generic name, the publisher, depending on the request of the trademark owner, on the work presented in electronic media immediately, on the printed work at the next edition of the publication following the request, shall correct the mistake by indicating that the trademark is registered or removes the trademark from the work.

Usage of the Trademark

ARTICLE 9- (1) The trademarks that are not used substantially within Turkey

by the trademark owner regarding the goods and services in which it is registered for five years from the registration date without a valid reason or of which the usage is interrupted for continuous five years shall be decided to be cancelled.

(2) In the cases below, regarding the Clause 1, the usage of trademark is accepted:

a) Using the trademark with different elements without changing its distinguishing character,

b) Using the trademark on goods or packages only for the purpose of export.

(3) Usage of the trademark under the consent of the trademark owner is also deemed as the usage by the trademark owner.

Requests regarding the registered trademark in the name of the commercial agent or representative

ARTICLE 10-(1) In case that the same or indistinguishably same of the trademark is registered in the name of the commercial agent or representative without the consent of the trademark owner, if commercial agent or representative does not have a rightful reason, trademark owner can request the court to prohibit the usage of the trademark and also can request the transfer of such a registration to his/her name.

PART 2

Application and Objection

SECTION 1

Application, Priority Right and Examination

Application terms, classification and division

ARTICLE 11 – (1) Trademark application consists of;

- a) The application form containing the identification information of the applicant,
- b) Trademark sample,
- c) List of goods or services subject to application,
- ç) Receipt showing the application fee is paid,
- d) If the application is filed as joint trademark or guarantee trademark, the technical specifications arranged in the scope of article 32,
- e) If there is a priority right request, the document indicating the priority right request fee is paid,
- f) If letter(s) other than the ones in Latin alphabet are used, their equivalents in the Latin alphabet.

(2) Registration of only one trademark can be requested by each application.

(3) The goods and services subject to application are classified according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks to which we entered by the Cabinet Decree no. 95/7094 and date 12/7/1995. The Institute can make required corrections on the classes and class numbers to which the goods or services within the application belong.

(4) The goods and services being in the same classes do not indicate that they are similar and the goods and services being in different classes also do not indicate that they are not similar.

(5) Trademark application, upon the request of the applicant, until registered, can be divided into two or more applications regarding the goods or services within the scope of the application.

(6) The spelling errors and clear errors of fact in the contents, trademark sample or goods or services list within the trademark application, that do not contain the scope of the amendments shall be corrected upon the request of the applicant.

(7) The procedures and principles regarding the application, classification and division are determined with the regulations.

Priority right and effects

ARTICLE 12-(1) Real persons or legal entities that are citizens of one of the states which is a party of the Paris Convention or the Agreement Establishing World Trade Organization or residing or having a functioning business organization in one of these states and their successors without being a citizen of such states, within the period of six months from the application they duly made for the registration of a trademark to the authorized offices within one of these states, benefit from the priority right in application in Turkey for the same trademark and for same goods or services within the scope of the provisions of the Paris Convention. The priority rights not executed within this period will be dismissed. For benefiting from the priority right it is obligatory to acquire a

priority right document from the authorized office of the state in which the first application is made.

(2) The real persons, legal entities or their successors described in the Clause 1, benefit from the priority right in the scope of the principles indicated in the Clause 1 for the trademark applications duly filed in a state that is not a party to the Paris Convention or the Agreement Establishing World Trade Organization.

(3) The real persons or legal entities indicated in Article 3 that exhibit the goods or services on which the trademark subject to application is used in the national or international exhibitions opened in Turkey or in the public or publicly acknowledged international exhibitions opened in the states that are parties of the Paris Convention or the Agreement Establishing the World Trade Organization and present the certified sample of the trademark, benefit from priority rights to file application for the registration of the same trademark in Turkey for six months from the exhibition date.

(4) If the goods or services on which the trademark indicated in the application shall be used, have been exhibited in the exhibition visibly, before the formal inauguration date, the priority right period starts with the date on which the goods are placed on the exhibition or the services are exhibited.

(5) If there are multiple applications for the goods or services that have been exhibited in any exhibition, the person first exhibits these goods or services, or in case that the exhibition is made on the same time, the person makes the first application benefits from the priority rights.

(6) In case that the application is filed based on the priority rights, the applications, comprising same or same type goods or services, that are same or indistinguishably similar to the trademark subject to the priority right, filed by the third parties after the priority right is acquired are rejected.

Requesting and term of the priority right

ARTICLE 13-(1) Applicant shall indicate the priority right which he/she wants to benefit from via paying the request fee together with the application. In case that the applicant does not submit the priority right documents within three months of the application date the priority right request deemed void.

(2) The term and results of the priority right arise as of the dates indicated in the article 12.

(3) In case there are multiple priority right requests for the trademark application, the priority right starts as of the first valid priority date.

(4) The procedures and principles regarding the priority rights are determined with the regulations.

International trademark applications filed within the scope of Madrid Protocol

ARTICLE 14- (1) An international application filed within the scope of the Madrid Agreement Concerning the International Registration of Marks and the Relating Protocol to which we entered with the Cabinet Decree no. 97/9731 and date 5/8/1997, gives the same results as an application filed directly to the Institute.

This application is deemed to be filed at the first hour and minute of the international application date. In case there are multiple international applications with the same date, the application with the smallest registry number is deemed to be filed first.

(2) International application shall not be rejected due to a trademark application or registered trademark filed on a date after the application or priority date. Trademark application with a later date, considering the international trademark application with a former date, is reevaluated in accordance with the provisions of Article 16 Clause 1.

(3) The fees for the transactions made by the Institute within the scope of the Madrid Protocol are determined by a notification.

Procedural review, correcting procedural imperfections and application date

ARTICLE 15-(1) The Institute shall procedurally examine the conformity of the application in view of the articles 3 and 11. In case that it is decreed that there are no procedural imperfections, the application becomes effective as of the date, hour and minute the application received. In case there are procedural imperfections two months period is given for the applicant to correct these imperfections.

(2) In case that there are imperfections regarding the Article 11 Clause 1 Items (a), (b), (c) and (ç), the application becomes effective as of the date, hour and minute the imperfections are corrected. The imperfections regarding the Article 11

Clause 1 Items (d), (e) and (f) do not affect the effectiveness of the application date.

(3) The application of which the imperfections are not corrected within given time period shall be dismissed. However, in case that the application is made for goods and services covering more than one class and the fee imperfection related to the classes is not corrected within the due time, the application is assessed concerning the class or classes the paid fee covers. Not correcting the imperfections related to the priority right in accordance with the Article 11 Clause 1 Item (e) results in the loss of priority right.

(4) The applications of the real persons or legal entities that do not reside within the scope of the Article 3 are rejected.

Examination of the application regarding the absolute rejection reasons and publication

ARTICLE 16-(1) If the Institute decides that the application does not have any procedural imperfections, it examines the application in the scope of Article 5. As the result of the examination, if the result that all or part of the goods or services within the scope of the application cannot be registered is reached then the application is rejected concerning these goods or services.

(2) If the application terms are fulfilled completely and it is not rejected in accordance with the provisions of Article 15 and this Article Clause 1, then the application is published in the Bulletin.

(3) In case it is decided after the publication that the application shall be

rejected in accordance with the provisions of Article 15 and this Article Clause 1, this decision is also published in the Bulletin.

SECTION TWO

The Opinions of the Third Parties, Objections and Review of the Objections

The Opinions of the Third Parties

ARTICLE 17- (1) After the publication of the trademark application, everyone may submit to the Institute their written and justified opinions regarding that the trademark application cannot be registered in the scope of Clause 1, Article 5 any Items except the Item (ç). However these persons cannot be a party to the transactions performed before the Institute.

(2) The Institute evaluates the opinions and if it decides that the opinions are valid, then refuses all or a part of the trademark applications.

Objection to publication

ARTICLE 18-(1) The objections for a trademark application not to be registered according to the Articles 5 and 6 shall be done by the related persons within two months after publication of the trademark application.

(2) The objection shall be submitted in writing and with justification to the Institute. In case that the objection justifications are not submitted within the time period indicated in the Clause 1 then the objection is deemed not made. In order for the objection to be reviewed, the fee should be paid within the objection period

and the documentation regarding the payment is done should be presented to the Institute within the same time period.

Review of the objection to publication

ARTICLE 19-(1) The Board shall request the applicant to declare its opinions on the objections within due time. If the Institute deems necessary, it may ask for the parties to submit additional information and documentation. In case that the opinions or requested additional information and documentation are not submitted to the Institute in due time, the assessment is made on the scope of the existing information and documentation.

(2) In the objections done within the scope of the Article 6 Clause 1, provided that the trademark made grounds to the objection is registered for at least five years in Turkey on the date of application or priority of the application subject to the objection, the demurrer shall be requested, upon the demand of the applicant, to show evidences that within the five year period before the date of application or priority of the application subject to the objection, the demurrer was using substantially within Turkey the trademark made grounds to the objection regarding the goods or services the demurrer presented as the basis for the objection or that the demurrer has rightful reasons not to use them. In case that these issues are not proved by the demurrer the objection is denied. In case it is proved that the trademark made grounds to the objection is used only for a part of the goods or services within the scope of the registration, only on the basis of goods and services of which the usage is proved are reviewed as basis.

(3) If, as the result of the review, it is decided that the trademark cannot be registered for all or part of the goods or services within the scope of the application, the application is rejected regarding these goods or services. Otherwise it shall be decided that the objection is denied.

(4) In case that the Institute deems necessary, it may encourage the parties to negotiate. In the issues related to the negotiation the provisions of Law on Mediation in Legal Conflicts no. 6325 and date 7/6/2012 are applied.

(5) The procedures and principles regarding the objection to publication are determined with the regulations.

Objection to decision

ARTICLE 20-(1) The parties that face damages due to the decisions adopted by the Institute in the scope of this Chapter can demur to the Institute.

(2) The objection shall be made to the Institute in writing and with justification within two months from the date of announcement of the decision. In case that the justification of the objection is not presented within this period the objection deemed not made. In order for the objection to be reviewed the fee should be paid within the objection period and the documentation regarding that the payment is done should be presented to the Institute within the same time period. After the objection period the objection justifications cannot be modified and new justifications cannot be added.

Review of the objection to the decision

ARTICLE 21-(1) The objections without procedural imperfections shall be reviewed by the Board.

(2) The Board requests the applicant to submit its opinions on the objections within due time. If the Institute deems necessary, it may ask for the parties to submit additional information and documentation. In case that the opinions or requested additional information and documentation are not submitted to the Institute in due time, the assessment is made on the scope of the existing information and documentation.

(3) The Board, in the objections made against the decisions given in accordance with the Article 19 Clause 3, if deems necessary, can encourage the parties to negotiate in accordance with the Article 19 Clause 4.

(4) The Board shall give the final decision of the Institute as the result of the review and assessment conducted about the objection.

PART THREE

Registration, Protection Period and Renewal

Registration

ARTICLE 22- (1) An application for which the application procedure is made without imperfections, which is examined in accordance with the Article 16, published, about which no objections are made or all objections made are rejected as final and of which all the lacking documentation, including the information regarding the payment of the registry fee, is submitted to the Institute in due time

and completed all the steps, is registered and recorded in the registry and announced in the Bulletin. In case that the fee related to the registration of the trademark is not paid and the information on payment is not submitted to the Institute in due time, the application shall be dismissed.

(2) The trademark that is registered without completing all the steps indicated in the Clause 1 shall not be deemed as registered trademark, application transactions are continued on the step that has not been completed and this condition is announced on the Bulletin. If re-registration of these applications is decided the previously paid registration fee is not asked for again. However, in case that two years have passed from the registration date, the registration status of the trademark is not affected from the incomplete step.

(3) Registration shall be open. In case that it is requested and the fee is paid a registration copy shall be provided.

(4) The procedures and principles regarding the recording to the registry, publication and registration transactions are determined with the regulations.

Protection period and renewal

ARTICLE 23- (1) The protection period of the registered trademark is ten years from the date of application. This period is renewed in ten year periods.

(2) The renewal request should be done within the last six month before the date the protection period ends by the trademark owner and the information on payment of the renewal fee should be submitted to the Institute in the same period. In case that the request is not done and the information on the payment of the renewal fee

is not submitted to the Institute within this period, the renewal request can be done via payment of an additional fee within the six months period after the date the protection period ends.

(3) The trademark can be renewed also for a part of the goods or services within the scope of the registration.

(4) For renewal of the joint trademark request from one of the establishments within the group shall be sufficient.

(5) Renewal is in force on the date that follows the date the previous protection period ends. Renewal is recorded to the registry and announced on the Bulletin.

PART FOUR

License

License

ARTICLE 24- (1) The trademark right can be subject to a license agreement for all or part of the goods or services it is registered for.

(2) License can be given as exclusive license or non-exclusive license. Unless otherwise agreed on the contract, license is not exclusive. In non-exclusive license contracts, licensor can use the trademark itself and also can distribute other licenses to third parties. In exclusive license contracts, licensor cannot give licenses to others and cannot use the trademark itself unless explicitly reserved its rights.

(3) Unless otherwise agreed on the contract, license owners cannot transfer their

rights born due to the license to third parties or cannot give sublicenses.

(4) Licensor takes the precautions that shall take the quality of the goods to be produced or services to be rendered by the licensee under guarantee. Licensee is obligated to follow the terms written in the license contract. Otherwise, licensor can claim its rights due to the registered trademark against the licensee.

PART FIVE

Expiration of the Right

SECTION ONE

Invalidity and Termination

Invalidity conditions and invalidity requests

ARTICLE 25-(1) In case that one of the conditions listed in Articles 5 or 6 is present the invalidity of the trademark shall be decided by the court.

(2) Beneficiaries, public prosecutors or related public institutes and agencies can request the invalidity of the trademark from the court.

(3) Trademark invalidity case is opened against the persons registered as the trademark owners in the registry at the date of the case or their legal successors. In the trademark invalidity cases the Institute shall not be presented as a party.

(4) If a trademark was registered contradictory to the Article 5 Clause 1 Items (b), (c) and (d), and has acquired a distinctive property regarding the goods or services it is registered for before the request of invalidity, it cannot be declared

invalid.

(5) If the invalidity conditions are present for part of the goods or services in which the trademark is registered, a partial invalidity regarding only those goods or services shall be decided. No invalidity decision can be given that shall change the trademark sample.

(6) If the trademark owner stayed silent for five consecutive years even if he/she knew or needed to know that a trademark with a later date is being used, he/she cannot use his/her trademark as the justification for the invalidity as long as the later trademark registration is not bad faith.

(7) In the invalidity cases opened in accordance with the Article 6 Clause 1, the provision of the Article 19 Clause 2 can be presented as a plea. In that case in the determination of the five years regarding the usage the date of case is taken as basis. If, on the application or priority date of the trademark requested for invalidity, the trademark of the plaintiff is registered for at least five years, the plaintiff shall also prove that on the said application or priority date the terms indicated in the Article 19 Clause 2 are fulfilled.

Termination conditions and termination request

ARTICLE 26-(1) In the following conditions, the Institute shall decide the termination of the trademark upon request:

- a) The presence of the conditions indicated in the Article 9 Clause 1.
- b) As the result of the actions of the trademark owner or him/her not taken required precautions, the trademark becoming a commonly used name for the

goods or services it is registered for.

c) As the result of the usage by the trademark owner or his/her consent, the trademark misleads the public about especially the property, quality or geographical source of the goods or services it is registered for.

ç) There is a usage contradictory to the Article 32.

(2) Related persons can request termination of the trademark from the Institute.

(3) Trademark termination requests may be claimed against the persons registered as trademark owners on the date of the request in the registry or their legal successors.

(4) In case that the trademark is substantially used regarding the goods or services it is registered for in between the end of the five year term and the date the termination request is submitted to the Institute, the termination request related to the Clause 1 Item (a) are rejected. If the usage is performed taking into consideration that there can be a termination request, the usage performed within the last three months before the request is submitted to the Institute, is not considered.

(5) If the termination conditions are present against a part of the goods or services the trademark registered for, the partial termination is decided for only that part of the goods or services. No termination decision can be given that shall change the trademark sample.

(6) In case that the right owner changes during the termination review, the transactions are continued against the person listed in the registry as the right owner.

(7) The termination requests are notified to the owner of the trademark which is requested to be terminated. Trademark owner presents the evidences and answers regarding the request to the Institute within one month. In case it is requested within the said one month period the Institute can give up to one month additional time. Institute may request additional information and documents if it deems necessary. The Institute gives the decision over the file in the scope of the claim and defenses and the evidences presented.

The effect of invalidity and termination

ARTICLE 27-(1) In case that invalidity of a trademark is decided in accordance with the Article 25, this decision is in effect starting from the trademark application date and all the protection provided to this trademark by this Law deemed never incurred.

(2) In case that termination of a trademark is decided in accordance with the Article 26, this decision is in effect starting from the date the termination request is submitted to the Institute. However, upon request, in case that the termination conditions have risen on a previous date, it can be decided that the termination decision will be in effect from the said earlier date.

(3) The compensation requests of the persons faced damages due to the gross negligence or bad faith actions of the trademark owner, the retrospective effect of the invalidity decision and the termination decision regulated in the Clause 2 second sentence do not affect the following conditions:

a) The decisions finalized and applied, given in a lawsuit filed due to infringement of the trademark rights provided before the decision.

b) Contracts executed and applied before the decision.

(4) Return of all or part, due to fairness, of the fee paid in accordance with the contracts within the scope of the Clause 3 Item (b) can be requested.

(5) The finalized decisions regarding the invalidity or termination of the trademark are effective against everyone.

(6) After the finalization of the invalidity decision the court sends this decision to the Institute ex officio.

(7) After the finalization of the invalidity or termination decision the trademark is deleted from the registry and this condition is published in the Bulletin.

SECTION TWO

Other Cases of Termination and Results

Termination and results

ARTICLE 28-(1) In the conditions below the trademark right shall be terminated:

a) The expiration of the protection period and the trademark not being renewed in due time

b) Trademark owner waiving the trademark right.

(2) Termination of trademark right is in effect from the date the reason for ending the trademark right occurs.

(3) Trademark owner can waive all or a part of the goods or services in the scope of the registry of the trademark. Waiver is informed to the Institute in writing and the waiver reason and the end of the trademark right are published in the Bulletin. Waiver is in effect as of the recording to the registry.

(4) Without the consent of the right and license owners recorded in the registry, trademark owner cannot waive the trademark right. If a claim of title has been done by a third person on the trademark and the injunction in this regard is recorded in the registry, the rights arising from the trademark cannot be waived without the consent of this person.

(5) Trademark application can be withdrawn by the applicant prior to the registration of the trademark. The provisions regarding the waiver of the trademark right shall also apply regarding the trademark application withdrawal.

PART SIX

Trademark Right Infringement

Actions regarded as infringement to trademark rights

ARTICLE 29-(1) Following actions are regarded as infringement to the trademark right:

- a) To use the trademark in the ways indicated in the Article 7 without the consent of the trademark owner.
- b) To imitate the trademark via using the trademark or indistinguishably similar one without the consent of the trademark owner.

c) To sell, distribute, place on trade in any other way, import, export, keep for commercial purposes or to offer contract on the products baring this trademark through infringement while knowing or being required to know that trademark is imitated via using the trademark or indistinguishably similar one.

ç) To expand the rights given by the trademark owner via license or transfer these rights to third parties without consent.

(2) The provision of the Article 19 Clause 2 can be used as a plea in the infringement lawsuits. In this case in determining the five year period regarding the usage the lawsuit date is taken as basis.

Penal terms regarding trademark right infringement

ARTICLE 30-(1) The person who produces goods or renders services, offers for sale or sells, imports or exports, purchases, keeps, ships or stores for commercial use via infringement in the trademark right of others through quotation or ambiguity, shall be punished with jail time from one year to three years and imposed punitive fine of up to twenty thousand days.

(2) The person who, without authorization, removes the sign that indicates the trademark protection from the good or packaging, shall be punished with jail time from one year to three years and imposed punitive fine of up to five thousand days.

(3) The person who, without authorization, acts on a trademark that belongs to another via transferring, licensing or pledging shall be punished with jail time from two year to four years and imposed punitive fine of up to five thousand days.

(4) In case that the crimes indicated in this article are committed within the frame of the legal entities' activities, additional security measures special to these are decided.

(5) In order to decide a punishment due to the crimes indicated in this article it is mandatory that the trademark is registered in Turkey.

(6) The investigation and prosecution of the crimes indicated in this article shall be performed on complaint.

(7) If the person who offers for sale or sells the product that is produced via imitating a trademark owned by another person informs of where he/she procured this good and thus helps to uncover the manufacturers and confiscate the produced goods, there shall be no penalty upon him/her.

PART SEVEN

Guarantee Trademark and Joint Trademark

Guarantee Trademark and Joint Trademark

ARTICLE 31-(1) Guarantee trademark is the mark used to guarantee the common properties, production procedures, geographical origins and quality of those establishments under the control of the trademark owner.

(2) It is forbidden to use the guarantee trademark on the goods or services of the trademark owner or of the enterprise economically linked to the trademark owner.

(3) Joint trademark is the mark used by a group formed of production or commerce or service establishments.

(4) Joint trademark is used for distinguishing the goods or services of the establishments within the group from goods or services of other establishments.

Technical specifications of guarantee trademark or joint trademark

ARTICLE 32-(1) For the registration of the guarantee trademark or joint trademark, it is mandatory to submit technical specifications showing the procedures and principles related to the usage of the trademark together with the application.

(2) Technical specifications of guarantee trademark defines the common properties of the goods or services the trademark guarantees, the procedures of use of the trademark, the way in which inspections will be conducted following the issuance of the right for using the trademark and the frequency of these inspections as well as the sanction to be enforced in the case of usage contradictory to the technical specifications.

(3) The technical specifications of joint trademark defines the establishments authorized to use the joint trademark and the membership conditions for the society these establishments form, the usage terms of the trademark and sanctions, if any. For the registration of the joint trademark and waiver of the joint trademark rights, all the establishments within the group act jointly.

(4) The establishments within the group that is authorized to use the joint trademark are solely authorized to file a legal case.

(5) The modifications to be done in the technical specifications cannot be applied unless approved by the Institute.

(6) In case that the technical specifications do not contain the terms indicated in the Clauses 2 and 3 or are contradictory to the public order or general ethics, it is informed to the trademark owner by the Institute, that the necessary changes should be done in the technical specifications. In case the trademark owner fails to make necessary changes and correct the technical specifications within six months from the notification date, the registration request of the guarantee trademark or joint trademark shall be rejected.

(7) Due to the trademark owner not taking necessary precautions to prevent the usage of the guarantee trademark or the joint trademark continuously contradictory to the technical specifications, in case that the contradictory usage is not corrected within the given time upon the application of the related persons, public prosecutor or related public authorities, the termination of the trademark is decided.

(8) The procedures and principles regarding the technical specifications are determined with the regulations.

CHAPTER TWO

Geographical Indication and Traditional Product Name

PART ONE

Rights of Geographical Indication and Traditional Product Name

Products under protection

ARTICLE 33- (1) The ones that are appropriate to the terms in this Book

among the food, agriculture, mining, handicrafts products and industrial products benefit from the geographical indication or traditional product name production with the condition that they are registered.

Origin name, geographical indication and traditional product name

ARTICLE 34-(1) Geographical indication is the mark that shows the product that is identified with its origin region, area, territory or country regarding its distinctive quality, reputation or other properties. Geographical indications are registered as origin name or geographical indication according to the properties mentioned below:

- a) The names that define the products originate from a region, territory with identified geographical borders or in rare conditions a country, take their all or main properties from the natural and human elements special to this geographical area, of which production, processing and other processes are all performed within this geographical area, are the origin names.
- b) The names that define products originate from a region, territory with identified geographical borders or a country, are identified with this geographical area regarding its distinctive quality, reputation or other properties, of which at least one of the production, processing and other processes is performed within the geographical area, are geographical indications

(2) Even if they do not contain a geographical place name, the names that are used traditionally to identify a product that carries the terms indicated in the Cluase

1, incorporated in the daily talk and do not contain a geographical location name can also be origin name or geographical indication.

(3) The names that are not within the scope of origin name or geographical indication and proved to be used at least for thirty years traditionally to define a product in the related market, are defined as traditional product name, provided that they confirm at least one of the conditions below:

- a) Sourced from traditional production or processing method or traditional composition
- b) Produced from traditional raw material or materials.

Names that shall not be registered

ARTICLE 35-(1) The ones listed below cannot be registered as geographical indications:

- a) The names that are not under the scope of the Article 34.
- b) The names that have become the real names of the products.
- c) The plant species and kinds, animal races or similar names that may confuse the public about the real origin of the product.
- ç) Names that are contradictory to the public order or general ethics.
- d) The names that are not protected, of which the protection ended or that are not used in their countries, despite the application is made by the persons that fulfill the terms indicated in the Article 3.
- e) The names that are completely or partially homonymic with a geographical indication of which the registration or application has been done and may confuse

the consumer.

(2) The ones listed below cannot be registered as traditional product names:

a) The names that do not meet the terms regarding the traditional product names in the Article 34.

b) The names that define the general properties of the product.

c) The names that may confuse the public about the properties of the product.

ç) The names that are contradictory to the public order and general ethics.

d) The names that are not protected, of which the protection ended or that are not used in their countries, despite the application is made by the persons that fulfill the terms indicated in the Article 3.

PART TWO

Application and Objections

SECTION ONE

Application for Geographical indication and Traditional Product Name

Application right

ARTICLE 36-(1) The ones listed below have right to file an application for geographical indication and traditional product name:

a) Production groups.

b) The public institutes and associations as well as the professional organizations in the quality of public institute related to the product or the geographical area from which the product originates.

c) The societies, associations and cooperatives that are working for the public benefit related to the product or authorized to protect economic interests of their members.

ç) If there is only one producer of the product, this producer, provided that it proves the condition.

(2) In the scope of this Chapter, the producer defines the person who produces or processes or affects the properties subject to registration via being within the supply chain the agricultural products, food products, mines, handicrafts and industrial products; whereas production groups define the unity formed of the producers of the same product without any concern on the legal formation or unification.

Application conditions

ARTICLE 37-(1) The geographical indication application contains the elements indicated below:

a) The application form containing the information regarding the identification of the applicant and those who has the application right indicated in the Article 36.

b) In case that the applying real person or legal entity is the only producer of the product, the information and documentation proving this condition.

c) The information regarding for which one of the origin name or geographical indication requested for registration is proper and the product group as well as the information and documents proving the conformity to definition of the geographical indication.

ç) The technical information and documentation describing the definition of physical, chemical, microbiological and sensory properties of the product and if necessary of its raw materials.

d) The information and documents that clearly indicate and define the borders of the geographical area.

e) The information and documents regarding the production method and if any, local production techniques, procedures and principles that give the referred product its properties.

f) The information and documents that prove the connection of the property of the product subject to geographical indication registration within the scope of the geographical indication definition, product and its other properties with the said geographical area.

g) The information and documents regarding the historical background of the product within the said geographical area.

ğ) The information and documents that explain the auditing method in detail in accordance with the provisions of article 49.

h) The information explaining the usage method of the geographical indication and if any, labeling and packaging procedures.

i) Information regarding the payment of application fee.

(2) The traditional product name application contains the elements listed below:

a) The application form containing the information regarding the identification of the applicant and those who have the application right indicated in the Article

36.

b) The information regarding the traditional product name requested for registration and the product group and information and documents proving its conformity to the definition in the Article 34.

c) The technical information and documentation describing the definition of physical, chemical, microbiological and sensory properties of the product and if necessary of its raw materials.

ç) Definition of the production method, including the explanation of properties of the raw materials and other components within the contents of the product and the preparation techniques indicating the product characteristics.

d) The information and documents that explain the auditing method in detail in accordance with the provisions of Article 49.

e) The information explaining the usage method of the traditional product name and if any, labeling and packaging procedures.

f) Information regarding the payment of the application fee.

(3) The procedures and principles regarding the geographical indication and traditional product name applications are determined with the regulations.

Review and publication of the application

ARTICLE 38-(1) The Institute reviews the geographical indication or traditional product name applications in accordance with the articles 33 to 37 and 39.

(2) In case that the identification information of the applicant is not present in

the application, the application is deemed not made. The decision on the application being not made is the final decision of the Institute and cannot be subject to objection in the scope of the Article 40.

(3) Except the identification information of the applicant, in case it is determined that the terms in the Article 37 are not fulfilled, the Institute requests the correction of these imperfections. In case that the lacking information and documents are not sent in due time or the sent information and documents do not fulfill the terms, the application shall be rejected. In case it is requested, additional time, not over two weeks, shall be given for correction of imperfections.

(4) The Institute may request opinions from the related institutes and associations for the purpose of evaluation of the technical information. In case that a payment is requested by the related institutes and associations for the opinions the said fee is paid by the Institute.

(5) The applications reviewed and found appropriate in the scope of this article are published in the Bulletin.

(6) The procedures and principles regarding the review and publication of the application are determined with the regulations.

Applications of foreign country origin

ARTICLE 39-(1) Without prejudice to the international agreement provisions, in order for the provisions of this Law to be applied in the foreign country origin geographical indication or traditional product name applications, the following terms are also looked for besides the terms indicated in the Article 37.

a) The geographical indication or traditional product name being protected by the origin country or the international society it is involved in.

b) The auditing conditions indicated in the Article 49 being provided in the origin country.

c) Origin country providing equivalent protection to registration applications for the geographical indication or traditional product name from Turkey.

(2) If the foreign country origin geographical indication or traditional product name application is same with a geographical indication or traditional product name that is protected in Turkey, the review shall be performed in consideration of the risk of the regional and traditional usage and the similar names are being confused by the consumer. The usage of such geographical marks and traditional product names is permitted only with the condition that the origin production country is clearly and visibly indicated on the label.

SECTION TWO

Objection and Review of the Objection

Objection and Review of the Objection

ARTICLE 40-(1) The applicant can demur to the Institute in writing and with justification, regarding the application rejected in the scope of Article 38, within two months after the notification date of the decision.

(2) A written objection with justification can be done within three months after the application is published in the Bulletin by the third parties or any right owner

with a previous date within the scope of the Article 48, based on the claim that the registration request is not conforming to the Articles 33 to 37 and 39. The applicant is notified on the objection and opinion will be requested.

(3) It is mandatory that the fee related to the objection is paid in due time and the information regarding the payment is presented to the Institute in the same time period. Otherwise the objection is deemed not made. No fee is taken for the objections by the public institutes and associations.

(4) The objections made in accordance with the Clauses 1 and 2 are reviewed by the Board in the scope of the principles laid down by the regulation. The Board may request opinions from the related institutes and associations for the evaluation of the issues claimed in the objection. In case a fee is requested by the related institutes and associations for the opinion the said fee is paid by the demurrer.

(5) The Institute, if deemed necessary, may encourage the parties for negotiation. In the issues regarding the negotiation the provisions of the Law no. 6325 are applied.

(6) As the result of the review of the objection, in case that a change is made in the format or scope of the application, the final state of the application, indicating separately the modified part, is published in the Bulletin. This publish cannot be demurred.

(7) In case that the application is rejected upon an objection the decision shall be published in the Bulletin.

SECTION THREE

Registration and Modification Requests

Registration

ARTICLE 41-(1) The application to which no objections are made within three months after it was published in the Bulletin, to which the objections made have been rejected or which was modified as the result of the objections, shall be recorded in the registry and published in the Bulletin, provided that within two months after the date of notification the registration fee is paid and the information regarding the payment is presented to the Institutes within the same time period.

(2) Registry is open. In case of request, a registry copy shall be provided.

(3) The procedures and principles regarding the record to the registration, publication and registration transactions are determined with the regulations.

Modification requests

ARTICLE 42-(1) In case that there is modification in the properties subject to registration of the registered geographical indication or traditional product name, modification request can be made by the beneficiaries, provided that the fee is paid.

(2) Modification request shall be reviewed in the scope of the Article 38 and the approved modifications are published in the Bulletin. The modification can be demurred within three months after the publication date in writing with justification. These objections are reviewed according to the Article 40. In case there are no objections or the objections are dismissed as the result of the review,

the modifications are published in the Bulletin and finalize by the date of publication. Modification shall be applied within a year after the publication date within the related parties.

(3) The procedures and principles regarding the modification requests are determined with the regulations.

Change in the applicant or registrant

ARTICLE 43- (1) In the case the court decides that the applicants or registrants of the geographical indication or traditional product name applications do not meet the terms indicated in the Article 36 or 49 or this condition is determined ex officio by the Institute or the change declaration is notified to the Institute in writing by the registrants, this decision, determination or declaration shall be published in the Bulletin. Within three months after the date of publication, modification in the application or registry records can be requested by the related persons who meet the terms in the Article 36. In case that there are no requests or the requests are dismissed, the geographical indication or traditional product name right ends and this condition is published in the Bulletin. In case of multiple requests, the Institute accepts the request that is most proper in accordance with the procedure indicated in the regulation.

(2) In case that the applicant or registrant agrees with the person who meets the terms indicated in the article 36 and 49, the record modification request shall be made to the Institute, provided that the documents are presented and the fee is paid. In case the request is accepted, the modification is published in the Bulletin.

(3) The modifications incurring in the names, addresses, titles or type of the applicants or registrants of a geographical indication or traditional product name application are recorded in the registry and published in the Bulletin.

PART FOUR

Scope of the Right, Usage and Inspection

Acquiring geographical indication protection and the scope of the rights arise from the registration

ARTICLE 44- (1) The geographical indication protection related to a product is acquired via registration within the frame of this Law.

(2) The persons who register the geographical indication and who has the usage right of the geographical indication have the right to request, for the third parties, the prevention of:

a) Direct and indirect usage of the geographical indication or the emblem stipulated to be used in accordance with the Article 46 as benefiting from the geographical indication's reputation while it does not bear the product properties indicated in the geographical indication registration or the products within the scope of the registration or products in quality to be associated with these,

b) Misleading usage or imitation of the registered geographical indication on the product that does not bear the properties within the scope of the registration or is similar enough to create association even if it contains explanations indicating the

real origin or quality of the product or terms like it is produced there in the style, method, way, type, kind or these are translated to a different language,

c) Include any incorrect or misleading explanation or indication regarding the registered origin and the natural or main quality and properties of the product on the inner or outer package, promotion or commercial of the product carrying the registered geographical indication or on any written document related to the product,

ç) Usage of the emblem of the registered geographical indication in a misleading way for the consumer.

(3) The rights provided by the geographical indication registration are in effect against the third parties as of the date the registration is published in the Bulletin. However, the applicant is authorized to file legal compensation cases due to the acts which occur after the application is published in the Bulletin and which may be forbidden in case that the geographical indication registration is published. The court shall not decide regarding the validity of the claims before the registration is published in the Bulletin.

(4) It is not accepted as the registered geographical indications become the essential name of the product.

(5) If a part of the name subject to the protection of the geographical indication is composed of the essential names of the product, the protection provided by registration does not cover the essential names.

(6) The essential name of the product, even if it is related with the region or

territory the product has first been produced or marketed, is the name of the product that become its general name. In determination of whether a name has transformed into the essential name of a product or not, the usage of this name by the people in the consumption field of the said product and other related legal regulations shall be considered.

(7) The registered geographical indication does not provide exclusive rights to the registrant.

Acquiring traditional product name protection and the scope of the rights due to the registration

ARTICLE 45- (1) The traditional product name protection related to a product is acquired via registration in the frame of this Law.

(2) The persons who register the traditional product name and have the usage right of the traditional product name have the right to request, for the third parties, the prevention of:

a) Usage of the emblem stipulated to be used for the registered product name in accordance with the Article 46 as benefiting from the product's reputation while it does not bear the product properties indicated in the traditional product name registration or the commercial use of the products resembling the products within the scope of the registration,

b) Usage of the emblem belonging to the registered product name misleading the consumer,

c) If it does not carry the product properties indicated in the traditional product

name registration and the emblem stipulated to be used for the registered product name in accordance with the Article 46, placing any misleading explanations or indications regarding that the product bears the properties indicated in the registration on the inner or outer package, promotion or commercial of the product or on any written document related to the product.

(3) The rights provided by the traditional product name registration are in effect against the third parties as of the date the registration is published in the Bulletin. However, the applicant is authorized to file legal compensation cases due to the acts which occur after the application is published in the Bulletin and which may be forbidden in case that the traditional product name registration is published. The court shall not decide regarding the validity of the claims before the registration is published in the Bulletin.

(4) The registered traditional product name does not provide exclusive rights to the registrant.

(5) The protection provided to the traditional product names in the scope of this Law does not bring any harm to the rights acquired in the scope of other industrial property rights especially geographical indications and trademarks.

Usage of the registered geographical indication and traditional product name

ARTICLE 46- (1) The registered geographical indications and traditional product names shall be used by the persons that are active in the production or marketing of the products that are appropriate to the terms indicated in the registry.

These persons shall notify the registrant on them performing production and marketing activities regarding the geographical indication and traditional product name.

(2) The persons who have the usage right of the registered geographical indication or traditional product name, shall use the said registered geographical indication or traditional product name on the product or its packaging together with the emblem. Regarding the geographical indications the emblem is mandatory to use.

(3) In case that, due to the property of the product, the geographical indication or the traditional product name cannot be used together with the emblem, the emblem and the registered indication or name shall be kept in the premises of the establishment by the ones who have the usage right, as easily visible.

(4) Usage of the traditional product name without emblem is not subject to the provisions of this Law.

(5) The procedures and principles of the usage of the registered geographical indications and traditional product names and the emblem and usage of the emblem are determined with the regulations.

Good-willed usage

ARTICLE 47- (1) The usage of the real person names or legal entity titles by the said persons or their successors during commerce in a way that is not confusing for the public, is not deemed violation of the conditions indicated in the Articles 44 and 45.

Relation to Trademarks

ARTICLE 48-(1) After the registration of the geographical indication, the trademark application filed in order to use in ways described in the Article 44 or with the goods and services related to the geographical indication subject to registration shall be rejected. If it has been registered it can be declared void via legal action.

(2) If a trademark same or similar to a geographic indication has been registered in goodwill before the protection of the geographic indication or the usage right of this trademark has been acquired in good will, the powers which the geographical indication provides to its owner shall not harm the registration of the trademark application and its good-willed usage.

(3) Considering also the reputation, popularity and usage period owned by a registered trademark, registration of the names in quality that will be misleading regarding the real source of or damaging to the existence of the trademark due to being same or similar with this trademark, as geographic indications or traditional product names shall not be permitted upon the objection of the previous dated title owner.

Inspection of usage

ARTICLE 49-(1) The inspection of usage of geographical indications and traditional product names covers all kinds of activities regarding the inspection of the conformity of usage of the product with the properties indicated in the

registration during the stages of the production, launching or distribution of the products carrying geographical indications and traditional product names or while the product is on the market.

(2) Inspection shall be performed by the inspection authority indicated in the application and of which the qualification is approved by the Institute. A change in the inspection authority listed in the registry can be done with the approval of the Institute.

(3) The inspection reports shall be submitted to the Institute once a year as of the publication date of the registration in the Bulletin. However in case of a complaint, the Institute can ask for the inspection reports to be submitted before due time.

(4) As the result of review of the inspection reports, if there is an imperfection, it is notified to the registrant and requested to be corrected within six months. In case that the imperfection is not corrected within due time or it is detected that the inspection activities are not performed according to the procedures, the provisions of the Article 43 are applied.

(5) The registrant can claim the costs related to the inspection from those who are inspected.

(6) The procedures and principles regarding the inspection are determined with the regulations.

(7) The inspection defined in this Chapter comprises the inspections performed by the inspection authority formed by the applicant and the provisions of the Veterinary Services, Plant Health, Food and Fodders Law no. 5996 dated

11/6/2010 and of other laws related to the inspection of the geographical indications and traditional product names shall be reserved.

PART FIVE

Termination of the Right

SECTION ONE

Invalidity

Invalidity request and invalidity conditions

ARTICLE 50- (1) The invalidity of the geographical indication or traditional product name can be requested from the court by the beneficiaries.

(2) The court shall decide that the geographical indication or the traditional product name to be invalid in cases that

a) The registration is not conforming to any of the terms indicated in the articles 33, 34, 35, 37 or 39

b) The registration has not been made by the persons who have the right to apply in accordance with the article 36

c) The inspection transactions have not been performed in the way indicated in the Article 49.

(3) The legal case regarding the invalidity of the geographical indication or the traditional product name shall be filed against the person recorded in the registry as the registrant. The Institute cannot be named as a party in these cases.

Effect of the invalidity

ARTICLE 51-(1) In case that the invalidity of the geographical indication or traditional product name is decided by the court, the production provided by this Law for the registered geographical indication and traditional product name is deemed never incurred.

(2) Without prejudice to compensation claims of the ones faced damages due to bad faith actions of the right owners' usage of the geographical indication or traditional product name, the retrospective effect of the invalidity decision for the geographical indication or traditional product name shall not affect the conditions below:

a) Decisions taken that are finalized and applied due to the infringement of the rights provided by the registry prior to the decision,

b) The contracts executed and applied before the decision.

(3) The reimbursement of all or part of the price paid in accordance with the contracts in the scope of the Clause 2 Item (b) can be requested in order to achieve equity.

(4) Finalized court decision is notified to the Institute ex officio by the court. The invalidated geographical indication or traditional product name is deleted from the registry and the information on deletion is published in the Bulletin.

SECTION TWO

Waiver of Rights and Responsibilities

Waiver of the rights and responsibilities provided by registration

ARTICLE 52-(1) The one who registers the geographical indication or traditional product name can waive the rights the registration provides and the responsibilities related to the inspection of usage. Waiver request is published in the Bulletin.

(2) Within the three months following the publication in the Bulletin, in case that there is a change request by the ones carrying the terms indicated in the Article 36 regarding the registrant, this request shall be reviewed in the scope of the provisions of the Article 43.

(3) In case that there is no change request regarding the registrant within the three month period, the geographical indication or traditional product name registration is deleted from the registry by the Institute at the end of the three month period and the information regarding the deletion is published in the Bulletin. Waiver is in effect as of the date of recording in the registry.

(4) The procedures and principles regarding the waiver are determined with the regulations.

PART SIX

Infringement of the Right

Acts deemed infringement of the geographical indication right

ARTICLE 53- (1) The usage of the geographical indication in the ways identified as below are deemed infringement of the geographical indication right:

a) Direct and indirect usage of the geographical indication or the emblem

stipulated to be used in accordance with the Article 46 as benefiting from the geographical indication's reputation while it does not carry the product properties indicated in the geographical indication registration or the products within the scope of the registration or products in quality to be associated with these,

b) Misleading, imitation or creating association usage of the geographical indication even if it contains explanations indicating the real origin or the translation of the geographical indication or terms like it is produced there in the style, method, way, type, kind,

c) Include any incorrect or misleading explanation or indication regarding the origin and qualities within the scope of the registration of the product on the inner or outer package, promotion or on any written document related to the product,

ç) Usage of the emblem related to the geographical indication in a way which misleads the consumers.

(2) Those who are entitled to use the geographical indication can request filing of a legal case via informing the registrant of the acts deemed infringement of the rights arising from the geographical indication. In case that the registrant does not accept the request or does not file a legal case within three months after the notification date, those who have right to use can file a legal case by including the notification made. The case filed shall be notified to the registrant. However, in face of serious damage, the usage title owners can request the court for provisional injunction without being dependent on the time period. In case a provisional injunction is decided then the indicated period shall not be awaited for a case to be filed.

(3) The record related to the geographical indication being registered is not being placed on the product, packaging or receipt does not clear the act from being an infringement. However the record and signs related to the registration are taken into consideration during the assessment of the fault.

(4) In case that the geographical indication application is published, the applicant has the right to file a legal case due to the infringements listed in this article regarding the geographical indication. If the infringer is informed of the application and its scope, non-publication of the application shall be disregarded. If the court decides that the infringer is in bad faith then it will be accepted that the infringement even before the publication of the application existed.

Acts deemed infringement of the traditional product name right

ARTICLE 54-(1) Usage of the traditional product name in the ways identified as below are deemed infringement of the traditional product name right:

- a) Using the emblem stipulated to be used in accordance with the Article 46 with the product name even if it does not bear the product properties indicated in the traditional product name, and enabling usage benefiting from the reputation of the product or commercial usage of the emblem allocated to the registered product name related to the products resembling the products in the scope of the registration,
- b) Misleading usage of the emblem for the consumers,
- c) Include any incorrect or misleading explanation or indication regarding the

product carrying the properties indicated in the registration on the inner or outer package, promotion of or on any written document related to the product, although it does not carry the product properties indicated in the traditional product name registered and the emblem stipulated to be used in accordance with the Article 46 for the registered product name,.

(2) In case that the infringement of the traditional product name right is detected by the right owners for use of this name, a legal case to be filed can be requested by these persons via informing the registrant through notary public. In case that the registrant does not accept the request or does not file a legal case within three months after the notification date, the right owners for use can file a legal case by including the notification made. The case filed shall be notified to the registrant. However, in face of serious damage, the right owners for use can request the court for provisional injunction without being dependent on the time period. In case a provisional injunction is decreed then the indicated period shall not be awaited for a case to be filed.

(3) In case that the traditional product name application is published, the applicant has the right to file a legal case due to the infringements listed in this article regarding the traditional product name. If the infringer is informed of the application and its scope, non-publication of the application shall be disregarded. If the court decisions that the infringer is in bad faith then it will be accepted that the infringement existed before publication of the application.

CHAPTER THREE

Design

PART ONE

Design Right and Scope

Design and product

ARTICLE 55-(1) Design is the view of the product arising from the properties of all or a part or ornament of the product like line, shape, form, color, material or surface texture.

(2) Product means, except the computer programs, any object manufactured via industrial ways or by hand, a composite product or the parts forming this product, object like package, presentations of more than one objects perceived together, graphical symbols and typographical characters.

(3) Composite product means a product composed of parts that can be modified or replaced by disassembling and assembling.

(4) Design is protected as the registered design if registered in accordance with the provisions of this Law, and in case that it is presented to the public first in Turkey it is protected as non-registered design.

Novelty and distinctiveness

ARTICLE 56-(1) Design is protected within the rights provided by this Law, provided that it has new and distinctive qualification.

(2) If the design of the part of the composite product carries the terms below, it is deemed to have new and distinctive properties:

a) When the part is assembled to the composite product, it should be visible in the normal usage of the composite product.

b) The visible properties of the part should meet the innovative and distinctive qualification.

(3) Normal usage indicated in this Article means the usage by the end user, excluding maintenance, service or repair works.

(4) If same of a design has not been presented to the public in anywhere on the world before

a) The application or priority date for the registered design

b) The first date it is presented to the public for the non-registered design that is considered new. If designs are different by small details they are considered the same.

(5) If the general impression which a design leaves on the informed user is different from the general impression of another design presented to the public or the same user before;

a) The application or priority date for the registered design

b) The first date it is presented to the public for the non-registered design, it shall be accepted that this design has distinctive qualification.

(6) In assessment of the distinctive qualification the degree of freedom of choice the designer had in developing the design shall be considered.

Presentation to the public

ARTICLE 57-(1) Presentation to the public comprises exhibition and placing on the market like sales, usage, description, publication, promotion or similar purpose activities. Disclosure of the design to a third party with a confidentiality term is not deemed as presentation to the public.

(2) A design for which protection is requested, in case that it is presented to the public within twelve months before the application date or priority date by the designer or the designer's successor or a third party with these persons or via misuse of the relationship with the designer or designer's successors, this disclosure does not affect the novelty and distinctive properties of the design.

Protection scope and conditions out of protection

ARTICLE 58-(1) Design owner may use his/her rights arising from this Law against the designs that have no distinctive properties compared to his/her own design.

(2) In assessment of the protection scope, the degree of freedom of choice which the designer had in developing the design shall be considered.

(3) The design protection provided in the scope of this Law shall not harm the protection stipulated in the Law on Intellectual and Artistic Works no. 5846 dated 5/12/1951, in case it meets the terms sought in the said law.,

(4) The conditions below are out of protection scope:

a) Designs contradictory to the public order and general ethics.

b) The visual properties that are mandatory due to the technical function of the

product.

c) The visual properties of the products that are mandatory to be produced at certain form and size, for the product which the design uses or applies to be mounted or connected mechanically to another product.

ç) Designs containing improper use of the sovereignty insignia given in the Paris Convention Article 6ter and marks, blazons, badges or names that are out of this scope but are in the interest of the public, that became public property regarding the religious, historical and cultural values, and to which the related authorities do not give permission for registration.

(5) On the condition to meet the terms in the Article 56, in a modular system composed of different or same units, designs that provide these units to form connections in various, finite or infinite ways shall benefit from the protection.

The scope and limits of the design right

ARTICLE 59- (1) The rights arising from the design exclusively belong to the design owner. Third parties cannot produce, place on the market, sell, import, use commercially or keep for such reasons the design or the product which the design applied to or offer for execution of contracts related to the products which this design is applied to without the consent of the design owner.

(2) Non-registered design gives the right to prevent the acts indicated in the Clause 1 to its owner, only if the same of the design or indistinguishably similar of the design considering the general impression is taken by copying. The design made independently by a designer who in any way cannot reasonably know that

the protected design is presented to the public before his/her own design, is not considered as copied from the design under the scope of the protection.

(3) The acts listed below are out of the scope of design right:

a) Acts that remain limited with special purposes and do not bear commercial purposes.

b) Trial aimed acts.

c) Multiplications with educational or reference purposes, with the conditions of complying with the fairness rules in the commercial practice, not putting the normal usage of the design in danger unnecessarily and giving references.

ç) The equipment that are registered in the foreign countries and are in the marine vessels and air crafts that are temporarily within the borders of Republic of Turkey and the spare parts and accessories imported for using in the repairs of these crafts and the acts of repairmen of these vessels/crafts.

(4) Usage of the parts connected to the outlook of the composite unit with the purpose of repair for giving back the original look to the composite unit and with the condition of not giving false information about the source of these parts, three years after the design was first placed on the market, is not considered as violation of the design right.

(5) Usage of the equivalent parts published by the Ministry of Science, Industry and Technology in the scope of the Clause 4 and within three years as of the date the design is first placed, shall not be considered as violation of the design right.

(6) The provisions of the Clause 2 are applied until the publication of the visual descriptions of the designs for which publication delay is requested.

Rights arising from previous use

ARTICLE 60- (1) Before the application date, design usage right is given to the persons who are domestically using the design which is under the scope of the protection of the registered design and who made independent of the registered design in goodwill for commercial purposes within the country or have taken serious and effective measures for the usage, due to the previous usage, being limited with these preparations, at a degree to meet the reasonable needs of the establishment. The right arising from the previous use shall be recorded in the registry and published in the Bulletin.

(2) The right arising from previous use cannot be extended or transferred via giving licenses. The transfer of this right is possible through the transfer of the relevant establishment.

PART TWO

Application, Review and Registration

SECTION ONE

Design Application, Priority right and Review

Application conditions, classification and multi-applications

ARTICLE 61- (1) The design application shall contain;

a) The application form containing the information regarding the identification of the applicant,

b) The visual explanation that reflects the view of the design and is suitable for multiplication via publishing,

c) The name of the product on which the design is using or applied,

ç) The name of the designer or the names of the designers in the designer group,

d) The information regarding how the registration request right was acquired from the designer or designers,

e) Request for delay of publication, if any,

f) If an attorney is assigned, the information regarding the attorney.

(2) In case that the subject matter of the application is a 2D design and a publication delay request is made in accordance with the Article 66, the sample of the design can be given instead of the visual explanation requested in the Clause 1 Item (b).

(3) In the application also a manual explaining the visual explanation or the sample of the design can be given, and the class of the products which the design is used or applied on can be identified. The product name, class and the information given in the manual within the scope of this article do not affect the protection scope.

(4) In case that the fees regarding the application transactions are not paid and the information regarding the payment is not presented to the Institute in due time, the application shall be deemed not made.

(5) In the classification of the products the design is used or applied on, the provisions of the Locarno Agreement on International Classification of the Industrial Demarks to which we enter by the Cabinet decree no 97/9731 and dated

5/8/1997 are applied.,

(6) The written indications on the visual explanation of the design indicated in the Clause 1 Item (b) do not provide exclusive rights over the concepts they state.

(7) The registration application of more than one design can be done under a multiple application with the condition that the additional application fee is paid. In multiple applications, ornaments being excluded, all the products that the design used or applied on should belong to the same class.

(8) Designs constituting the multiple application or multiple registration are reviewed separately in the enforcement of this Law.

(9) In multiple application if registry request is made for the designs that do not meet the terms indicated in the Clause 7 or if the design count is exceeded the indicated number, the Institute requests separated applications to be made for these designs. For each of the separated applications the application date is the first application date. If priority right was requested in the first application this right shall be given also to each separated application.

(10) The designer has right to request the indication of his/her name, in case the name is not indicated in the application. However the designer may also request to have his/her name kept confidential. If the applicant is not the designer or is one or more of the designers, how the applicant acquired the application right from the designer or designers shall be explained.

(11) The clerical errors and the clear errors of fact in the design application are corrected upon the request of the applicant, as long as they do not cause a change in the design sample.

(12) The number of designs which may be included in a multiple application and the other procedures and principles regarding the application are determined with the regulations.

Priority right and effect

ARTICLE 62-(1) The real persons or legal entities that are citizens of one of the states which is a party of the Paris Convention or the Agreement Establishing World Trade Organization or without being a citizen of such states, residing or having a functioning business organization in one of these states and their successors, within the period of six months from the application they duly made for the registration of a design or utility model to the authorized offices within one of these states, benefit from the priority right in application in Turkey for the same design within the scope of the provisions of the Paris Convention. The priority rights not executed within this period will be dismissed. For benefiting from the priority right it is obligatory to acquire a priority right document from the authorized office of the state in which the first application is filed.

(2) The real persons or legal entities described in the Clause 1 or their successors, may benefit from the priority right in the scope of the principles indicated in the Clause 1 for the design applications which they duly filed in any state that is not a party to the Paris Convention or the Agreement Establishing World Trade Organization.

(3) A later application filed to the same state and is same with the previous first application; at the date of the later application, provided that the previous

application was withdrawn, considered withdrawn or rejected before it is opened to public review and is not leaving any rights behind and does not form a basis for the priority right, is accepted as the first application in the determination of the priority right. The previous application cannot form a basis for the priority request.

(4) About the real persons or legal entities indicated in the Article 3 Clause 1 Item (ç) the provisions of this article are also applied.

(5) The real persons or legal entities indicated in the Article 3 exhibit the design of which the application is filed or the product which the design is applied on in the national or international exhibitions opened in Turkey or in the public or publicly acknowledged international exhibitions opened in the states that are parties of the Paris Convention or the Agreement Establishing the World Trade Organization, may benefit from priority rights to make application in Turkey for six months from the exhibition date.

(6) If the design of which the application is filed or the product which the design is applied on have been exhibited in the exhibition visibly, before the formal opening date, the priority right period starts with the date on which the goods are placed on the exhibition or the services are exhibited.

(7) If there are multiple applications for the product exhibited in an exhibition or for a similar product, the person first exhibits the product, in case that the product is put on the exhibition and is exhibited at the same time, the person who files the first application benefits from the priority rights.

(8) In case that within the period indicated in the Clauses 1 and 5 the application is filed based on the priority right, the applications under the scope the design

application subject to the priority right by the third parties after the priority right incurs and the design registrations in their name shall become void.

Request and term of the priority right

ARTICLE 63-(1) Priority right request must be done together with the application. The documents regarding this request shall be submitted to the Institute within three months after the application date. Otherwise the request for benefiting from the priority right is deemed not made.

(2) The term and results of the priority right arise as of the date of the application in which the priority right is requested in accordance with the Article 62 Clause 1 or as of the dates indicated in the Article 62 Clauses 5 and 6.

(3) In case there are multiple priority right requests for design application, the priority right shall start as of the first valid priority date.

(4) The priority right born of the presentation in an exhibition, does not extend the priority period given according to the Article 62 Clause 1.

(5) The procedures and principles regarding the priority rights are determined with the regulations.

Review

ARTICLE 64- (1) The Institute reviews the conformity of the application to the terms indicated in the Articles 61 to 63. As the result of the review, in case that the decision is given as there is no imperfections regarding the terms indicated in the Article 61 Clause 1 Items (a) and (b), the date of application is finalized as the date

the Institute has received the application.

(2) In case the imperfections detected in the review carried out in accordance with the Articles 61 to 63 are corrected in due time, the application date is finalized as the date the application is first filed. However, in case the imperfections regarding the information and documents listed in the Article 61 Clause 1 Items (a) and (b) are corrected within due time the application date is finalized as the date these imperfections are corrected.

(3) The protection of the design starts from the date on which the application date is finalized.

(4) In case that the imperfections are not corrected in due time the application is deemed not made.

(5) Not correcting the imperfections regarding the priority right will cause only the loss of the priority right.

(6) The Institute shall reject the design registration requests that are

a) Not appropriate for the definition of design or product,

b) Contradictory to the public order or the general ethics,

c) Made by the real persons or legal entities not included in the scope of the Article 3,

ç) Containing improper use of the sovereignty insignia given in the Paris Convention Article 6ter and marks, blazons, badges or names that are out of this scope but are in the interest of the public, that are relevant for public figures regarding the religious, historical and cultural values and to which the related authorities do not give permission for registration,

d) Detected not to be new.

(7) In case that the rejection decisions given in the scope of the Clause 6 Items (b) and (ç) are found related to only a part of the design, rejection decision related only to that part shall be adopted. As the result of the partial rejection, for the registration to continue, the remaining part should meet the protection conditions and keep the design identity.

SECTION TWO

Registration and Publication

Registration and publication

ARTICLE 65-(1) The application that is finalized and not rejected in accordance with the provisions of Article 64 is recorded in the registry as registered design and published in the Bulletin.

(2) Registry is open. Upon request and with the condition that the fee is paid, a registry copy shall be provided.

(3) The procedures and principles regarding the recording to the registry, publication and registration transactions are determined with the regulations.

Delaying publication

ARTICLE 66-(1) The applicant can make a publication delay request together with the application for thirty six months starting from the application or if any, priority date.

(2) The application with the publication delay request and that is not rejected in accordance with the provisions of Article 64 is registered and recorded to the registry. However, the visual explanation of the design and information and documents regarding the application file are kept closed to review of third party.

(3) The application delay request regarding the design recorded to the registry is published in the Bulletin.

(4) The Institute, on the date the publication delay expires or on a previous date upon the request of the right owner, shall open all records and documents related to the application for the examination of third parties and publishes them. However, publication fee should be paid before the publication. If only the sample of the product the design is used or applied on is given during the application, the visual explanation of the design proper for publication should also be submitted. In case these terms are not met in due time, all of the protection for the design recorded to the registry by this Law starting from the application date is deemed not originated.

(5) For an infringement case to be opened within the publication delay period, the information in the registry records and application file should be notified to the defendant party.

(6) The publication date of the design with a publication delay is the date on which the visual explanations are published.

(7) The provisions of this article can also be applied for a part of the designs within a multiple application.

SECTION THREE

Objection and Review of the Objection

Objection to the decision and registration

ARTICLE 67- (1) The applicants may file an objection against the decision given in accordance with the Article 64 within two months of the notification date of the decision in writing and with justification.

(2) Third parties may submit an objection in writing to the registration certificate to be given, by paying the fee, within three months after the publication date of the design registration through justifications that design is not conforming to the definitions within the Article 55 Clauses 1 and 2, not fulfilling terms indicated in the Article 57, is included in the scope of the Article 58 Clause 4 and Article 64 Clause 6 Item (c), that the application is in bad-faith and that it contains unauthorized usage of an intellectual property right.

(3) In case that the fee related to the objection made within the scope of Clause 2 or the information on payment is not delivered to the Institute in due time, the objection is deemed not made.

Review of the objection

ARTICLE 68-(1) The objections made in accordance with the Article 67 shall be reviewed by the Board.

(2) In the review stage of the objection given in accordance with the Article 64 and in cases deemed necessary the view of the applicant shall be taken.

(3) The objections made in accordance with the Article 67 Clause (2) are

notified to the applicant for the applicant to declare opinions. Additional information and documents may be requested the demurrer to be submitted within one month after the notification date. In case that the additional information and documents requested are not submitted within this time period the objection is reviewed within the scope of the current information and documents.

(4) In case that the existence of imperfections in the application is detected in the scope of the Article 64 and regulation provisions during the objection period or during the review of the objection, transactions are continued from the incomplete step and in cases deemed necessary the decisions taken are published in the Bulletin.

(5) In case that the objection made in accordance with the Article 67 Clause 2 is accepted, the effect of the design shall be declared invalid. In case that the objection made on a part of the design with the justification of unauthorized usage of an intellectual property right and the Article 63 Clause 6 Items (b) and (c) are accepted, then the registration of such a part shall be declared invalid. For the continuation of the registration as the result of a partial invalidity the remaining part should meet the protection terms and keep the design identity. In the review stage of the objection made to a multiple application, the design registrations that are not subjected to the objection but seen to be declared invalid from the documents attached to the objection shall be declared invalid ex officio in accordance with the procedure indicated in the Clause 3.

(6) In case that a registration is decided to be invalid in accordance with this

article, the invalidity terms indicated in the Article 79 are born. The invalidity decision is published in the Bulletin.

SECTION FOUR

Protection Period and Renewal

Protection period of the design and renewal

ARTICLE 69- (1) The protection period of the registered designs is five years starting from the date of application. It may be extended up to twenty five years via renewal in five year terms.

(2) The protection period of the unregistered designs is three years from the date on which the design requested to be protected is first presented to the public.

(3) The design registration is renewed upon the request of the design owner and with the condition that the renewal fee is paid and the information on payment is delivered to the Institute in due time.

(4) The renewal request should be made by the design owner within six months before the date the protection period end and the information on the payment of the renewal fee should be submitted to the Institute within the same time period. In case that the request is not made or the information on the payment of the renewal is not submitted to the Institute in this time period, the renewal request can also be done within six months after the date on which the protection period ends with the condition that an additional fee is paid.

(5) Renewal is in effect from the date the previous protection period ends. The

renewal is recorded to the registry and published in the Bulletin.

(6) The design right regarding the designs that are not renewed ends on the date the protection period ends.

PART THREE

Right Ownership and Usurpation

Right ownership

ARTICLE 70-(1) Design right belongs to the designer or his/her successors and is transferable.

(2) If the design application or the design belongs to more than one person, the partnership on the right is determined according to the agreement between parties. If there is no such agreement, then it is determined accordance with the provisions related to the shared property within the Turkish Civil Code no.4721 dated 22/11/2001. Each of the right owners can perform the transactions below independently in his/her own name:

- a) Decide on the share belonging to him/her independently.
- b) Can use the design via notifying the other shareholders
- c) Can file a legal case against the third parties in case that the rights arising from the design are violated in any way. In such a case a notification is made by the plaintiff to the other right owners within a month in order for them to attend the case.

(3) The unanimity of the right owners is mandatory for giving licenses to the

third parties for the usage of the design. In case that the unanimity cannot be reached in the issue of license giving, the court may give the right to issue license to one or more right owners in fairness.

(4) Even if there is more than one person having right on it, it is not possible to divide a design application or a design for its transferring or establishing rights on the parts.

Usurpation of the design

ARTICLE 71- (1) If the application of the design is filed by a person who is not a real right owner or the design is registered in the name of this person or an unregistered design is presented to the public by a person who is not a real right owner, the person who claims to be the actual right owner, reserving the other rights and requests due to the design rights, may request the court for the transfer of the design right to him/her or for acknowledging as the owner of the design.

(2) In case a partial right is claimed on the design; right ownership rewarding in accordance with the Clause 1 and shared property principles can be requested.

(3) The requests indicated in the Clauses 1 and 2 shall become invalid if not claimed within three years after the publication date of the registered design or the date of presentation to the public of the unregistered design. However, in case that the person that is not the actual right owner is in bad faith then the period for invalidation of the right shall not be applied.

(4) The lawsuit filed in accordance with this article and the requests claimed in the lawsuit, the final judgment at the end of the lawsuit or all the conditions that

end the lawsuit in any way shall be recorded to the registry and published in the Bulletin upon request and will come in effect and bare results against the good-willed third persons as of the date on which it is recorded to the registry.

(5) In case that the application is registered while the legal case continues, the application usurpation case turns into a design usurpation case.

Results of ending the usurpation

ARTICLE 72- (1) In case that the ownership of the design changes in accordance with the provision of the Article 71, all of the rights of the third parties regarding this design ends with this change being recorded in the registry.

(2) If the person who is later found out not to be the actual right owner or the person who executes a license agreement with this person, had started to use the design before the date on which the actual right owner is recorded in the registry or made serious preparations for the usage, may request the actual right owner for a non-exclusive license to be given within two months. This period starts from the date on which the Institute informs the related persons of that the actual right owner is recorded in the registry.

(3) If the person who is later found out not to be the actual right owner or the person who executes a license agreement with this person, was in bad faith when starting to use or during serious preparations for usage, the provision of the Clause 2 shall not applied.

PART FOUR

Designs of the Employees

Right ownership in service relationship and other transaction of business relationships

ARTICLE 73-(1) Unless otherwise is agreed due to the contract between them or the contents of the business, the owner of the designs made by the employees in a business while performing the work that they are responsible for or during the business relationship depending mostly on the experience and works of the establishment, shall be the employer.

(2) In case of request, the right owner of the designs that are out of the scope of the Clause 1, made by the employees making use of the information and tools subject to the general activity of the business where they work, shall be the employer.

(3) The provisions related to the designs of the employees are also applied to the designs of the students and trainees working without pay independent of the period and the designs that are created by the teaching staff indicated in the Higher Education Law no. 2547 dated 4/11/1981 Article 3 Clause 1 Item (1) as the result of scientific works or researches.

(4) The right owner in the designs made in the frame of the business transaction contracts that are outside of the service relationship is determined within the scope of the provisions of the contract executed between the parties.

The price in the right request regarding the demarks made by the employees

ARTICLE 74- (1) The employee has the right to claim a price that shall be determined by considering the importance of the design which the employee made in the scope of the Article 73 Clause 2. If the parties cannot agree on the price it shall be determined by the court.

(2) The sharing of the income gained from the designs made by the teaching staff in the scope of the Article 73 Clause 3 between the higher education institute and the designer, shall be determined by the board of directors of the related higher education institute in a way that at least half of the income is given to the designer.

PART FIVE

License

License

ARTICLE 75 - (1) Design right may constitute subject matter of a license agreement.

(2) License can be given as exclusive license or non-exclusive license. Unless otherwise agreed on the contract, license is not exclusive. In non-exclusive license contracts, licensor can use the design himself and also can issue other licenses to third parties. In exclusive license contracts, licensor cannot give licenses to others and cannot use the license himself unless explicitly reserved its rights.

(3) Unless otherwise agreed on the contract, license owners cannot transfer their

rights born due to the license to third parties or cannot give sub-licenses.

(4) Unless otherwise agreed on the contract, licensee may act in anyway regarding the usage of the design during the license period. Licensee is obligated to follow the terms written in the license contract. Otherwise, licensor may claim the rights due to the design against the licensee.

Responsibility arising from the transfer of title or giving license

ARTICLE 76-(1) If it is later understood that the person who transfers the rights due to the application or registration or gives licenses, is not authorized to perform such transactions, said person shall be responsible of this situation against the related parties.

(2) In case that the design application is withdrawn, rejected, terminated or invalidity of the design registration is decided, if the parties did not stipulate a greater responsibility with a contract for the licensor or transferor of the rights, the provisions of the Article 79 shall be applied. The request period for the compensation incurring from the provisions of this article starts on the finalization date of the court decision that is the basis of the lawsuit on the responsibility.

PART SIX

Termination of the Right,

SECTION ONE

Invalidity

Invalidity conditions

ARTICLE 77- (1) The court shall decide that the design is invalid in cases below:

a) If it is proven that it is not conforming with the definitions in the Article 55 Clauses 1 and 2, it does not fulfill the terms indicated in the Articles 56 and 57, it is included in the scope of the Article 58 Clause 4 and Article 64 Clause 6 Item (c), the application is made in bad faith and it contains an unauthorized usage of an intellectual property right.

b) If it is proven that the right ownership belongs to another person or other persons.

c) If the application date of a design that is same or similar and is disclosed later to the public is before the application date of a registered design.

(2) If the invalidity request for a part of a design is accepted with the justification of the Article 63 Clause 6 Items (b) and (c) and unauthorized usage of the intellectual property rights, the registration of that part is declared invalid. As the result of a partial invalidity, for the continuity of the registration, the remaining part should provide the protection conditions and keep the design identity.

Invalidity request

ARTICLE 78-(1) Invalidity of a design may be requested by those who have interests except the cases listed in the Clause 2.

(2) Invalidity of a design may be claimed, according to the Article 77 Clause 1 Item (c) only by the previous right owner, and according to the Articles 70 and 73 only by the persons who have the design right.

(3) A lawsuit can be filed regarding the invalidity of the design during the protection period or within the five years following the end of the design right.

(4) Invalidity lawsuit shall be filed against the person registered as the design owner in the registry. In order to ensure the persons seen as right owners on the design in the registry to participate in the case, a notification shall be additionally made to these persons.

(5) Invalidity lawsuit in the unregistered designs shall be filed against the person claiming to be the right owner.

Effect of the invalidity

ARTICLE 79- (1) The decision regarding the invalidity of the design is retrospectively effective and the protection for the design born by this Law shall be deemed never born.

(2) The compensation requests of the persons who faced damages due to gross negligence or bad-faith acts of the design owner being reserved, the retrospective effect of the invalidity shall not affect the conditions below:

a) The decisions that are finalized and applied, given due to infringement of the rights provided by the design before the invalidity is decided.

b) The contracts executed and applied before the invalidity is decided.

(3) Reimbursement of all or part of the price paid in accordance with the

contract indicated in the Clause 2 Item (b) can be requested in fairness.

(4) The finalized decision on the invalidity of the design is effective against everyone. After the finalization of the invalidity decision the court sends ex officio this decision to the Institute. The invalidated design shall be deleted from the registry by the Institute and published in the Bulletin.

SECTION TWO

Other Termination Conditions and Results

Termination and results

ARTICLE 80- (1) Design right ends in case of realization of one of the following reasons;

- a) Expiration of the protection period or registration not being renewed,
- b) Right owner waiving its rights.

(2) Applicant or registration owner can waive all or part of the design right.

(3) The waiver should be notified to the Institute in writing. The waiver is in effect as of the date of recording to the registry and is published in the Bulletin.

(4) Without the consent of the right and license holders recorded in the registry the design owner cannot waive this right.

(5) If a right ownership is claimed on the design by a third party and the injunction taken in this matter is recorded in the registry, the rights born of the design cannot be waived without the consent of this party.

PART SEVEN

Infringement of the Design Right

Acts deemed infringement of the design right

ARTICLE 81-(1) The acts listed below are deemed infringement of the design right:

a) Without the consent of the design owner, to produce, place on the market, sell, offer for contract, use for commercial purposes, keep for these purposes, deliver to the field of trade in another way, or use in import transactions the same or indistinguishably similar in general impression of the product which the design in the scope of protection according to the provisions of this Law is used or applied on.

b) To extend or transfer to third parties, without consent, the rights given by the design right owner through license.

c) To usurp the design right.

(2) If the application is registered and published in accordance with the Article 65, the registrant has right to file a lawsuit due to the infringements listed in this article regarding the design right. If the infringer has been notified of the application and its scope the application being published shall not be disregarded. If the court decides that the infringer is in bad faith the existence of the infringement before the publication will be also accepted.

(3) The failure to place the record regarding that the design in the scope of protection is registered on the product, packaging or receipt does not remove the

acts listed in this article from being infringement of the design right.

(4) For the unregistered demarks, if the design is presented to the public in accordance with the Article 57, the right owner is authorized to file a lawsuit regarding the infringement of the design right.

CHAPTER FOUR

Patent and Utility Models

PART ONE

Patent Right

SECTION ONE

Patentability Terms

Patentable inventions and exceptions of the patentability

ARTICLE 82- (1) To the invention in every field of technology a patent is awarded, provided that they are new, involving an invention step and applicable in industry.

(2) The ones listed below are not deemed invention. In case that the patent application or the patent is related to the subjects and activities indicated below only these subjects and activities are excluded from the patentability:

- a) Discoveries, scientific theories and mathematical methods.
- b) Intellectual activities, business activities or plans, rules and methods related to games.

c) Computer programs.

ç) Products with esthetic quality, literature and art works and science works.

d) Presentation of the information.

(3) The inventions indicated below shall not be awarded a patent:

a) Inventions contradictory to the public order or general ethics.

b) Except the microbiological processes or the products obtained as the result of these processes, essentially biological processes regarding the plant types or animal races and production of plants and animals.

c) All the treatment methods including the diagnostic methods and surgical methods to be applied to the human or animal body.

ç) Discovery of only one of the elements of the human body in the various steps of the formation and development, including the human body and one gene sequence or partial gene sequence.

d) Human cloning processes, processes for changing gem line genetic identity of human beings, usage of human embryo for industrial or commercial purposes, processes for changing genetic identity that would cause suffering to the animals without providing important benefits for humans or animals and the animals obtained as the result of these processes.

(4) In the scope of the Clause 3 Item (a) the commercial use of an invention being prohibited only by the legislation does not mean that this usage is contradictory to the public order or general ethics.

(5) In the Clause 3 Item (b), the microbiological process means any process that

contains microbiological materials, performed with a microbiological process or as a result of which a microbiological material is formed within; the essentially biological process means the method of plant or animal production formed of an completely natural event like hybridization or selection.

(6) The provision in the Clause 3 Item (c) shall not be applied to the products, especially substance or compositions, used in any of the methods listed in this Item.

Novelty, inventive step and industrial applicability

ARTICLE 83- (1) The invention that is not included in the known state of the art is considered as new.

(2) The known state of the art covers all the things that are available to the public, disclosed in written or oral promotion or explained via usage or any other way in anywhere of the world before the application date.

(3) The first contents of the national patent and utility model applications which have been published at the date of application or published after this date and have a previous date compared to the application date are considered as the known state of the art. This provision also covers,

a) The patent and utility model applications among the international patent applications made in accordance with the Patent Cooperation Treaty to which we entered with the Cabinet Decree no. 96/7772 dated 5/1/1996, made entry to the national phase in accordance with the terms indicated in the regulation according

to the Patent Cooperation Treaty articles 22 and 39,

b) European patent applications based on the international application, that meets the requirements in the European Patent Convention on the Grant of the European Patents article 153 clause 5, to which we entered with the Cabinet Decree no. 2000/842 dated 7/6/2000, and the European patent applications in which the Turkey is designated in accordance with the European Patent Convention article 79 clause 2 and the related determination fee is paid.

(4) Considering the known state of the art, the invention that is not obvious according to the expert in the related technical field is considered to involve an invention step.

(5) The contents of the applications and documents considered as the known state of the art in accordance with the clause 3 are not considered in the evaluation of the invention step.

(6) If the invention is qualified to be produced or used in any branch of the industry including agriculture, it is considered to be applicable to industry.

The disclosures not affecting the grant of patent or utility model to an invention

ARTICLE 84-(1) Any disclosures being made in the conditions listed below and within the twelve months before the application date or if priority right is requested, within the twelve months before the priority right date do not affect the grant of patent or utility model to the invention:

a) Disclosure is made by the inventor.

b) Disclosure is made by the authority to which patent application is submitted and the information declared by this authority;

1) is within another application of the inventor and is disclosed although the said application should not be disclosed by the related authority.

2) is placed in an application made by a third party that obtained the information from the inventor directly or indirectly, without the consent or knowledge of the inventor.

c) is disclosed by a third party who acquires information from the inventor directly or indirectly.

(2) In accordance with the Clause 1, every person that has the right to request patent or utility model on the date on which the application is made is considered the inventor.

(3) The results born of the application of the Clause 1 is not limited with time and can be claimed anytime.

(4) The party claiming application of the Clause 1 is obligated to prove that the terms are fulfilled or expected to be fulfilled.

SECTION TWO

Scope of the Patent Right

Scope and limits of the patent right

ARTICLE 85- (1) Patent owner may benefit from the patent right regardless of the place, technological field of the invention and whether the products are imported or domestically produced.

(2) Patent owner has right to request prevention of the acts listed below in case they are performed without consent:

a) Production, sales, usage, import or being kept for these purposes with any reason other than personal need of the product subject to patent.

b) Usage of the method subject to patent

c) Offering the usage of the method patent that is known or needed to be known to be forbidden.

ç) Sale, usage, import or being kept for these purposes with any reason other than personal need of the products obtained directly with the method subject to patent.

(3) The acts listed below are outside of the scope of the right provided by the patent:

a) Acts limited with private purposes and do not carry any industrial or commercial purposes.

b) Experimental purpose acts containing the invention subject to patent.

c) Experimental purpose acts containing the invention subject to patent, including registration of the drugs and the tests and experiments required for this,.

ç) Preparation and usage of the drugs made in the pharmacies only for production of a prescription without mass production and acts related to drugs prepared in this way.

d) The usage of the invention subject to patent in construction or operation of the ship, space vessel, plane or land transport vehicles of the states that are a party to the Paris Convention or providing the needs of these vehicles, provided that the said vehicles are temporarily or by chance within the borders of Republic of Turkey.

e) Acts related to the air vehicle of a state which is stipulated in the International Civil Aviation Treaty article 27, approved by the Law no. 4749 dated 5/6/1945 and in which the provisions of this Law are applied.

(4) The small farmer defined in the Law on Protection of Breeder Rights of the New Plant Types no. 5042 dated 8/1/2004, has the right to use the production material that the small farmer obtains from the product as the result of the production made by a patented product sold by the patent owner or with patent owner's consent or procured by a different commercial way, on the land of the small farmer processed by the small farmer, for the new productions to be done again on the land of the small farmer processed by the small farmer. This usage right is subject to the provisions of the Law no. 5042.

(5) The farmer has the right to use the patented brood or other animal reproduction materials sold by or with the consent of the patent owner, with agricultural purposes. This right covers the usage of the animals or other animal reproduction materials for continuing the farmer's own agricultural activity. The procedures and principles regarding the usage of this right are determined with the regulations.

(6) Subject of the patent cannot be used in a way to damage the laws, general

ethics, public order or general health. This usage is also bound to the current or future legal prohibitions and limitations of definite or indefinite term.

Prevention of indirect usage of the invention

ARTICLE 86- (1) Patent owner has the right to prevent third persons from giving the elements or tools related to a part constituting the basis of the invention and enabling implementation of the invention subject to patent to the persons not authorized to use the invention subject to patent. For this provision to be applied, the said third parties should know that these elements or tools are sufficient for implementation of the invention and know that they will be used with this intent or this condition should be sufficiently apparent.

(2) If the elements or tools are products that can easily be found in the market, the provision of the Clause 1 is not applied unless the third parties encourages the said unauthorized persons for performing the indicated acts.

(3) The persons performing the acts indicated in the Article 85 Clause 3 Items (a), (b), (c) and (ç) are not considered among the persons unauthorized to use the patent in accordance with provisions of Clause 1.

Rights arising from previous use

ARTICLE 87- (1) Against the persons using or taken substantial and actual measures for usage of the invention in goodwill within the country before or on the application date, the patent applicant or the patent owner have no rights to prevent them from continuing to use the invention subject to the patent in the same way or

start to use it in accordance with the measures taken. However, the continuation of usage or usage in accordance with the taken measures of the invention subject to the patent of the said persons can only be to an extent that will meet the reasonable requirements of the establishment they own. The rights arising from the previous use cannot be extended by giving licenses and this right can only be transferred together with the establishment.

(2) The acts related to the products offered for sale by the persons mentioned in the Clause 1 are outside of the scope of the right provided by the patent.

Legal monopoly

ARTICLE 88-(1) When a patent is granted for an invention related to the issues that reside in the activity field of the public business enterprises of which all of the capital belong to the State and which are established to produce and market the goods and services in characteristic of monopoly via protecting public interest and which, due to this public service, have monopoly rights regarding the goods and services they produce, the usage of the invention by the monopoly owner is bound to the consent of the patent owner. The monopoly owner is responsible for acquiring the usage rights of and applying the invention that can provide great deal of economic benefits and an important technical improvement in the field of industry where they operate.

(2) The monopoly owner has right to request the patent owner to give consent for acquiring the usage of the invention subject to the patent. When the monopoly owner declares such an offer, the patent owner may request him to take over the

patent. The price to be paid for usage of the invention subject of the patent or transfer of the patent to the monopoly owner is determined by the parties. In case that the parties cannot agree the price is determined by the court.

(3) The provisions of the Clause 2 being reserved, if the monopoly is formed after the granting of the patent, the patent owner has the right to request the monopoly owner to take over the business or also the installment that the invention is used in. In case the parties cannot agree the price is determined by the court.

(4) If an invention subject to patent cannot be used due to a current legal monopoly, no annual fees shall be paid for the said patent.

Scope of the protection

ARTICLE 89- (1) The scope of the protection provided by a patent application or a patent shall be determined with claims. However, in interpretation of the claims descriptions and drawings are used.

(2) The interpretation of the claims is not limited to the meaning which the used words provide. However, the claims, in determining the scope of the protection, cannot be extended as to cover the properties that are thought by the inventor but not requested in the claims, whereby arise in the interpretation of the descriptions and the drawings by a person expert in the related technical field.

(3) The claims shall be interpreted as to provide the patent owner or applicant with the protection and give a reasonable degree to the third parties regarding the scope of the protection.

(4) The scope of the protection provided by the patent application is determined

with the claims of the application that are published for the period until the patent is granted. However the granted version or the changed version as the result of the objection and invalidity transactions of the patent determines retrospectively the protection that the application provides, provided that the protection field is not extended.

(5) In determining the scope of the protection provided by the patent application or patent, also the elements that are qualified as equivalent to the elements indicated in the claims on the date when the existence of an infringement is claimed are also considered. If an element in essence provides the same function with the element requested in the claims, realizes this function in the same way and provides the same result, it is accepted in general the equivalent of the element requested in the claims.

(6) For determining the scope of the claim, during the transactions related to the grant of the patent or during the validity of the patent, in determining the scope of the protection the declarations of the applicant or owner of the patent are taken into consideration.

(7) If the patent contains samples related to the invention, the claims cannot be interpreted limited to these samples. Especially in cases that the additional properties that the product or method have and not being on the samples disclosed in the patent, not covering the properties on these samples or not realizing all purposes and properties indicated in these samples, the production or method shall not be excluded from the protection scope provided by the claims.

PART TWO

Application, Granting Patent and Objection

SECTION ONE

Application and Priority right

The required documents for the patent application and the finalization of the application date

ARTICLE 90-(1) A patent application contains

- a) Application form,
- b) Description explaining the invention subject,
- c) Claims,
- ç) Drawings referenced in the instructions or requests,
- d) Abstract
- e) Information showing the application fee is paid.

(2) The description, claims, abstract and drawings, if any, can be submitted in one of the official languages of the states that are parties to the Paris Convention or the Treaty Establishing World Trade Organization or applying the reciprocity principle.

(3) The application date is finalized and the application is put into process as of the date all of the elements below are delivered to the Institute:

- a) The patent granting request.
- b) The identification and contact information of the applicant.
- c) The description written in Turkish or any one of the languages indicated in the

Clause 2 or reference to a previous application.

(4) If the invention is based on a genetic source or a traditional knowledge connected to the genetic source, the explanation regarding where this source is taken shall be given in the patent application.

(5) The inventor is indicated in the application. However the inventor may request his/her name to be kept confidential. In case that the applicant is not the inventor or is one or several of the inventors, these persons are obliged to explain how they acquired the patent application right in the application.

(6) The inventor has the right to request the applicant or patent owner to be identified as the inventor and his/her name to be indicated.

(7) The procedures and principles regarding the application are determined with the regulations.

Unity of invention and divided application

ARTICLE 91- (1) The patent or utility model application contains the group of inventions came together as to form a single invention or a single general inventive idea. The application that is not conforming to this provision shall be separated into divided applications upon the request of the applicant or the notification of the Institute.

(2) For each application a divided application can be made upon the request of the applicant regardless of the unity of the invention.

(3) The divided application shall be filed as not exceeding the scope of this application related to the application of which the transactions are continuing. The

annual fees of the previous years shall be also paid along with the divided application.

(4) The application date for each of the divided applications is the date of the first application. If priority right is requested in the first application this right is granted to each divided application.

(5) Other procedures and principles regarding the divided applications are determined with the regulations.

(6) The divided applications filed non-conforming to this article shall not be processed.

Explanation of the invention, description, claims and abstract

ARTICLE 92- (1) The invention shall be explained as sufficiently clear and complete to provide the application of the invention by a person expert in the technical field related to the subject of the invention, with a description, claims and drawings referenced in the description or claims, in the patent application.

(2) If the invention is related to a biological material that is not available to the public and that cannot be explained sufficiently enough in the patent application for implementation of the invention by the expert in the related technical field or includes usage of such a material, it is considered that the invention is explained in accordance with the Clause 1, provided that this material is deposited.

(3) If the biological material deposited in accordance with the Clause 2 becomes unavailable in the deposit institute, this availability is considered as not been interrupted, provided that this material is re-consigned in accordance with the

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure to which we entered with the Cabinet Decree no. 97/9731 dated 5/8/1997, and the copy of the document given by the deposit institute regarding the delivery of the material is submitted to the Institute within four months after the deposit date, indicating the number of the patent application or certificate.

(4) The basis of the claims should be the description and the claims should define the issue requested to be protected, be clear and short and not exceed the scope of the invention defined in the description.

(5) The abstract carries only the purpose of giving technical information. It shall not be used for other purposes especially for determining the protection scope or enforcement of the Article 83 Clause 3.

(6) The terms regarding the depositing of the biological material are determined with the regulations.

Priority right and its effect

ARTICLE 93- (1) Any person, or his successor, that has duly applied for a patent or utility model in any state, including Turkey, that is a party of the Paris Convention or Agreement Establishing the World Trade Organization, for the purpose of applying for the same invention in Turkey, benefits from the priority right within a period of twelve months from the date when the first application is filed.

(2) Each application equivalent to the national application, duly filed according

to the national legislation of any state that is a party of the Paris Convention or Agreement Establishing the World Trade Organization or with the two or multiple party agreements the same state have executed or according to this Law, shall give rise to the priority right.

(3) The duly filed national application is a sufficient application to take the date of application, whatever the result of the application may be, as the application date.

(4) A later application filed to the same state and which is same with the previous first application on the date of the later application, provided that the previous application was withdrawn, considered withdrawn or rejected before it is opened to public examination and is not leaving any rights behind and does not form a basis for the priority right, is accepted as the first application in the determination of the priority right. The previous application cannot form a basis for the privilege request.

(5) If the first application is filed to the industrial property authority of a state that is not a party to the Paris Convention or the Agreement Establishing the World Trade Organization, provided that this authority accepts that a first application filed in Turkey incurs a priority right under the equivalent effects and terms indicated in the Paris Convention, in accordance with the reciprocity principle the provisions of the paragraph 1 are applied to this application.

(6) The real persons or legal entities that exhibit the product covering the subject of the patent or utility model in the national or international exhibitions opened in Turkey or in the public or publicly acknowledged international

exhibitions opened in the states that are parties of the Paris Convention benefit from priority rights to file application in Turkey to be granted patent or utility model for twelve months from the exhibition date.

(7) The priority date shall have the effect of the application date in application of the article 83 clauses 2 and 3 and the article 109 paragraph 3.

Requesting and term of the priority right

ARTICLE 94- (1) Priority right request shall be done together with the application or within two months after the application date via paying the fee and the documents related to this request shall be submitted to the Institute within three months after the application date. Otherwise the request for benefiting from the priority right is deemed not made.

(2) In the application, regardless of being originated from different countries, multiple priority rights can be requested. In proper condition, more than one priority right can be requested for each request. In case that multiple priority rights are requested, the periods counting starting from the priority date start from the earliest priority date.

(3) In case multiple priority right requests are made, the priority right covers only the elements included in the application or applications the priority right arise from.

(4) Even if particular elements of the invention for which the priority right is requested are not present in the requests of the patent application the priority right arises from, the priority right is accepted also for these elements, provided that the

patent application that the priority right arises from explains these elements as a whole.

(5) The procedures and principles regarding the priority rights are determined with the regulations.

SECTION TWO

Grant of Patent

Examination of the application in conformity to the formal requirements

ARTICLE 95-(1) If any one of the elements indicated in the Article 90 Clause 3 is missing the application shall not be approved for process.

(2) If in the application that is put into process, at least one of the elements indicated in the Article 90 Clause 1 is missing or the elements are delivered in a foreign language in accordance with the Article 90 Clause 2, without a need for notification, the imperfections shall be corrected or the translations to Turkish shall be submitted within two months after the application date. Otherwise the application is deemed withdrawn.

(3) The Institute examines the application of which the elements indicated in the Article 90 Clause 1 are complete or the elements are completed in accordance with the Article 90 Clause 2, regarding the conformity to the Article 90 Clauses 4 and 5 as well as the other procedural requirements defined by the regulations.

(4) If the application is not conforming to the formal requirements, the applicant is asked to correct the imperfections within two months after the notification date.

In case the imperfections are not corrected within this period the application shall be rejected.

(5) If the application is conforming to the formal requirements or the imperfections are corrected within due time, the search report is issued in accordance with the article 96.

Search request, issuance and publication of the search report

ARTICLE 96- (1) The applicant makes a search request with the application or within twelve months after the application date via paying its fee. Otherwise the application is deemed withdrawn.

(2) If the applicant makes a search request in accordance with the Clause 1 and if the application is conforming to the formal requirements or the imperfections are corrected within due time, the search report shall be issued and informed to the applicant and published in the Bulletin. The search report shall be published in the Bulletin separately if the application has already been published in accordance with the Article 97 and if not it shall be published together with the application.

(3) If the subject of the application is within the scope of the Article 82 Clauses 2 and 3 or the description or all of the claims are not being clear enough and thus prevent the issuance of the search report, the search report is not issued. The applicant shall be requested to submit his/her objections or the modifications in the application within three months after the notification date. If there are no objections within this period, or the objection or the modifications submitted are not accepted by the Institute the application shall be rejected. If the objection or the

modifications submitted are accepted then the search report shall be issued and notified to the applicant and published in the Bulletin.

(4) Cabinet is authorized to decrease the search request period of twelve months indicated in the Clause 1 down to its half.

(5) The procedures and principles regarding the requesting the search report and issuance of the search report are determined with the regulations.

Publication of the application and effects

ARTICLE 97- (1) Upon the completion of the eighteen month period after the date of application or, if any, priority or before the end of this period upon the early publication request from the applicant, patent or utility model application shall be published in the Bulletin.

(2) Third parties can submit their views on the patentability of the invention subject to patent application starting from the date when the patent application is published. However these persons cannot be a party to the transaction within the Institute in this step.

(3) If the patent is granted before the end of the eighteen month period indicated in the Clause 1, the patent application is published together with the patent.

(4) The protection provided with the patent in accordance with the Law is provided to the applicant temporarily starting from the date when the patent application is published in the Bulletin.

(5) If the person who is using the invention subject to the application without the consent of the applicant is made aware of the patent application and its scope

then the protection indicated in the Clause 4 becomes also valid before the publication date of the application.

(6) If the invention subject to patent application is related to the microorganisms, the protection starts when the microorganism becomes available.

(7) In case that the patent application is withdrawn, deemed to be withdrawn or rejected, the results indicated above Clauses are deemed not born.

(8) The procedures and principles regarding the publication of the application and the third parties submitting views are determined with the regulations.

Examination request, examination report issuance and granting the patent

ARTICLE 98- (1) The applicant requests the examination to be done via paying its fee within three months after the notification date of the search report. Otherwise the application is deemed withdrawn.

(2) The institute, upon the review request of the applicant, reviews the conformity of the application and the related invention to the provisions of this Law.

(3) If the application or the related invention is not conforming to the provisions of this Law, the applicant is notified to submit of the opinion and make amendment in the condition that they would not exceed the scope of the application and these notifications shall be repeated when deemed necessary. However the number of notifications in this regard cannot exceed three.

(4) A three month period after the notification date is given to the applicant for submitting opinion or making amendment for the notification indicated in the

Clause 3. In case that no opinion is submitted or no amendment is made within this period the application is deemed withdrawn.

(5) If in the examination report issued as the result of the examination, the application and the related invention are indicated as conforming to the provisions of this Law, the patent granting shall be decided and notified to the applicant, and this decision and the patent are published in the Bulletin.

(6) If amendment is needed to be done for the patent to be granted according to the examination report, the amendment is asked to be done within two months after the notification date. If the amendment made is accepted the patent granting is decided, this decision is notified to the applicant, and this decision and the patent are published in the Bulletin. If the amendment is not done or the amendment made is not accepted by the Institute the application is deemed withdrawn, this decision is informed to the applicant and published in the Bulletin.

(7) The issued certificate is given to the patent owner, if it is requested after the publication related to the granting of the patent and the certificate issuance fee is paid.

(8) In the examination report, if the application and the related invention are indicated to be nonconforming to the provisions of this Law, the application is rejected by the Institute, and this decision is notified to the applicant and published in the Bulletin.

(9) Granted patent cannot be interpreted as that a guarantee is given by the Institute in the issue of validity and utility of the patent, and it also does not create a responsibility for the Institutes.

(10) The procedures and the principles regarding the examination request, issuance of the examination report and granting of the patent are determined with the regulations.

SECTION THREE

Objection and the Review of the Objection

Objection and the review of the objection

ARTICLE 99- (1) Third parties can object to the patent by paying its fee, within six months after the decision of patent grant is published in the Bulletin, claiming at least one of the justifications below;

a) Patent subject is not carrying the patentability conditions in accordance with the Articles 82 and 83,

b) The invention is not sufficiently explained in accordance with the Article 92 Clauses 1 to 3,

c) The patent subject exceeded the scope of the initial application or in case that the patent is based on a divided application filed in accordance with the Article 91 or an application filed in accordance with the Article 110 Clause 3 Item (b), it exceeded the scope of the first state of the initial application.

(2) In case that the fee related to the objection is not paid within the period indicated in the Clause 1 or the objection is not made in accordance with the terms indicated in the regulations the objection is deemed not made.

(3) In case that there are no objections made or the objections were deemed not

made, the decision on granting the patent is finalized and the final decision is published in the Bulletin.

(4) The Institute notifies the objection to the patent owner. The patent owner can submit his/her opinion or make amendment in the patent within three months after the date of this notification. The objection is reviewed by the Board by also taking into consideration the opinion and amendment requests of the patent owner.

(5) If the Board comes to the opinion that the patent or its amended version is conforming to this Law, it upholds decision for the continuation of the patent or if any, the amended version of it. If the opinion that it is nonconforming, it upholds decision for the invalidity of the patent and in this case the invalidity has the consequences indicated in the Article 139. The invalidity decision is published in the Bulletin.

(6) If the Board comes to the opinion that the patent or its amended version is partially conforming to this Law then it shall confirm the validity of that part of the patent, requests the patent owner to perform the necessary amendment within two months after the notification date. If no amendment is made or the amendment made is not accepted then the invalidity of the patent is decided and in this case the invalidity has the consequences indicated in the article 139. The invalidity decision is published in the Bulletin.

(7) The final decision as the result of the objection is published in the Bulletin. In case it is decision that the patent shall continue with its amended state in accordance with the Clauses 5 and 6, the amended version of the patent is published in the Bulletin.

(8) The procedures and principles regarding the objection and review of the objection are determined with the regulations.

Objection to the decision of the Institute

ARTICLE 100- (1) The Article 99 provisions being reserved, the patent applicant, patent owner or related third parties can demur to the decision taken by the Institute within two months after the notification date of the decision. The objections made in the scope of this article are reviewed by the Board.

SECTION FOUR

Protection Period and Annual Fees

Protection period and annual fees

ARTICLE 101- (1) The protection period of the patent is twenty years, starting from the date of application and that of the utility model is ten years. These periods cannot be extended.

(2) The annual fees required for the patent application or patent protection are payable during the patent protection period starting from the end of the second year after the application date and on due date in each following year. Due date is the month and day of the application date.

(3) If the annual fees are not paid on the due indicated in the Clause 2, they can be paid within the following six months together with an additional fee.

(4) In the case that the annual fees are not paid within the period indicated in the

Clause 3, patent right is terminated as of the due date of this fee. The notification regarding the termination of the patent right shall be done and this status is published in the Bulletin. In case that a compensation fee is paid within two months after the notification regarding the termination of the patent right, the patent right is revalidated as of the date of the payment and it is published in the Bulletin. The notification regarding the termination of the patent right shall be made within one year starting on the due date on which the patent right is terminated.

(5) Patent being revalidated does not affect the acquired rights of the third parties that acquired rights as a result of the termination of the patent right. The rights of the third parties and their scope are determined by the court.

PART THREE

Transactions Related to the Patent Process

Patent application and examination of the patent by third parties

ARTICLE 102- (1) Patent applications which have not yet been published cannot be examined by third parties without the written consent of the applicant.

(2) The third parties who prove that the applicant wants to claim the rights provided by the application against them, can examine the unpublished patent application without the consent of the applicant.

(3) In case that a divided application done in accordance with the Article 91 or a new patent application done in accordance with the Article 110 Clause 3 Item (b)

is published, the previous patent application can be examined by third parties without the consent of the applicant before the publication of the application.

(4) The procedures and principles regarding the patent application and examination of the patent by third parties are determined with the regulations.

Amendments and corrections to the patent application and patent

ARTICLE 103- (1) Patent application can be amended by the applicant during the processes followed within the Institute, provided that it does not exceed the scope of the initial application.

(2) If the patent is objected, patent can be amended by the patent owner until the final decision regarding the objection is given by the Institute, provided that it does not exceed the scope of the protection provided by the patent.

(3) Clerical errors and clear errors of fact on the patent application or patent documents are corrected upon request.

(4) The procedures and principles regarding the amendments and corrections on the patent application and the patent are determined with the regulations.

Conversion of the patent application to a utility model application and a utility model application to a patent application

ARTICLE 104- (1) A patent applicant can request the conversion of his/her application to a utility model application with ongoing processes. In case of such a request, the Institute notifies the applicant on the requirements that the necessary

documents should be submitted and the search fee should be paid and a search request should be made within one month after the notification date. In case that the required term is not met within this period, the conversion request is deemed not made and the application continues to be processed as a patent application. In case that the required term is met within this period, the provisions of the Article 143 Clauses 6 to 11 are applied on the application.

(2) A utility model applicant can request the conversion of the utility model application to a patent application within three month after the date of notification of the search report. In case of such a request the Institute notifies the applicant on the requirements that the necessary documents should be submitted and the search fee should be paid and a search request should be made within one month after the notification date. In case that the required terms are not met within this period, the conversion request is deemed not made and the application continues to be processed as a utility model application. In case that the required terms are met in this period the provisions of this Law regarding the granting of patents are applied.

(3) In case the application is published, the decision on acceptance of the conversion of the patent application to a utility model application or the utility model application to a patent application is published in the Bulletin.

(4) In case of conversion of the patent application to a utility model application or the utility model application to a patent application, if priority right is requested for the initial application the same priority right is provided for the converted application.

(5) The reconversion applications made for the applications converted from a patent application to a utility model application or from a utility model application to a patent application shall not be put into process.

(6) The procedures and principles regarding the conversion of the patent application to a utility model application or the utility model application to a patent application are determined with the regulations.

Withdrawal of the patent application

ARTICLE 105-(1) Patent application can be withdrawn anytime by the applicant before the date of announcement of the patent grant. The withdrawal of a published patent application is published in the Bulletin. After the publication of the withdrawal of the application the request cannot be cancelled.

(2) The application cannot be withdrawn without the consent of the third parties that have established rights on the patent application in the registry.

(3) In case an unpublished patent application is withdrawn, deemed withdrawn or rejected, a new patent application for the same invention subject can be filed.

(4) If a published application is withdrawn no new applications can be made for the same invention subject.

Recording to the registry and its terms

Article 106- (1) Patent applications and patent are recorded in the registry. Registry is open to the public. In case of a request and the payment of the fee a certified copy of the patent shall be provided. The procedures and principles

regarding the recording to the registry, publication and registration transactions are determined with the regulations.

(2) The provision of the Article 111 Clause 1 being reserved, the transfers and licenses regarding the patent applications or patents and voluntary or mandatory actions affecting the patent applications or patents come into effect against the good-willed third parties on the date of the recording to the registry.

(3) The rights provided by the patent application or the patent cannot be claimed against good-willed third parties, unless duly recorded to the registry.

(4) The person claiming the rights provided by the patent application or the patent is obligated to notify the patent application number or the patent number to the persons whom the claims are made against.

(5) In case that there are declarations indicating that there exists a protection provided by a patent application or a patent on a product and its labels and packages and also on any of its announcement, commercial or printed documents then the person who placed these declarations is obliged to indicate also the patent application number or the patent number.

Continuation of suspended processes and reestablishment of the rights

ARTICLE 107- (1) In case of not conforming to the periods regarding the procedures related to the patent application, the applicant can request to continue the processes by paying the fee within two months after the date of notification of the consequence of not conforming to the time periods. Otherwise this request is rejected. In case that the request is accepted, the legal consequences of not

conforming to the time period are deemed not born.

(2) Despite the care required by the terms is given in the procedures related to the patent application or patent by the patent applicant or patent owner, in case that a nonconformity to a time period to be followed results in rejection, being deemed to be withdrawn of the patent application, patent being declared invalid in accordance with the Article 99 or loss of any other right, the reestablishment of the rights can be requested. This request shall be done by paying its fee, within two months after the removal of the reason for non-conformity to the time period, provided that no more than one year is passed from the end of the non-conformed time period. Otherwise this request is rejected. In case the request is accepted, the legal consequences of non-conforming to the time period are deemed not born.

(3) In case that the rights are reestablished this is published in the Bulletin. The persons who used or took substantial and actual measures for usage of the invention subject to the patent in Turkey with goodwill during the time between the loss of rights and the reestablishment of these rights, can continue to use the invention for free to an extent that will meet the reasonable needs of the business they own.

(4) It cannot be requested to continue the processes in accordance with the Clause 1 regarding the period given for the payment of the compensation fee indicated in the Article 101 Clause 4 and the period indicated in the Article 93 Clause 1 and the periods related to the procedures defined in the regulation.

(5) The provisions of this article are not applied regarding the periods related to the continuation of the processes or reestablishment of the rights.

(6) The procedures and principles regarding the continuation of the processes and reestablishment of the rights are determined with the regulations.

Incorrect procedures

ARTICLE 108- (1) The invalidity reasons indicated in the Article 138 and 144 being excluded, despite the patent or utility model application or certification does not meet the terms indicated in this Law, the incorrect procedure and the subsequent procedures shall be cancelled and the procedures are continued from the stage where the error was made, in case that the incorrect continuation of the procedures of the application or the certification and this condition are detected upon request or ex officio.

SECTION FOUR

Title Ownership and Usurpation

Patent request right

ARTICLE 109- (1) Patent request right belongs to the inventor and his/her successors and can be transferred to others.

(2) If the invention is done together by more than one person, the patent request right belongs to all of them, unless the parties agreed otherwise.

(3) If the same invention is realized by more than one person independently, the patent request right belongs to the one that made earlier application, provided that the earlier application has been published.

(4) The person who applied first for a patent, unless otherwise is proven, is the owner of the right to request patent.

The procedures related to the right ownership in patent applications.

ARTICLE 110-(1) It cannot be claimed to the Institute that the patent request right does not belong to the applicant. Unless otherwise is proven, the applicant is considered to be the owner of the patent request right.

(2) During patent granting procedures, the person who claims to be the actual owner of the patent request right in accordance with the Article 109 Clause 1 can file a legal case against the applicant and notifies the Institute of this case. Until the finalization date of the decision related to the legal case, the patent granting procedures can be suspended by the court.

(3) In case that the decision given as the result of the legal case regarding the right ownership is finalized in the favor of the plaintiff, the court-approved right owner for the application, within three months after the decision finalization date, can;

a) request the Institute for the patent application to be accepted as his/her application and to be continued.

b) make a new patent application for the same invention, benefiting from the same priority right, if any.

c) request the Institute for the application to be rejected.

(4) The application made in accordance with the Clause 3 Item (b) is processed as of the date of the initial application and in this case the initial application is

deemed void.

(5) If the court-approved right owner makes no requests within three months after the decision finalization date, the application subject to the legal case is deemed withdrawn.

(6) The person who claims that he/she made the invention together with the applicant and he/she has a partial right, can also file a legal case in accordance with the Clause 2 provisions with the request of joint right ownership to be granted.

(7) The provision of Clause 3 is also applied for the divided applications made in accordance with the Article 91.

(8) Until the finalization of the decision to be given as the result of the legal case filed according to the Clause 2, the application cannot be withdrawn without the consent of the plaintiff.

(9) If a patent is granted to the application while the case continues, the case of usurpation of the application becomes into the case of usurpation of the patent.

The usurpation of the patent and the results of ending the usurpation

ARTICLE 111- (1) If the patent is given to other person than the actual right owner, the person claiming to be the actual right owner in accordance with the Article 109 Clause 1 can request the court to transfer the patent to him/her, provided that the other rights and requests provided by the patent remain reserved.

(2) In the case that a partial patent right is claimed, granting of right ownership can be requested according to the Clause 1 and shared property principles.

(3) The rights indicated in the Clauses 1 and 2 can be used within two years after the date of publication regarding the patent being granted, or in cases of bad-faith, until the end of the patent protection period.

(4) The legal cases filed in accordance with this article and the regulation given and finalized as the result of this case are recorded to the registry and published in the Bulletin. As of the date of recording to the registry they come in effect and bare result against good-willed third parties.

(5) In case the right ownership related to a patent changes in accordance with this article, upon the recording of this change to the registry, the licenses and other given rights of the third parties regarding that patent shall be terminated.

(6) The person who is later found out not to be the actual patent owner or made a license agreement with him/her before the legal case related to the patent subject to the case before the date of recording to the registry of the actual patent owner in accordance with the Clause 5, and has started to use or started substantial preparations for usage of the invention, can request the patent owner for a non-exclusive license to be given.

(7) The stipulated period for this request to be made is two months for the person that was seen previously as the patent owner in the registry and four months for the licensee. These periods start with the date on which the Institute notifies the related persons on the recording of the actual patent owner to the registry.

(8) The licenses to be given in accordance with the Clause 6 shall be given with reasonable periods and terms. In determination of these periods and terms the provisions related to the granting of a mandatory license are applied as guidelines.

(9) If the patent owner or the licensee is in bad-faith while starting to use or making substantial preparations for usage of the patent, the provisions of the Clauses 6 and 7 are not applied.

Partnership relation and indivisibility of the patent

Article 112-(1) If the patent application or patent belongs to more than one person the partnership on the right is determined in accordance with the agreement between the parties, if no such agreement exists in accordance with the provisions related to the shared property in the Law no. 4721. Each right owner can perform the transaction below independently from the others:

- a) Can freely regarding his/her share.
- b) Can use the invention after notifying the other right owners.
- c) Can take necessary precautions for protection of the patent application or the patent.
- ç) In case the rights provided by the jointly made patent application or granted patent are infringed in any way, can file a legal case against the third parties. In order for the other right owners to be able to attend the case, the situation has to be notified to them by the complainant within one month after the case is filed.

(2) The unanimity of the right owners is mandatory for giving licenses to the third parties for the purpose of using the invention. However in case that the unanimity is not reached regarding the issue of giving a license, the court can assign this right to one or several of the right owners considering the current

conditions in fairness.

(3) Even if there is right ownership of more than one person on a patent application or a patent, it is not possible to divide them for transferring or establishing rights on them.

PART FIVE

Inventions Made by Employees

Service invention and free invention

ARTICLE 113- (1) Inventions made by the employees in a business while performing the work which they are responsible for in a business or public administration or during the business relationship depending mostly on the experience and works of the business or the public administration, is a service invention.

(2) The inventions residing outside of the service inventions indicated in the Clause 1 are considered as free inventions.

(3) Regarding the students and trainees working without pay independent of the period the provisions related to the employees are applied.

(4) The provisions applied for the inventions of the employees are also applied to the inventions of the employees of the public institutes and associations, provided that the provisions of the other legal regulations and the contracts executed between the parties reserved.

(5) The amount to be paid to the employees of the public institutes and

association for their inventions cannot be less than one third of the income gained from the invention. However in case that this invention is used by the public institute or association itself, the amount to be paid, for one time only, cannot be more than ten times the net wage paid to the employee for the month in which the amount is paid.

(6) Regarding the inventions realized in the research infrastructures which received qualification in the scope of the Law on Supporting Research Infrastructures no. 6550 dated 3/7/2014, the provisions in the Law no. 6550 are applied. In cases where no provisions are available in the Law no. 6550, the provisions of this Law Article 121 are applied as guideline.

Notification obligation regarding the service invention

ARTICLE 114-(1) When an employee made a service invention, he/she is obligated to inform the employer of this invention promptly in writing. If the invention is realized by more than one employee, this notification can be done jointly. The employer promptly shall notify the persons that the notification is delivered to him/her in writing, on the date of the notification.

(2) The employee is obligated to explain the technical problem, its solution and how the service invention is realized in the notification. For a better explanation of the invention drawings, if any, are also given to the employer.

(3) The employee has to indicate the business experience and works used in the invention, and the contributions of other employees, if any, and the form of these

contributions, and instructions taken related to the work done and his/her own contribution besides the said contributions.

(4) The employer informs the employee of any corrections to the notification within two months after the notification is delivered to him/her. In case that no requests are made the notification indicated in the Clause 2 is deemed valid.

(5) In order for the employee to be able to make a notification as stipulated in this Law, the employer is obliged to give the necessary support.

(6) The employer is obligated to keep the service invention confidential, unless it has not been qualified as a free invention.

Employer rights regarding the invention and compensation of the right request

ARTICLE 115-(1) The employer can request full or partial right related to the service invention. The employer is obligated to deliver this request to the employee within the four months of receiving the notification of the employee. If no such notification is done within due time or a notification is given to the employee regarding no right requests are made, then the service invention is considered as a free invention.

(2) If the employer requests full rights regarding the service invention, all the rights on the invention are transferred to the employer upon the delivery of a notification regarding this to the employee.

(3) If the employer requests partial rights related to the service invention, the service invention is considered as a free invention. However in this case the

employer can use the invention based on the partial rights. If this usage makes substantially hard for the employer to utilize the invention, the employee can request for complete transfer of the rights related to the invention or the waiver of the usage rights based on the partial rights from the employer. If the employer does not give an answer to the notification related to this request of its employee within two months after the date of notification, the usage right of the employer based on the partial right ends.

(4) The actions which the employee took regarding the invention before the employer made the right request related to the service invention are deemed void against the employer to the extent that they infringe the rights of the employer.

(5) If the employer does not make a full rights request, it is obliged to keep the information related to the invention notified to the employer confidential while the justified interests of the employee continue.

(6) If the employer requests full rights on the service invention, the employee can request a reasonable compensation to be paid to him/her from the employer. If the employer requests partial rights on the service invention and uses the invention, the right for the employee to request a reasonable compensation to be paid to him/her is born.

(7) In the calculation of the compensation the economic utility of the service invention, the duty of the employee in the enterprise and the share of the enterprise in the realization of the invention are considered.

(8) Employer cannot dismiss the payment of the compensation after making a request regarding the service invention, by claiming that the inventions is not

worth protecting. However in case that the court decides to accept the case as a result of a legal case filed regarding the invention not being protectable then the employee cannot request a compensation.

(9) Following the employer's partial or full rights request related to the service invention, the compensation and the payment method are determined with the provisions of a contract signed between the employer and the employee or of a similar legal relationship.

(10) If the service invention is realized by more than one employee, the compensation and the payment method are determined separately for each of them in accordance with the Clause 9.

(11) The compensation tariff and the arbitration method to be followed in cases of conflict regarding the service inventions are determined with the regulations.

(12) The employee can act freely on the service invention that is considered as a free invention without being subject to provisions of the article 119.

Patent application for the service invention

ARTICLE 116-(1) If the employer made a full rights request for the service invention notifies to it, it is obligated to make the first application to the Institute for granting of the patent. However, the employer, if the business interests require, can avoid making a patent application. The provision of the Clause 2 being reserved, in case of avoiding an application, in calculation of the compensation the employer shall pay for the invention, the possible economic losses which the employer shall face due to not receiving a patent are also considered.

(2) Obligation of the employer to submit a first application to the Institute for the service invention is removed in case at least one of the conditions below is realized;

- a) The service invention becomes a free invention,
- b) The employee consents not to file an application for his/her invention,
- c) The business secrets require not making an application.

(3) If the service invention becomes a free invention, the employee has the right to file an application on his/her own.

(4) If the employer does not apply for the service invention for which he made a full rights request and does not file an application within the period the employer shall determine, the invention becomes a free invention.

(5) If the employer requested full rights for the service invention, he/she may also apply for the said invention to be protected in a foreign country.

(6) The employer is obligated, upon the request of the employee, to free the invention for the countries where it does not want to acquire a patent and provide opportunity for the employee to request for a patent grant in these countries. Freeing the invention, regarding not to exceed the priority right period, shall be done in a reasonable time period.

(7) The employer, while freeing the invention for the employee to acquire a patent in the foreign countries, has right to reserve the usage right in a non-exclusive quality for using the invention for a proper price in these countries and to request for the interests born of this reserved right not to be damaged.

The mandatory provisions related to the employee inventions and conformity to fairness term

ARTICLE 117-(1) The employers cannot make any regulations or applications that works against the employees in contradiction with the provisions of this Part related to the employee inventions. The freedom of the parties to execute contracts regarding the employee inventions begins after the application filed for granting patent in service inventions and after the obligation of notification of the employee to employer in the free inventions.

(2) The contracts between the employer and the employee regarding the service inventions and the free inventions are deemed void if they are not fair grossly, even if they are not contradictory to the mandatory provisions related to the employee inventions. Same rule is valid also for the determined compensation.

(3) The objections regarding that the contract or the determined compensation is contradictory to fairness can be claimed in writing within six months after the end of the employment contract.

The rights and obligations of the parties related to the patent application

ARTICLE 118-(1) The employee is obligated to give the employer the necessary information and required help for the patent to be acquired. The employer is obligated to give the copies of the application filed for the service invention and its attachments to the employer and notify the employee of the developments during the application transactions upon the request of the employee.

(2) If the employer wants to waive its patent application or patent right before paying the compensation which the employee requested due to the service invention, the employer is obligated to inform the employee of the situation. Upon the request of the employee, the employer is obligated to transfer the patent right or the necessary documents for acquiring a patent to the employee on the employee's expense. If the employee does not reply to the notification made to the employee in this matter within three months after the notification date, the employer can waive the patent application or the rights provided by the patent.

(3) The employer can reserve the non-exclusive right to benefit from the service invention against a reasonable fee by the notification indicated in the Clause 2.

(4) The rights and obligations due to the employee invention are not affected from the employment contract being terminated.

Free invention, notification obligation and request obligation

ARTICLE 119- (1) The employee is obligated to notify promptly the employer if he/she makes a free invention while being in a employment contract. Information on the invention and if necessary the way of realizing the invention is given in the notification thus proving the employer to reach an opinion regarding whether the invention should be considered an actual free invention.

(2) The employer can claim the objection regarding that the invention is not a free invention in writing within three months after the date of the notification delivered to the employer.

(3) If it is apparent that the free invention has no utility in the activity field of

the employer then the employee has no notification obligation.

(4) If the free invention is within the field of activity of the business or the business is making preparations for activities in the field related to the said invention, the employee, before starting to utilize the invention in another way while continuing his/her employment contract, is obligated to present an offer to the employer to give an opportunity to benefit from the invention under proper terms without giving full rights. If the employer does not answer within three months after the date when the offer is delivered to it, it loses its priority right in this matter. If the employer accepts the offer made to it but does not find the stipulated terms proper, the terms are determined by the court upon the request of the parties.

Preemption right of the employee

ARTICLE 120-(1) If the employer goes bankrupt and the administration of bankruptcy wants to transfer the invention separately from the enterprise, the employee has preemption right regarding the invention he/she made and for which the employer made a full rights request.

(2) The compensation receivable due to the invention of the employee is a privileged receivable. The administration of bankruptcy distributes this kind of more than one compensation receivables among the claimants in the rate of their receivables. The employee can request for the invention to transform into a free invention instead of compensation receivable.

Inventions made in higher education institutes

ARTICLE 121- (1) For the inventions realized as the result of the scientific works or researches conducted in the higher education institutes identified in the Law no. 2547 Article 3 Clause 1 Item (c) and the higher education institutes connected to the National Defense Ministry and Ministry of Internal Affairs, special law provisions and the regulations in the scope of this article being reserved, the provisions related to the employee inventions are applied.

(2) If an invention is made as a result of the scientific works or researches made in the higher education institutes, the inventor is obligated to inform the higher education institute of the invention promptly in writing. If a patent application is made a notification regarding the application shall be made and delivered to the higher education institute.

(3) If the higher education institute requests the ownership on the invention, it is obligated to file a patent application. Otherwise the invention becomes a free invention.

(4) The inventor can demur to the request of ownership of the higher education institute by claiming that the invention is a free invention. Upon the objection made the higher education institute must provide justifications in writing. Otherwise the invention is considered as a free invention.

(5) The provisions of the articles 115, 116, 118 and article 119 Clause 4 are not applied about the inventions made in the higher education institutes.

(6) If the higher education institute wants to waive the application or the patent right, or if the invention becomes a free invention after the patent application is

filed, the higher education institute offers primarily to the inventor to take on the application or patent right. In case the inventor accepts the offer the rights are transferred. In this case the higher education institute gives the inventor the necessary document for acquiring and protection of the patent. The higher education institute can reserve a non-exclusive usage right against a reasonable price in case it transfers the application or the patent right to the inventor. In case the inventor does not accept the offer the right to act on the patent application or the patent shall belong to the higher education institute.

(7) If the higher education institute causes the termination of the patent application transaction or the patent right due to its fault, it is obligated to compensate the damage the inventor faces.

(8) The distribution of the income gained from the invention between the higher education institute and the inventor is determined in a way that at least one third of the income is given to the inventor. The higher education institute share of the income gained from the invention is recorded as self-income to the budget of the higher education institute and is used for meeting the needs of the higher education institute, especially for the scientific researches.

(9) In determination of the right ownership over the inventions made as the result of the works done in the scope of a certain contract made with other public institutes or private organizations by the teaching staff defined in the Law no.2547 Article 3, Clause 1, Item (1) as well as the trainees and students, the contract terms are taken as basis, provisions in the other laws being reserved.

(10) The procedures and principles regarding the application of the article are

determined with the regulations.

Inventions made in the public supported projects

ARTICLE 122-(1) The inventions made in the projects supported by the public institutes and associations are mandatory to notify the public institute giving the support in accordance with the regulations. The person benefiting from the project support notifies the institute in writing of his/her choice regarding whether he/she requests right ownership on the subject of invention or not within one year after the date of this notification. If the person benefiting from the project support does not request right ownership within this period or does not make his/her choice on the right ownership in writing, the public institute or association giving support can take the right ownership for the invention. The person benefiting from project support cannot make declaration that would affect the granting of a patent or utility model for the invention until the process related to the right ownership is completed.

(2) In case that the person benefiting from project support request right ownership related to the invention, he/she is obligated to file a patent application for the invention. In the application the public institute or association providing support shall be indicated.

(3) The public institute or association has the right to request information regularly regarding the usage or the efforts which the person benefiting from project support invested in for the usage of the invention subject to patent from him/her. This commercial and financial information requested by the public

institute or association is kept confidential. The distribution of the income gained from the usage of the invention is determined by a contract.

(4) In case that the person benefiting from the project support requests right ownership on the invention, the public institute or association shall have a license right free of charge regarding the usage of the invention for its needs. Waiver from this right is possible by being indicated in the contract. In the conditions listed below the public institute or association shall have the right to use or request licenses to be given to the third parties under reasonable terms for the usage of the invention subject to patent:

a) The person benefiting from the project support does not use the invention subject to patent in accordance with the Article 130 or does not make any attempts for usage.

b) The product subject to patent, produced by the person benefiting from the project support or the licensee, is not able to meet the need incurring due to the reasons of public health or national security,

c) The product subject to patent, produced by the person benefiting from the project support or the licensee, is not able to meet the need of the public institute or association.

(5) The license application within the scope of the Clause 4 does not affect the application of the provisions regarding the mandatory license.

(6) The provisions of this article are not applied for the inventions made in the public support that is not project based or in works not conducted in a contract frame with the support of public institutes and associations, in the technology

development zones established in the scope of Technology Development Zones Law no.4691 dated 26/6/2001 or in R&D or design centers established in the scope of the Law on Support for the Research, Development and Design Activities no. 5746 dated 28/2/2008.

PART SIX

Additional and Secret Patent

Additional patent

ARTICLE 123- (1) Applicant can file additional patent application to the actual patent application with ongoing processes that develop or improve the invention subject to patent and for protection of the inventions which are in unity with the subject of the actual patent in the scope of the Article 91 Clause 1.

(2) The additional patent application can be filed until the publication of the decision of granting the certification to the actual patent application. The date of the additional patent application is the date when the additional patent application is submitted to the Institute in accordance with the Article 90.

(3) The search report of the additional patent application is issued together with or later than the search report of the actual patent application. In assessment of the invention stage indicated in the Article 83 Clause 4 for the additional patent application, the actual patent application is not taken into consideration as the known state of the technique.

(4) Before the patent grant decision for the actual patent application, patent is not granted for the additional patent application.

(5) The term for the additional patent starts with the date of additional patent application and is until the end of the term for the actual patent application.

(6) No annual fees are paid for additional patent applications and additional patents.

(7) The additional patent application can be converted into an independent patent application anytime upon the request of the applicant during the application transactions. In case it is determined by the Institute that the additional patent application does not have the necessary connection with the actual patent application, the additional patent application is converted into an independent patent application within three months after the date of notification.

(8) If the actual patent right is terminated due to the actual patent being declared invalid or the actual patent owner waiving the patent right or the annual fee not being paid, the additional patent is converted into an independent patent.

(9) The decision regarding the invalidity of the patent does not create the result that the additional patents should be invalid. However, within three months after the notification of the invalidity decision given in accordance with the Article 99, if no application is made for the additional patents to be converted into independent patents, the invalidity of the patent results in the additional patents to become invalid.

(10) If the actual patent application is deemed invalid due to the actual patent application being withdrawn or deemed withdrawn or rejected or the annual fee not being paid, the additional patent application is converted into an independent patent application.

(11) If more than one additional patent application are filed for the actual patent application, the first additional patent application or additional patent can be converted into an independent patent or an independent patent application in accordance with the Clauses 7, 8 and 9. Other additional patent applications are deemed to be the additions of the transformed independent patent or the application.

(12) The additional patent application or additional patent, in case that it is transformed into an independent patent application or an independent patent, is subject to annual fee payments starting from the date of transformation and the protection period is the period indicated in the Clause 5.

(13) In case otherwise is clearly foreseen and it is not contradictory to the property of the additional patent, the provisions of this Law regarding patent are also applied on the additional patent.

(14) No additional applications can be filed for the utility model application.

Secret patent

ARTICLE 124-(1) If the Institute decides that the invention subject to application carries an importance regarding the national security, the Institute delivers a copy of the application to the National Defense Ministry for taking opinion and informs the applicant of the situation.

(2) If the National Defense Ministry decides that the application transactions shall be conducted confidentially, it notifies this decision to the Institute within three months after the date of notification. If no confidentiality decision is

submitted or no notifications are made to the Institute in the said period, the Institute starts the processes regarding the application.

(3) In case that the patent application is subject to confidentiality the Institute informs the applicant of the condition and records the application to the registry as a secret patent application before conducting any other transactions related to the application.

(4) Patent applicant cannot disclose the invention subject to the secret patent application to unauthorized persons.

(5) Upon request of the patent applicant, National Defense Ministry can permit the usage of the invention subject to the patent application as a whole or partially.

(6) The patent applicant, for the period the patent application is kept confidential, can request compensation from the State. If an agreement on the amount of the compensation to be paid cannot be reached, the compensation amount is determined by the court. The compensation is calculated considering the amount of the possible income if the patent applicant should have used it freely and the importance of the invention. If the invention subject to the secret patent application is disclosed due to the fault of the patent applicant the compensation request right shall be dismissed.

(7) For the secret patent applications no annual fees are paid to the Institute as long as they remain confidential.

(8) The Institute, upon the request of the National Defense Ministry, can lift the confidentiality stipulated for the patent application. The patent application of which the confidentiality is lifted, is processed as a patent application starting from

the date when the confidentiality is lifted.

(9) If an invention made in Turkey carries importance regarding the national security, patent applications cannot be made in other countries for this invention. If the patent application made to the Institute for an invention made in Turkey is subject to the provisions of the Clauses 1 to 8 then without the consent of the National Defense Ministry, a patent application cannot be done in another country for the said invention.

(10) If the residence of the inventor is in Turkey, until otherwise is proven, the invention is considered to be made in Turkey.

PART SEVEN

License

SECTION ONE

Contract Based License

Contract based license

ARTICLE 125-(1) Patent application or patent can be subject to a license contract.

(2) License can be given as exclusive license or non-exclusive license. Unless otherwise agreed on the contract, license is not exclusive. In non-exclusive license contracts, licensor can use the trademark itself and also can distribute other licenses to third parties. In exclusive license contracts, licensor cannot give licenses to others and cannot use the invention subject to itself unless explicitly

reserved its rights.

(3) Unless otherwise agreed on the contract, license owners cannot transfer their rights born due to the license to third parties or cannot give sublicenses.

(4) The person who receives a license based on a contract, unless otherwise is agreed in the contract, can act freely regarding the usage of the invention subject to patent during the protection period of the patent. Licensee is obligated to follow the terms written in the license contract. Otherwise, licensor can claim its rights due to the registered patent against the licensee.

Obligation to give information

ARTICLE 126-(1) Unless otherwise is agreed in the contract, the transferor of the patent application or the patent or licensor is obligated to give the technical information that are mandatory for a normal usage of the invention subject to patent to the transferee or licensee.

(2) Transferee or licensee is obligated to take necessary precautions to prevent the disclosure of the confidential information given to him/her.

Responsibility due to the transfer of right and giving license

ARTICLE 127-(1) If the person transferring the rights provided by the patent application or the patent or giving license understood that it is not authorized for doing these transactions, the said person becomes responsible against the related person in this condition.

(2) If the patent application is withdrawn or the application is rejected or the

invalidity of the patent right is decided by the court, and the parties have not stipulated a more detailed responsibility regarding the transferee of the right or the licensee with the contract, the provisions of the Article 139 are applied.

(3) In case that the transferee or licensee acts in bad-faith, these persons are responsible for their actions for all times. If the transferee or the licensee has not informed the other party of the reports and decisions in Turkish or in foreign languages on the issue of protectability with a patent of the invention on which the action is taken or what he/she knows on the subject and has not included the documents containing the statements related to these in the contract, the existence of the bad-faith is accepted.

(4) The request period of the compensation due to the provisions of this article starts on the finalization date of the court decision that is basis to the responsibility case.

Licensing offer

ARTICLE 128- (1) The patent application or patent owner, with a written request submitted to the Institute, can declared that he/she will give license to everyone that wants to use the invention subject to the patent. The licensing offer is published in the Bulletin.

(2) If there is an exclusive license recorded in the registry the patent application or patent owner cannot offer others to give licenses.

(3) Patent application or patent owner can anytime take back the licensing offer. The withdrawal of the offer is published in the Bulletin.

SECTION TWO

Compulsory License

Compulsory license

ARTICLE 129-(1) Compulsory license can be given in case that at least one of the conditions indicated below is fulfilled:

- a) In accordance with the Article 130 the invention subject to the patent is not used.
- b) The dependency of the patent issues indicated in the Article 131 is present.
- c) The public benefit indicated in the Article 132 is present.
- ç) In the case that the terms indicated in the Protocol Modifying the Agreement on Trade Related Aspects of the Intellectual Property Rights to which we entered via the Law no. 6471 dated 30/4/2013 are met, the export of the pharmaceutical products due to the public health problems in other countries is present,
- d) The breeder is not able to develop a new plant type without infringing the previous patent.
- e) Patent owner conducts activities preventing, disturbing or limiting the competition while using patent.

(2) The compulsory license to be given in the scope of the Clause 1 Items (a), (b) and (ç) is requested from the court, in the scope of the Item (e) from the Competition Authority. In the compulsory license requests made in accordance with the Clause 1 Item (ç), the emergency conditions and Clause 1 Item (e) being excluded, proof that the license requester cannot receive within a reasonable time

period even if he/she requested a contract based license under reasonable commercial terms from the patent owner are included in the request. The court sends one copy of the compulsory license request and one copy of each attached documents to the patent owner without delay. One month period is given to the patent owner starting from the date of notification for him/her to present opinions together with the proofs opposing these.

(3) The court sends the opinions of the patent owner, if any, to the requester of the compulsory license and decisions for the rejection of the request or granting of the compulsory license within one month. This period cannot be extended. If the patent owner has not demurred to the compulsory license request, the court decides the compulsory license without delay.

(4) In the decision in which the compulsory license is given, the scope, license fee, term of the license, the warranty given by the licensee, time of start of usage and the precautions providing the substantial and effective usage of the patent shall be indicated.

(5) When legal actions are applied for against the court decision, if the proofs presented by the patent owner for stopping the compulsory license application are found sufficient, the usage of the invention is delayed until the finalization of the decision related to the license.

(6) The situation of the patent owner being not able to use the patent right without infringing a breeder right belonging to a plant type can be subject to compulsory license. In this case the provisions of the Law no. 5042 are applied.

(7) If a license is given in accordance with the Clause 1 Item (d), the parent

owner for the usage of the protected plant type can request granting a mutual license in reasonable conditions to him/herself; if a license is given in accordance with the Clause 6, the owner of the breeder right for the new plant type for the usage of the protected invention can request it.

(8) For the licenses indicated in the Clause 1 Item (d) and the Clause 6 the requester can request the court for granting a compulsory license to him/herself by proving that;

a) He/she applied to the owner of the breeder right of a new plant type or to the patent owner to acquire a contract based license, but could not reach a solution,

b) When compared to the protected plant type or invention protected by patent, the next invention or plant type shows an important technical improvement providing a great deal of economic benefit.

(9) The provision of the Clause 1 Item (ç) being reserved, the compulsory license is launched to the domestic market essentially.

Compulsory license in nonuse condition

ARTICLE 130- (1) Patent owner or the person whom he/she authorized is obligated to use the invention protected by patent. In the assessment of use the market conditions and the conditions out of patent owner's control and will are considered.

(2) Whichever is later, at the end of three years after the decision of granting patent is published in the Bulletin or at the end of four year period after the patent application, any related persons can request for granting of compulsory license

with the justifications that the invention subject to patent has not started to be used or no substantial or actual preparations are made for usage or the usage is not at a level to meet the domestic market need. Without a justified reason, the said condition is also applied in cases that the use of the invention is an uninterruptedly stopped for consecutive three years.

Compulsory license in case of dependence of the patent subjects

ARTICLE 131- (1) In the case that the invention subject to patent cannot be used without infringing the rights provided by the previous patent, as there will be a dependence between the patent subjects, the owner of the later dated patent cannot use the invention subject to the former dated patent without the consent of its owner.

(2) In case that there is a dependence between the patent subjects, the owner of the later dated patent, for using the invention subject to the patent, can request a compulsory license to be granted, provided that the invention shows an important technical improvement providing a great deal of economic benefit compared to the invention subject to the former dated patent. If a compulsory license is given to the later dated patent owner, the former dated patent owner can request a compulsory license to be granted to him/her for the usage of the invention subject to the later dated patent.

(3) In case of invalidity or termination of one of the patents with dependence the compulsory license decision is also dismissed.

Compulsory license due to public benefit

ARTICLE 132- (1) In cases that starting to use, increasing the usage of, extension in general of, or improvement for a beneficial use of the invention subject to patent carries an importance with the public health or national security reasons, or the nonuse of or the insufficient use in quality or quantity of the invention subject to patent shall cause substantial damages regarding the economic or technological development of the country, the following can be decided by the Cabinet upon the request of the related ministry:

- a) Issue of compulsory license due to the reason that there is public benefit,
- b) Conditional issue compulsory license for the public benefit, if the usage of the invention sufficient enough to meet the public benefit can be realized by the patent owner.

(2) If the usage of the invention subject to patent application or patent is important regarding the public health or national security, an offer is made by the related ministry by taking statement of approval from the National Defense Ministry or the Ministry of Health.

(3) The compulsory licenses given with the justification of public benefit can be exclusive. The compulsory license decision given with the justification of being important regarding the national security can be limited with usage of the invention by one or a few companies.

The legal quality of the mandatory license and trust relationship

ARTICLE 133- (1) The compulsory license is not exclusive however the compulsory licenses given with the justification of public benefit can be exclusive. The compulsory license is given under certain conditions considering the period, the license fee and the usage field. The court considers the economic value of the patent while determining the license fee. In the compulsory licenses to be given in accordance with the Article 129 Clause 1 Item (ç), when determining the license fee, the noncommercial and humane purposes are taken into consideration and the economic value of such usage regarding the importing country are considered.

(2) In case that the compulsory license is granted, the licensee does not have the right to give sub-licenses and import the patent subject. However in the compulsory license given with the justification of public benefit, the licensee can import the patent subject, if it is authorized explicitly for import due to public benefit. This import permit shall be given as limited and for a temporary period of time.

(3) Due to the compulsory license, if the trust relationship born between the patent owner and the licensee is breached by the patent owner, the licensee can request discount of the license fee to the patent owner, according to the effect of the breach in valuation of the invention.

Compulsory license scope in the additional patent

ARTICLE 134- (1) The compulsory license also covers the additions of the patents that are present at the acceptance date of the license. If new additional patents are given after the compulsory license is granted and these are serving the

same purpose of usage with the patent subject to license, the licensee can request the court for the additional patents to be included in the scope of the compulsory license. If the parties cannot agree on the license fee or on the other terms of the extended license due to the additional patents these are determined by the court.

Transfer of the compulsory license

ARTICLE 135- (1) In order for the transfer of the compulsory license to be valid, it should be transferred together with the business or the part of the business in which the license is utilized. In the case that the compulsory license is given due to the justification of dependence of the patent subjects, the license is transferred together with the dependent patents.

Request for change in the conditions and cancelation of the compulsory license

ARTICLE 136-(1) After the compulsory license is granted, the licensee or the patent owner can request the court for modifications to be made in the license fee or terms of the compulsory license, depending on the events that incur later on such as having granted a contract-based license under better terms compared to the compulsory license or that justify the modification,.

(2) In case that the licensee infringes substantially its obligations due to the compulsory license or continuously fails to fulfill them, upon the request of the patent owner, the court can cancel the license, the compensation rights of the

patent owner being reserved.

(3) If the conditions that cause that the issue of the compulsory license cease to exist and the possibility of relapse is unlikely, the court cancels the compulsory license upon request.

The applicability of the provisions of the contract based licenses

ARTICLE 137- (1) Not being contradictory to the provisions in the Articles 129 to 136, the provisions related to the contract based license indicated in the articles 125 and 126 are also applied to the compulsory licenses.

PART EIGHT

Termination of the Right

SECTION ONE

Invalidity

Invalidity conditions

ARTICLE 138-(1) After the final decision of the court if;

a) the patent subject does not comply with the patentability conditions according to the Articles 82 and 83,

b) The invention is not explained sufficiently in accordance with the Article 92 Clauses 1, 2, and 3,

c) the patent subject exceeds the initial application or in case that the patent is based on a divided application made according to the Article 91 or on an

application made according to the Article 110 Clause 3 Item (b), the initial version of the first application,

ç) it is proven that the patent owner has no right to request patents according to the Article 109,

d) the protection scope provided by the patent is exceeded

(2) The court cannot decide related to the request of invalidity made in accordance with the Clause 1 Items (a), (b) and (c) before the publication made in accordance with the Article 99 Clauses 3 and 7.

(3) The claim regarding the patent owner not having the patent request right in accordance with the Article 109 can only be made by the inventor or its successors.

(4) If the invalidity reasons are related only to a part of the patent, the court may decide partial invalidity of the claims pertaining to that part. Partial invalidity of a claim cannot be decided. If the claims that are not cancelled as the result of partial invalidity carry the patentability conditions in accordance with the provision of the Articles 82 and 83, the patent remains valid for this part. In case an independent claim is declared invalid, if each of the claims dependent on the independent claim does not carry separately the patentability conditions in accordance with the provisions of the articles 82 and 83, the dependent claims on the independent claim are also declared invalid by the court.

(5) The invalidity case of the patent can be filed against the person recorded as patent owner in the registry during the patent protection period or within five years following the termination of the right. In order to provide the attendance to the legal case of the persons seen as right owners of the patent in the registry a

notification is also send to them.

(6) Interested parties, public prosecutors or related public institute and associations can request the invalidity of the patent. The invalidity of the patent due to the reason that the patent owner does not have the right to request patent in accordance with the Article 109 can only requested by the inventor or its successors.

(7) The decision regarding the invalidity of the patent does not create the result that the additional patents should be invalid. However, within three months after the notification of the invalidity decision, if no application is filed for the additional patents to be converted into independent patents, the invalidity of the patent results in the additional patents to become invalid.

Effect of the invalidity of the patent

ARTICLE 139- (1) If the invalidity of the patent is decided, the results of the decision are retrospectively effective and the protection for the patent application or patent born by this Law is deemed never born.

(2) The compensation requests of the persons who faced damages due to gross negligence or bad-faith acts of the patent owner being reserved, the retrospective effect of the invalidity does not affect the conditions below:

a) The decisions that are finalized and applied, given due to infringement of the rights provided by the patent before the invalidity of the patent is decided.

b) The contracts executed and applied before the invalidity of the patent is decided.

(3) Reimbursement of all or part of the fee paid in accordance with the contract indicated in the Clause 2 Item (b) can be requested in fairness.

(4) The finalized decision on the invalidity of the patent is effective against everyone. After the finalization of the invalidity decision the court sends ex officio this decision to the Institute. The invalidated patent is deleted from the registry by the Institute and published in the Bulletin.

SECTION TWO

Other Termination Conditions and Results

Termination and results

ARTICLE 140-(1) The patent right ends via realization of one of the following reasons;

- a) Expiration of the protection period,
- b) Patent owner waiving patent rights,
- c) Annual fees not being paid in the period defined in the Article 101.

(2) The Institute publishes the termination of the patent right in the Bulletin. The subject of the patent with terminated right, becomes public starting from the moment of realization of the termination reason.

(3) Patent owner can waive the entire patent or one or more patent requests. If the patent is waived partially, the patent remains valid regarding the claim or claims that are not waived, provided that the claim or claims constitute subject of a separate patent and the waiver is not related to the extending of the scope of the

patent.

(4) The waiver should be notified to the Institute in writing. The waiver is in effect as of the date of recording to the registry.

(5) Without the consent of the right and license owners recorded in the registry the patent cannot be waived.

(6) If a title ownership is claimed on the patent by a third party and the injunction taken in this matter is recorded in the registry, without the consent of this party the patent cannot be waived.

(7) Patent right being waived is published in the Bulletin.

PART NINE

Infringement of the Patent Right

Acts deemed infringement of the patent or utility model right

ARTICLE 141-(1) The acts listed below are deemed infringement of the patent or utility model right:

a) To imitate fully or partially as the result of production the product subject to invention without the consent of the patent or utility model owner,

b) To sell, distribute or launch for trade in any other way or import for these reason, to keep for commercial use, to use by implementing or to offer contract about the products subject to the invention produced by infringement despite having known or needed to know that they are realized with full or partial imitation,

c) To use the method subject to invention without the consent of the patent owner or to sell, distribute or trade in any other way, to import for these reasons, to keep for commercial use, to use by implementing or to offer contract about the products acquired directly via this method despite having known or needed to know that the method is used without permission,

ç) To usurp the patent or utility model right,

d) To extend or transfer to third parties the right given via contract based license or compulsory license by the patent or utility model owner without permission.

(2) If the patent subject is a method related to acquiring a product or substance, the court may request the defendant to prove that the method of acquiring the same product or substance is different from the method subject to patent. If the product or substance acquired by the method subject to patent is new, it is accepted that all the same product and substances produced without the consent of the patent owner are acquired via the method subject to patent. The person claiming otherwise is obligated to prove so. In this case, the fair interest of the protection of the business and production secrets of the defendant is considered.

(3) After the date when the patent application or the utility model application is published in accordance with the Article 97, the owner of the patent application or the utility model application is authorized to file a legal case due to infringements incurring to the invention. If the infringer is informed of the application and its scope, the publication condition does not apply. If the court decides that the infringer is in bad-faith the existence of the infringement before the publication is accepted.

(4) The court cannot decide related to the validity of the claims before the publication made in accordance with the Article 99 Clauses 3 and 7 and the Article 143 Clauses 10 or 12.

PART TEN

Utility Model

The inventions protectable with the utility model and exceptions

ARTICLE 142- (1) The inventions that are new in accordance with the provision of Article 83 Clause 1 and applicable to the industry in the scope of the Article 83 Clause 6 are protected by granting utility models.

(2) In the assessment of novelty of the utility model, the technical properties that do not contribute to the subject of the invention are not considered.

(3) In addition to the Article 82 Clauses 2 and 3, the following inventions cannot be protected by utility models;

a) The inventions related to the products acquired with the chemical and biological substances or with chemical and biological methods or as the result of these methods,

b) The inventions related to the products acquired with substances related to pharmacy or via methods related to pharmacy or as the result of these methods,

c) Biotechnological inventions,

ç) The inventions related to the products acquired via methods or as the result of these methods,

Formal examination, search request, objection and granting utility model

ARTICLE 143-(1) If any one of the elements indicated in the Article 90 Clause 3 is missing the utility model application is not put into process.

(2) If in the application that is put into process, at least one of the elements indicated in the Article 90 Clause 1 is missing or the elements are delivered in a foreign language in accordance with the Article 90 Clause 2, without a need for notification the imperfections are corrected or the translations to Turkish are submitted within two months after the application date. Otherwise the application is deemed withdrawn.

(3) The Institute reviews the application of which the elements indicated in the Article 90 Clause 1 is completed or the elements are completed in accordance with the article 90 Clause 2, regarding the conformity with the Article 90 Clause 5 as well as the other procedural requirements defined by the regulations.

(4) If the application is seen not to be conforming to the formal requirements, the applicant is asked to correct the imperfections within two months after the notification date. If the imperfections are not corrected within this period the application is rejected.

(5) The applicant shall submit a search request with the application or within two months after the date of notification that the application has no imperfections regarding the conformity to the formal conditions or the imperfections are corrected in due time, by paying its fee and in accordance with the terms indicated in the regulation. Otherwise the application is deemed withdrawn.

(6) If the applicant requests the search in accordance with the Clause 5 or the Article 104 Clause 1, the search report is issued, informed to the applicant and published in the Bulletin.

(7) If the application subject is decided to be within the scope of the Article 142 Clause 3 or if the description or the claims are not sufficiently explicit and prevent issuance of the search report, the search report shall not be issued and the applicant is requested to present the objections in this matter or the modification in the application within three months after the notification date. If there are no objections in this period or if the objection or the modifications made are not accepted by the Institute, the application is rejected. If the objection and the modifications made, if any, are accepted, the search report is issued, informed to the applicant and published in the Bulletin.

(8) The applicant can demur to the search report contents within three months after the publication of the search report by attaching the related documents. Third parties can state their opinions

(9) If the applicant does not demur or third parties do not state their opinions, only the search report is assessed. If an objection is made or opinions are declared, the research report and the objection or the opinions are reviewed.

(10) If the Institute decided to grant the utility model as the result of the review it conducted, this decision is notified to the applicant, and the decision and the utility model is published in the Bulletin. If modification is required for the utility model to be granted as the result of the review, the modification is requested to be done within two months after the notification date. If the modification made is

accepted, it is decided to grant the utility model, this condition is informed to the applicant, and this decision and the utility model are published in the Bulletin. If the modification is not done or the modification made is not accepted by the Institute, the application is deemed withdrawn, this decision is notified to the applicant and published in the Bulletin. If it is requested after the publication regarding the grant of the utility model and the certification issuance fee is paid, the issued certificate is given to the utility model owner.

(11) The objection indicated in the Article 99 cannot be processed after the utility model is granted, only invalidity can be requested through the court.

(12) As the result of the assessment if the Institute decides that the application and the invention related to this are nonconforming to the provisions of this Law, the application is rejected. This decision is notified to the applicant and published in the Bulletin. This decision can be demurred in accordance with the Article 100.

(13) Granting utility model cannot be interpreted as the Institute has given a guarantee regarding its validity and utility. It also does not make a responsibility of the Institute.

(14) The procedures and principles regarding the application of this article are determined with the regulations.

Invalidity of the utility model

ARTICLE 144-(1) In the cases below the authorized court decides that the utility model is invalid:

a) The utility model subject does not carry the conditions indicated in the

Article 142.

- b) The invention is not explained sufficiently in accordance with the Article 92 Clause 1.
- c) The utility model subject exceeds the initial version of the application or in case that the utility model is based on a divided application made according to the Article 91 or on an application made according to the Article 110 Clause 3 Item (b), the initial version of the first application,
- ç) It is proven that the utility model owner has no right to request utility models according to the Article 109.

(2) Interested parties, public prosecutors or related public institute and associations can request invalidity of the utility model. Invalidity of the utility model due to the reason that the utility model owner does not have the right to request utility model in accordance with the Article 109 can only requested by the inventor or its successors.

(3) The invalidity case of the utility model can be filed against the person recorded as utility model owner in the registry during the utility model protection period or within five years following the termination of the right. In order to provide the attendance to the legal case of the persons seen as right owners in the registry a notification shall be also sent to them.

(4) The claim regarding the utility model owner not having the utility model request right in accordance with the Article 109 can only be claimed by the inventor or its successors. In this case the provisions of the Article 110 are applied.

(5) If the invalidity reasons are related only to a part of the utility model, the court can decide to cancel only the claims related to that part. Partial invalidity of a claim cannot be decided.

(6) If the claims of the utility model that are not cancelled as the result of partial invalidity are conforming to the provisions of the article 142, the utility model remains valid for these claims.

Applicability of the provisions related to the patents and double protection

ARTICLE 145- (1) If there is no explicit provision regarding the utility model and it is not contradictory with the properties of the utility models the provisions stipulated for the patents in this Law are applied for the utility models.

(2) To the same person or his/her successor, in the same protection scope, more than one patent or utility model or both of these certificates shall not be given independent of each other.

BOOK FIVE

Common and Other Provisions

PART ONE

Common Provisions

Periods and notifications

ARTICLE 146- (1) The period to be followed in all transactions to be made to the Institute including the objections related to the industrial property right, if not

defined in this Law or the related regulation, is two months from the notification date. In the case that these periods are not followed the request is deemed not made.

Joint representative

ARTICLE 147- (1) If the industrial property right belongs to more than one person, excluding the withdrawal and waiver requests, all the transactions to the Institute are conducted by the right owner jointly assigned by the right owners. In case a joint representative is not assigned by the right owner, the right owner with the first name on the application form is considered to be the joint representative in the cases where trademark or patent attorney is not assigned,.

(2) In case that the residence of the joint representative is not in the borders of Republic of Turkey the transactions are conducted via the trade or patent attorney.

(3) The provisions related to the joint trademarks are reserved.

Legal transactions

ARTICLE 148- (1) The industrial property right can be transferred, inherited, subject to license, pledged, shown as warranty, seized or subject to other legal transactions. The geographical indication and the traditional product name right cannot be subject to legal transactions like license, transfer, inheritance, levy etc. and cannot be shown as warranty.

(2) The legal transactions indicated in the Clause 1 can be performed independently of the business.

(3) In case that the industrial property right belongs to more than one person and

one of the owners sell his/her share in full or partially to a third person, there is preemption of the other shareholder. The sale performed is informed to other shareholder by the buyer or the seller. The preemption is dismissed by passing of three months after the sale is notified to the title owner and in any case passing of two years after the sale. In case the parties cannot agree the preemption is used via filing a legal case against the buyer. The preemption owner, before the transfer of the share in his/her name is decided, is obligated to deposit the sales price within the period determined by the court to a location the court shall decide. In the sales with compulsory auction preemption cannot be used.

(4) Legal transactions are subject to written form. The validity of the transfer contracts are dependent on that they are approved by the notary public.

(5) The legal transactions are recorded to the registry and published in the Bulletin upon the request of one of the parties, payment of the fee and fulfillment of other terms indicated in the regulation. The provisions of the Article 115 being reserved, the rights born of the legal transaction that are not recorded in the registry cannot be claimed against the good-willed third parties.

(6) The trademark can be transferred for all or a part of the goods and services it is registered for.

(7) Transfer of the guarantee trademark or the joint trademark or granting license for the joint trademark are valid in case of recording to the registry.

(8) The provisions in this article are also applied in the industrial property right applications.

The requests that can be claimed by the right owner whose industrial property right is infringed

ARTICLE 149-(1) The right owner whose industrial property right is infringed can request the court for the following:

- a) Determination of whether the act is an infringement or not.
- b) Prevention of a possible infringement.
- c) Stop of the infringement acts.
- ç) Removal of the infringement and the compensation for the material and nonmaterial damages.
- d) Seizing of the products that cause infringement and require penalty, and device and machine like tools used only for the production of them, without preventing the production of products other than the products subject to infringement.
- e) Assign of the property rights to him/herself on the seized products, devices and machinery in accordance with the Item (d).
- f) Taking precautions to prevent the continuation of the infringement, especially on the infringer's expense; modification of the shapes of the tools like devices and machines and the products seized according to the Item (d), deletion of the trademarks on them or if it is impossible to prevent the industrial property right infringement then destruction of them.
- g) In case that there is a justified cause or an interest, the publication of the finalized decision in the daily gazette or similar media fully or in summary or

notification of it to the related authorities on the other party's expense.

(2) In case that the request in the Clause 1 Item (e) is accepted, the value of the said product, device and machines are discounted from the compensation. In case that this value exceeds the accepted compensation amount, the exceeding part is paid to the other party by the right owner.

(3) In case that the request in the Clause 1 Item (g) is accepted, the form and scope of the announcement is determined in the decision. If it is not requested within three months after the finalization of the decision, the publication right is dismissed.

(4) The compensation of the nonmaterial damage regarding the geographical indication and traditional product name cannot be requested.

Compensation

ARTICLE 150-(1) The persons committed the acts deemed infringement to the industrial property right are responsible for compensating the damages of the right owner.

(2) In case of infringement of the industrial property right, if the reputation of the industrial property right is damaged as the result of misuse or bad production of the products or services subject to the right by the infringer, the procurement or releasing to the market in an improper way of the products manufactured as such, a separate compensation can be requested for this reason.

(3) Before filing a compensation case based on infringement of the industrial

property right claim for the collection of the evidences or for the determination of the damage amount he/she faced in the filed compensation case, the right owner can request the court to order the other party to submit the documents related to the usage of the industrial property rights for the purpose of determining the amount of compensation.

Loss of profit

ARTICLE 151-(1) The damage the title owner faces contains the actual loss and the deprived profit.

(2) According to the choice of the damaged right owner, the loss of profit is calculated with one of the valuation methods below:

a) If there was no competition caused by the infringer of the industrial property right, the possible gain which the right owner would acquire.

b) The net profit which the infringer of the industrial property right acquired.

c) The license fee required to be paid by the infringer of the industrial property right if he/she had used this right legally via a license contract.

(3) In calculation of the loss of profit, factors like especially the economic importance of the industrial property right or the number, period and types of licenses related to the industrial property right during the infringement, the quality and the size of the breach are taken into consideration.

(4) In calculation of the loss of profit, in case that one of the valuation methods indicated in the Clause 2 Items (a) or (b) is chosen, if the court decided that the industrial property right is a determining factor in the formation of the request

related to the product, it decides a share conforming to fairness to be added in calculation of the income.

(5) In the cases of infringement of the patent rights, if the court decides that the patent owner has not fulfilled the usage of patent obligation stipulated in this Law, the loss of profit is calculated according to the Clause 2 Item (c).

(6) In the case of infringement of geographical indication or traditional product name the provisions of this article are not applied.

Exhaustion of the right

ARTICLE 152-(1) After the products subject to the industrial property right protection are brought to market in Turkey by the right owner or the third persons with the consent of the right owner, the actions related to these products are outside of the scope of the right.

(2) Trademark owner has the right to prevent modified or worsened commercial use of the products within the scope of the provision of the Clause 1 by the third parties.

Person who cannot be sued

ARTICLE 153-(1) The industrial property right owner cannot file the civil cases within this Law or make a complaint for a criminal charge against the persons who keep or use the products to the extent of their own need, that are brought into the market by the infringer of the right.

(2) The industrial property right owner cannot file the civil cases within this

Law or make a complaint for a criminal charge against the persons who use in commercial purposes the products brought into market by the person, who paid compensation to the right owner due to the damages he/she caused, due to not being seized by the industrial property right owner.

Legal case regarding the non-existence of the infringement and its terms

ARTICLE 154-(1) All the persons with interest can request the opinions of the right owner regarding whether their commercial or industrial activity which they undertook or shall start in Turkey or the substantial and actual preparations which they have done for this reason constitute an infringement to an industrial property right or not. In case that no answer is given within one month after the notification of this request or the answer given is not accepted by the person with interest, the person with interest can file a legal case against the right owner with the request for a decision that his/her actions do not constitute an infringement. The notification being made is not required as a cause of action in the case. This case cannot be filed by a person against whom an infringement case is filed.

(2) The case filed in accordance with the Clause 1 is notified to all the right owners recorded in the registry.

(3) The case filed in accordance with the Clause 1 can be filed together with the invalidity case.

(4) The court cannot decide related to the validity of the claims before the publication made in accordance with the Article 99 Clauses 3 or 7 and the Article 143 Clauses 10 or 12.

Effect of the previously dated rights

ARTICLE 155-(1) The trademark, patent or design owner with a previous priority or application cannot claim his/her own industrial property right as a defense justification in the infringement case.

Competent and authorized court

ARTICLE 156-(1) The competent court in the cases stipulated in this Law is the civil court for intellectual and industrial property rights and the criminal court for intellectual and industrial property rights. These courts are established by taking the positive opinion of the High Council of Judges and Prosecutors, and presided over by a single judge. At the degree of court of first instance they are established at the locations determined by the Ministry of Justice. The jurisdiction frame of these courts is defined in accordance with the provisions of the Law on Establishment, Duty and Authorizations of the Courts of Original Jurisdictions and Regional Civil Tribunals no. 5235 dated 26/9/2004. At the locations where the civil court for intellectual and industrial property rights is not established, the actions and works within the duty field of this court, are looked by the civil court of first instance present at these locations; in the locations where the criminal court for intellectual and industrial property rights is not established, the actions and works within the duty field of this court, are looked by the criminal court of first instance at these locations.

(2) In all cases to be filed against the decisions which the Institute takes

according to the provisions of this Law and in the cases filed against the Institute by the third parties that face damages due to the decisions of the Institute the competent and authorized court is the Ankara Civil Court for Intellectual and Industrial Property Rights.

(3) In the cases to be filed by the industrial property right owner against the third parties, the authorized court is the court of the location of the plaintiff's residence or the location where the illegal act is conducted or the effects of this act are seen.

(4) In case that the plaintiff has no residence in Turkey, the competent court is the court of the location where the workplace of the attorney recorded in the registry on the date when the case is filed and if the attorney registry is deleted where the headquarters of the Institute resides.

(5) In the cases to be filed by the third parties against the owner of the industrial property right the competent court is the court of the location where the defendant's residence is located. If the owner of the industrial property right application or the industrial property right has no residence in Turkey, the provisions of the Clause 4 are applied.

Time limit

ARTICLE 157-(1) In the requests related to the private law arises due to the industrial property right or the traditional product name, the provisions regarding the time limit of the Turkish Code of Obligations no. 6098 dated 11/1/2011 are

applied.

Licensee filing a case and its conditions

ARTICLE 158-(1) Unless otherwise is agreed in the contract, the person who has an exclusive license can file the legal cases him/herself that the right owner can file in accordance with this Law, in case of an infringement of the industrial property right by a third party,.

(2) Unless the right to file a legal case due to the infringement of the industrial property right is not explicitly limited in the contract, non-exclusive licensee requests the right owner to file the required case with a notification. In case that the right owner does not accept this request or does not file the requested case within three months after the notification date, the licensee can file a legal case in his/her name and in the degree his/her interests require by attaching the notification he/she sent. The licensee who files a case according to this Clause should inform the right owner that he/she has filed a case.

(3) Licensee can request the court to issue provisional injunction in case of existence of a substantial damage threat and before the said time period is over. In cases that the court issues the provisional injunction, the requested licensee is also authorized to file a case. In this case the conditions in the Clause 2 are completed while the prosecution continues.

The provisional injunction request and the quality of the provisional injunction

ARTICLE 159-(1) The persons who have the right to file a legal action in accordance with this Law can request the court to issue the provisional injunctions in order to provide the effectiveness of the decision to be given, provided that they prove the usage subject to the legal action is being performed within the country as infringing their industrial property rights or there are substantial and efficient preparation being done for performing as such.

(2) The provisional injunctions should especially cover the injunctions indicated below:

a) Prevention and stop of the acts constituting the infringement of the industrial property right of the plaintiff,

b) Confiscation and storage of the products subject to infringement that are produced or imported via infringing the industrial property right, the devices used exclusively for the production of these or the devices used in the performance of the patented method, without preventing the production of the products other than the products subject to infringement, within the borders of Turkey, including customs and free port or zones.

c) Giving warranty regarding the compensation of any damages.

(3) If there is no provision in this Law related to the provisional injunction the provisions of Code of Civil Procedure no. 6100 dated 12/1/2011 are applied.

Persons authorized to conduct transaction and notification

ARTICLE 160-(1) Real persons or legal entities as well as the trademark or patent attorneys recorded in the registry, authorized by these persons can conduct

transactions within the Institute.

(2) Legal entities are represented by a real person or persons assigned by their authorized bodies.

(3) The persons whose residences are abroad are represented only by a trademark or patent attorney. The transactions performed by such persons without being represented by an attorney, are deemed not conducted.

(4) In case a trademark or patent attorney is assigned, all transactions are conducted by the attorney. The notifications made to the attorney are deemed to be made to the right owner.

(5) In cases it deems necessary, the Institute can request presentation of the real or an approved copy of the power of attorney indicating the authorization of the attorney.

(6) The notifications to be done in the application of this Law are delivered in electronic media without being dependent on the procedures related to electronic notification organized in the Notification Law no. 7201 dated 11/2/1959 Article 7/a, via taking the approval of the person to be notified and placed in the electronic mailbox assigned by the Institute for the real person or legal entity. The notifications done in this way are deemed to be notified as of the date when the concerned party enters the mailbox for the first time after the document subject to notification is placed in the mailbox and in any case end of the tenth day following the document being placed in the mailbox.

(7) The notices by publication to be performed in the scope of this Law, without being dependent on the provision of the Law no. 7201 Article 29 related to the

form of the notice by publication, are done over the related Bulletin. The notices performed as such are deemed to be done for seven days after the publication date of the Bulletin.

(8) The Institute is authorized to establish all kinds of technical infrastructures related to the applications and notifications to be done in electronic media or to use already established ones, to make mandatory that the application, requests and notification are made in electronic media, to determine the ones to be notified through electronic media and other procedures and principles related to the electronic media applications and notifications.

Fees, period of payments and consequences

ARTICLE 161-(1) In case the information that the payments which must be made for transactions regarding granting or registering industrial property rights are made in due of time is not submitted to the Institute, application for industrial property right shall be deemed withdrawn.

(2) In case the information that the payments which must be made for transactions other than the ones cited in the first paragraph regarding the registered industrial property rights are made in due of time is not submitted to the Institute, the relevant request shall be deemed not made.

(3) With the exception of Articles 15, 18, 20, 23 and 69, in case the payment which must be made for transactions regarding application or industrial property rights is not paid in full amount, claimant is notified by the Institute regarding deficient payment amount. In case the information that the deficient payment is

made within one month starting from the date of notification is not submitted to the Institute, provisions of first and second paragraphs shall be implemented.

(4) Except as otherwise provided, there shall be no refund and payments which are already made are registered as revenue to the Institute.

Implementation of decisions

ARTICLE 162-(1) In cases of cancellation by Board's decisions or invalidity by court's decisions, such decisions can't be enforced unless they are finalized. This provision is also applied for secondary judgments.

Quick destruction procedure

ARTICLE 163- (1) In case that the products subject to crime that are confiscated and stored due to the crimes indicated in this Law, are in a condition that they cannot be preserved in the checkroom with the reasons like numbers, size or quality, after taking sufficient amount of samples from the products from which sampling is possible in accordance with the instructions of the public prosecutor, the remaining crime products are sent to the finance administration of the location. The report containing all the information like the amount, type, size of the confiscated products are delivered to the public prosecutor's office together with the samples.

(2) In case that the products which are delivered to the finance administration of the location after samples are taken in accordance with the Clause 1, are in danger of being damaged or lose substantial amount of value or their storage causes

serious costs, in the investigation stage upon the request of the public prosecutor, the judge decides destruction after the expert examination, in the prosecution stage and before the decision. Destruction operations are performed in the presence of three-member commission formed in the finance administration under the rule of public prosecutor and the report on this is issued.

The provisions to be applied on the traditional product names

ARTICLE 164-(1) The provisions of the Articles 146, 147, 149, 150, 152, 153, 154, 156, 159 and 161 are also applied to the traditional product names.

Regulation

ARTICLE 165-(1) The regulations regarding the application of this Law are put in force by the Institute.

SECTION TWO

Other Provisions

ARTICLE 166- The Law on Establishment and Duties of the Turkish Patent Institute no. 5000 dated 6/11/2003 Article 3 Clause 1 Items (a), (e), (i) and (k) are amended as follows:

“a) Performs the registration of the patents, utility models, trademarks, geographical marks, traditional product names, designs and integrated circuit

topographies in accordance with the provisions of the related legislation and transactions related to the protection of these rights.”

“e) Conducts the relationships with the European Union, international institutes and foreign countries in the field of industrial property and establishes collaborations.”

“i) Makes publications related to the industrial property rights,”

“k) Performs studies towards giving education to persons and institute in and out of the country in the field of industrial property, supports the educational activities and academic studies related to the subjects within its field of duty,”

ARTICLE 167- The law no.5000 article 7 is modified as follows.

“ARTICLE 7- The Advisory Committee of the Institute consists of one member each from Ministry of Justice, Ministry of European Union, Ministry of Science, Industry and Technology, Ministry of Labor and Social Security, Ministry of Environment and Urbanization, Ministry of External Affairs, Ministry of Economy, Ministry of Food, Agriculture and Husbandry, Ministry of Customs and Trade, Ministry of Internal Affairs, Ministry of Development, Ministry of Culture and Tourism, Ministry of Finance, Ministry of National Education, Ministry of National Defense, Ministry of Forestry and Waterworks, Ministry of Health, Ministry of Transport, Maritime Affairs and Communication, Undersecretariat of Finance, Turkey Scientific and technological Research Institute, Turkey Atomic Energy Institute, Small and Medium Enterprises Development and Support Organization, Turkey Exporters Union, Turkey Union of Chambers and

Commodity Exchanges, Turkish Union of Chambers of Engineers and Architects, Turkish Medical Association, Turkish Union of Veterinarians, Turkish Union of Pharmacists, Turkish Merchants and Craftsman Confederation and confederations of labor and employer's unions with the highest member number and five members to be determined from the universities by the Higher Education Board.

Higher Education Board can call experts to the meetings of the Advisory Committee, when needed.

Advisory Committee membership terms are two years. The members with expired term of duty can be reelected.

Advisory Committee working procedures and principles are determined with the regulations.

Advisory Committee gathers at least once a year. The Minister of Science, Industry and Technology or a person he/she assigns preside the meetings.”

ARTICLE 168- The Law no.5000 Article 10 is modified with its heading as follows.

“Intellectual Property Rights Academy and Industrial Property Rights Training Center

ARTICLE 10- In order to conduct the education, consultation, research and coordination activities related to the intellectual property rights the Intellectual Property Rights Academy, in order to conduct the education, consultation, research and coordination activities related to the industrial property rights the Industrial

Property Rights Training Center are established.

Within the Academy the education activities related to the copyrights are conducted by the Ministry of Culture and Tourism Copyright Education Center, the education activities related to the industrial property rights by Industrial Property Rights Training Center of the Turkish Patent and Trademark Institute. The costs regarding the education centers are met by the Ministry of Culture and Tourism or the Institute respectively.

An Executive Committee is formed for planning and consulting related to the education and research activities to be conducted in the Intellectual Property Academy. This Board consists of one representative from the Institute, one representative from the related unit of the Ministry of Culture and Tourism, two university teaching staff each expert in industrial property rights or copyrights, one patent or trademark attorney, one sector representative active in the copyright field and a member determined among the related office members by the Supreme Court of Appeals with the condition of taking his/her consent and one judge working in the civil or criminal courts for intellectual and industrial property rights determined by the related office of the High Council of Judges and Prosecutors, total of eight members. The Intellectual Property Academy Execution Board meetings are held under the mutual presidency of the Institute representative and the representative of the Ministry of Culture and Tourism. The members except the supreme court member and the judge member, are assigned by the Ministry of Culture and Tourism and the Institute. Members are assigned for three years. The ones with expired terms can be reassigned.

Intellectual Property Academy Execution Board's and training centers' working procedures and principles, secretariat services, the fees against the services rendered, issues regarding the education activities and other subjects are determined with the regulation put into force jointly by the Ministry of Culture and Tourism and the Institute”

ARTICLE 169- The Law no.5000 Article 11 Clause 1 Items (c) and (d) are modified as follows and the following items are added to the same article.

- “c) Department of Designs.
- d) Department of European Union and Foreign Relations.
- e) Department of Innovation and Promotion.
- f) Department of Geographical Indications.
- g) Department of Review and Assessment.”

ARTICLE 170- The Law no.5000 Article 14 is modified with its heading as follows.

“Department of Designs

ARTICLE 14- Department of Designs;

a) Performs the recording, filing, research, examination, assessment and registration transactions of the registry applications of the demarks in accordance with the provisions of the related legislation,

b) Performs the license, transfer and other modifications related transactions of the design applications in accordance with the provisions of the related legislation,

- c) Performs the announcement, classification and registry transactions of the demarks,
- d) Executes the secretariat of the Turkish Design Advisory Council,
- e) Performs other works to be given by the Presidency.”

ARTICLE 171- The Law no.5000 Article 14 is modified with its heading as follows.

“Department of European Union and Foreign Relations

ARTICLE 15- Department of European Union and Foreign Relations;

a) Performs the preparations related to the negotiations and attends meeting in the issued within the duty field of the Institute related to the European Union, provides coordination among the units of the Institute related to these matters,

b) Executes the relations with the foreign countries and international institutes in the issues within the duty field of the Institute, provides coordination, helps in preparation of the two or multiple party collaboration agreements and regional collaboration agreements and protocols,

c) Follows and observes the legislation of the foreign countries and the international treaties that enter the field of duty of the Institute and executes necessary works for the obligations to be fulfilled,

d) Performs other works to be assigned by the Presidency.”

ARTICLE 172- To the Law no.5000 to come after the Article 15 the following Articles 15/A, 15/B and 15/C are added.

“Department of Innovation and Promotions

ARTICLE 15/A- Department of Innovation and Promotions;

- a) Executes activities like detection of the assets and usage ways that are or shall be subject to industrial property of the real and legal entities, to follow the related sectors, to perform surveys in order to create value for the country economy from the industrial property rights,
- b) Performs studies on value and economic impacts of the industrial property assets,
- c) Executes the activities of detection of new technologies, mediation in technology transfer and similar commercialization,
- d) Gathers, organizes and present to public use all the data acquired as the result of innovation support activities,
- e) Offers consultancy service for the issues within the scope of innovation support activities,
- f) Prepares application manuals, legislation, brochures, concept and promotion films and materials in all kinds of media related to the duties of the Institute, and executes publication transactions of these,
- g) Determines, plans and executes the goals and strategies regarding the promotion of the industrial property rights,
- h) Organizes all kinds of education activities, seminars, conferences, symposiums and similar activities related to the industrial property rights, and executes preparations for participation in the fairs,
- i) Executes the necessary collaboration works for the information and

documentation units of the Institute,

j) Performs other works to be assigned by Presidency.

Department of Geographical Marks

ARTICLE 15/B- Department of Geographical Indications;

a) Performs the recording, research, examination, assessment and registration transactions related to the geographical indications and the traditional product names,

b) Performs the announcement and registry transactions of the geographical indications and the traditional product names,

c) Performs other works to be assigned by the Presidency.

Department of Review and Assessment

ARTICLE 15/C- Department of Review and Assessment executes, connected directly to the President of the Institute, the review and assessment transactions of the objections to be made by the persons with affected interests due to decision and are party to the processes against the final decisions that are taken by the related office regarding the transactions related to the industrial property rights and traditional product names within two months of the notification of the decision.

The decisions on the issued requested to be reviewed and assessed are taken by the Board formed under the Department Head by the attendance of at least two expert members who are not assigned in the Institute decision subject to objection

and are specialists in the issue to be reviewed and assessed.

The decisions of the Department of Review and Assessment are the final decisions of the Institute. Against these decisions a legal case can be filed at the Ankara Civil Court for Intellectual and Industrial Rights within two months after the notification date of the decision. Unless the verdict regarding the cancellation decision of the Review and Assessment Board is finalized it cannot be carried out. This provision is also applied for the ancillaries of the verdict. The lapse of time period related to the said verdicts starts on the date of finalization of the decision.”

ARTICLE 173- The Law no.5000 Article 16 Clause 1 Items (b) and (c) are modified as follows.

- “b) Department of Support Services.
- c) Department of Information Technologies.”

ARTICLE 174- The Law no.5000 Article 18 is modified as follows with its heading.

“Department of Support Services.

ARTICLE 18- Department of Support Services.;

- a) Executes the renting and purchasing transactions in the frame of the provisions of Public Financial Management and Control Law no. 5018 dated 10/12/2003; performs or have them performed the cleaning, security, lighting, heating, repair, transportation and similar services,
- b) Organizes and executes the general documentation and archive activities,

- c) Executes the transactions of the Institute related to the immovable and movables in accordance with the related legislation,
- d) Plans and executes the civil defense and mobilization services of the Institute,
- e) Executes the library services,
- f) Performs other works assigned by Presidency.”

ARTICLE 175- The Law no.5000 Article 19 is modified as follows with its heading.

“Department of Information Technologies

ARTICLE 19- Department of Information Technologies;

- a) Following the information technologies, determines the automation strategies of the Institute, takes the precautions required by the information security, produces solutions proper to the public informatics standards,
- b) Executes the information technologies services of the Institute,
- c) Performs the technical works related to the websites, electronic signature and electronic document applications of the Institute,
- d) Gathers information related to the services of the Institute and established databases,
- e) Executes the works related to the establishment, maintenance, supply, improvement and update of the current information technologies infrastructure of the Institute, provides communication security,

f) Provides data transfer between the Institute and the documentation centers and the national and international institute which it is in collaboration with, establishes and develops the necessary technical coordination for the electronic communication,

g) Gathers the information related to the industrial property rights provided from domestic and foreign sources, assesses and presents them to the usage of related units,

h) Performs other works assigned by Presidency.”

ARTICLE 176- To the Law no.5000 Article 20 Clause 1 the following item is added.

“c) Department of Strategy Development.”

ARTICLE 177- The Law no.5000 Article 22 is modified as follows.

“ARTICLE 22- Office of Legal Counselor;

a) Performs the duties given to the legal units in accordance with the provisions of the Statutory Decree related to the Execution of Legal Services in the Public Administrations Under General Budget and Administrations with Special Budget no.659 dated 26/9/2011,

b) Performs other works assigned by Presidency.”

ARTICLE 178- To the law no.5000 to come after the article 22 the following Article 22/A is added.

“Department of Strategy Development

ARTICLE 22/A- Department of Strategy Development;

- a) Performs the duties given to the strategy development and financial services units in accordance with the Law no. 5018, Law no. 5436 dated 22/12/2005 Article 15 and other legislation,
- b) Performs other works assigned by Presidency.”

ARTICLE 179- The Law no.5000 Article 23 Clause 1 is modified as follows, Clauses 3 and 4 are revoked and “and taking positive registry” in the Clause 6 Item (b) is removed from the text.

“Institute Board of Directors members are assigned among the persons that had at least four years of domestic or foreign higher education, have sufficient occupational knowledge and ten years of experience. It is mandatory that the representatives of the Ministry of Justice and Ministry of Finance have worked in the said ministries for ten years and have sufficient occupational knowledge and experience, one of the members the Minister of Science, Industry and Technology shall appoint be the representative of the Turkey Union of Chambers and Commodity Exchanges that has worked in public and/or private sector for ten years. Also these members should meet the terms in the Civil Servants Law no.657 dated 14/7/195 Article 48 Clause (A).”

AETICLE 180- The law no.5000 Article 26 is modified as follows.

“ARTICLE 26- Local and foreign experts can be employed temporarily under contract within the country or from abroad with the approval of the Board of

Directors, considering the needs of the Institute. The net amount of the wage to be paid to these, not exceeding the average monthly net amount paid to a first degree Industrial Property Expert, shall be determined by the Board of Directors. The procedures and principles regarding the employment of these are determined with the regulation put into force with a Cabinet Decree upon the recommendation of the Institute and the request of the Minister of Science, Industry and Technology.

For the works and services requiring a certain level of expertise processes are made in the frame of a contract of work with the decree of the Board of Directors.

The Institute can utilize the services of domestic and foreign institutes in execution of the transactions related to the industrial property rights. The fees paid to the services utilized in this manner are collected by the Institute together with the fees of the services rendered by the Institute and the payments to the related institutes are made by the Institute.

The wage payment made to the chairman and the members of the board of directors of the government business enterprises due to their duties is applied as same for the Chairman and the members of the Board of Directors.”

ARTICLE 181- The Law no.5000 article 30 is modified as follows.

“ARTICLE 30- The real or legal entities with the authorization to conduct transaction in the name of the applicants within the Institute and to give consultation regarding the industrial property rights and the traditional product names are patent attorneys in patent, utility model and integrated circuit topography issues, trademark attorneys in trademark, geographical indications and

traditional product names issues, both patent attorneys and trademark attorneys in design issues.

The real persons should carry the following conditions in order to be a patent attorney or a trademark attorney:

- a) Being a citizen of Republic of Turkey.
- b) Having legal capacity.
- c) Having graduated from higher education institutes giving at least four years of undergraduate education or from one of the higher education institutes abroad of which the equivalency is acknowledged by the competent authorities.
- d) Not being convicted of, even if the terms indicated in the Turkish Criminal Law no.5237 dated 26/9/2004 Article 53 have passed, convicted with five or more years of jail time due to an intentional crime or even if pardoned the crimes against the security of the State, the crimes against Constitutional order and functioning of this order, embezzlement, defalcation, bribery, theft, fraud, forgery, misuse of trust, bankruptcy by deception, collusive tendering, collusive action, laundering the wealth gained by crime or smuggling.
- e) Having residence in Turkey.
- f) Having passed in the patent attorneyship or trademark attorneyship examinations.

It is mandatory that a legal entity of patent attorney or trademark attorney is established as limited or joint-stock company according to the laws of Republic of Turkey, the field of operation covers the activities of patent attorneyship or

trademark attorneyship and is represented by real persons of patent attorneys or trademark attorneys. A real person of attorney can only use his/her attorneyship authority to represent a single legal entity attorney even if he/she is the partner or employer of more than one legal entity attorneys. The ones that used the attorneyship authority as such cannot perform as real-person attorneys. The real person of attorney, personal criminal responsibility being reserved, is responsible conjointly against the grantor of the power of attorney together with the legal entity he/she represents.

The patent attorneyship and trademark attorneyship examinations are held once in two years with the Board of Directors decision. The ones carrying the conditions indicated in the Clause 2 Items (a), (b), (c) and (d) are accepted to the exam.

For the ones that pass the examinations of patent attorneyship and trademark attorneyship, must register in the Patent Attorneys Registry in order to perform as a patent attorney and in the Trademark Attorneys Registry in order to perform as a trademark attorney. The term and amount of the occupational responsibility insurance required to be made at the record to registry and record renewal are determined by the Board of Directors.

The procedures and principles regarding the exam related to the patent attorneyship and trademark attorneyship and the registry transactions and the other issues related to the patent attorneyship and trademark attorneyship are organized with a regulation.

The fees of exams, certificate issuance, registry recording and renewal of

registry records related to patent attorneyship and trademark attorneyship are determined by the Institute.

In case that there is no provisions related to the power of attorney in this Law, the provisions of the Turkish Code of Obligations no 6098 dated 11/1/2011 related to the power of attorney are applied.”

ARTICLE 182- To the law no.5000 to come after the Article 30 the following Article 30/A is added.

“Disciplinary punishments, acts to be punished and disciplinary board

ARTICLE 30/A- For the ones that act and behave nonconforming to the vocational rules of the patent attorneyship and trademark attorneyship published in the official website of the Institute and prepared by the Institute via taking opinion from Turkey Union of Chambers and Commodity Exchanges and the institute related to the attorneyship with highest number of members, and that do not perform the duties the attorneyship requires the disciplinary punishments written in this Law are applied.

The actions and conditions to be punished with the disciplinary punishments to be given to the patent attorneys and trademark attorneys and the disciplinary punishments are as such:

a) Warning: It is notification in writing that it is required to act more carefully in performance of the attorneyship and occupational attitudes and behaviors. For the attorneys that act in attitudes and behaviors nonconforming to the vocational rules, the warning punishment is applied.

b) Reprobation: It is notification in writing of being faulty in the performance of the attorneyship and occupational attitudes and behaviors. To the ones that have received a warning punishment and perform the action requiring the same punishment within two years or do not fulfill the responsibilities required by the attorneyship or being attorneys of parties with conflicting interest in any transaction conducted within the Institute the reprobation punishment is applied.

c) Temporary suspension of attorneyship: It is a ban from attorneyship activities for no less than three months and no more than one year. To the attorneys that received reprobation and perform an act that requires same punishment within five years or with a copy contradictory to the original of the power of attorney use rights and authorities of attorneyship or use the titles, web domain names or other promotion tools as leading to confusion the punishment of temporary ban from attorneyship shall be applied.

d) Dismissal from attorneyship: It is the indefinite ban from the attorneyship activities. To the ones that received temporary ban from attorneyship punishment and perform an act requiring the same punishment within five years the dismissal from attorneyship punishment shall be applied.

About the ones performing the acts and conditions listed in the Clause 2, in case that an investigation is not started within three months after the performance of the acts and conditions is found out, in any case, no disciplinary punishments are given within two years from the date when the acts and conditions are performed the disciplinary punishment authority lapses.

It is mandatory to give the punishments in the scope of the clause 2 within thirty days after the investigation is completed.

About the attorneys no disciplinary punishments can be declared without taking their defenses. The attorney that does not perform his/her defense within the period, no less than seven days, given by the investigator or on indicated date deems to waive the defense right.

The disciplinary punishments come into effect on the date when they are decided and applied promptly.

Against the decision of imposing or not imposing disciplinary punishment the administrative jurisdiction can be applied to. The ones that are dismissed from the patent attorneyship or trademark attorneyship as the result of the finalized disciplinary decision cannot be patent attorneys or trademark attorneys once again.

The Patent and Trademark Attorneys Disciplinary Board consists of one member from Ministry, three members from the Institute and three members from patent attorneys and trademark attorneys that actively perform their occupations for at least five years and have not received any of the punishments indicated in the Clause 2 by a decision given by the Disciplinary Board, total of seven members. In same number and same principle substitute members are determined. All the members are appointed by the Minister of Science, Industry and Technology. The Institute President, while recommending the members to be chosen among the patent attorneys or trademark attorneys to the Ministry, takes opinions from two chambers of commerce that have highest number of members and two associations

related to the attorneyship that have the highest number of members.

The term of Disciplinary Board members is three years. In case that a legal case is filed about one of the members due to a crime indicated in the Article 30 Clause 2 Item (d) this member cannot attend the meetings until the end of the case and instead the substitute member comes. The member that will not be able to attend a meeting with a valid reason should notify of the reason before the date of the meeting. The membership of the members that do not attend two consecutive meetings or lose qualification for election ends and instead the substitute member comes.

The procedures and principles regarding the Disciplinary Board, the method to be followed in the detection of the acts requiring disciplinary punishments and other issues in the subject of discipline are determined with the regulations.”

ARTICLE 183- To the Law no. 5000 the following additional article is added.

“Positions

ADDITIONAL ARTICLE 1- The positions given in the list no (1) attached to the Law forming this article are formed and added to the related part of the tables attached to the Statutory Decree on the General Cadre and Procedure no. 190 dated 13/12/1983 and the positions given in the attached list no (2) are cancelled and removed from the related part of the tables attached to the Statutory Decree no. 190.

The part of the Statutory Decree no. 190 attachment table no. (1) that belongs to the Turkish Patent Institute changed as Turkish Patent and Trademark Office, the

titles of the empty and full Trademark Expert and Patent Expert given in the said table changed as Industrial Property Expert, titles of the Assistant Trademark Expert and Assistant Patent Expert changed as Assistant Industrial Property Expert.”

ARTICLE 184- The following provisional article has been added to the Law No. 5000.

“PROVISIONAL ARTICLE 3- The duties of the President of the Institute, the Vice-President and the head of the department, which are in the (2) numbered list attached to the Act that creates this article, shall come to an end on the date when this Act comes into force and the President of the Institute and Vice President shall be deemed to have been appointed to the positions of the President of the Turkish Patent and Trademark Office and the Vice President of the Turkish Patent and Trademark Office respectively, which shall be created with the (1) numbered list attached hereto, head of department shall be deemed to have been appointed to the counsellor staff which is created by the (3) numbered list attached to Act which creates this article. If the counsellor staffs which are created by the (3) numbered list attached to Act which creates this article is vacated for any reason, it shall be regarded as canceled without any processing.

In accordance with this article, if the total net amount (this amount is based on a constant value) of all payments (excluding overtime pay and additional course fees related to actual work under the relevant legislation) made as contract fee, price, compensation, salary, additional indicator, bonus (net amount per month), all kinds

of hike and compensation, office compensation, representation compensation, compensation for duty, surcharge, supplementary payment, incentive payment and so on that the personnel who are deemed to have been appointed for counsellor staff in the last month regarding the old staff as of the appointment date of the new staff exceeds the total net amount (this amount is based on a constant value) of all payments (excluding overtime pay and additional course fees related to actual work under the relevant legislation) made as contract fee, price, compensation, salary, additional indicator, bonus (net amount per month), all kinds of hike and compensation, office compensation, representation compensation, compensation for duty, surcharge, supplementary payment, incentive payment and so on, the amount of the difference is paid as compensation, up to the closing of the difference, without any tax or deduction.

The payment of compensation for difference to those who are appointed to other institutes at their will and those who have any changes in the title of the appointed position as required.

The personnel who are working as patent experts and trademark specialists in Institute shall be deemed to have been appointed to the staff of the industrial property specialist and the personnel who are working as patent assistant and trademark expert assistant shall be deemed to have been appointed to the staff of the industrial property specialist assistant on the date this Act enters in force without any further processing that the staff degree they are currently in.

ARTICLE 185- The "industrial design" inscription in the first paragraph of

Article 21 of the Law on the Establishment of the Scientific and Technological Research Council of Turkey dated 17/7/1963 numbered 278 has been changed to "design".

ARTICLE 186- The “Institute” inscription in the (e) sub-clause of "2nd. Patents and utility models:" subparagraph of the section "I-manufacturing licenses" of the provision (8) of the Act of Fees dated 2/7/1964 numbered 492 to “Corporation”, "3. Industrial demarks:" in the same section to " 3. Design: ", "Institute" in the (k) sub-clause of this sub-paragraph to “Corporation”, "Industrial Design" the title of 3.Industrial Designs:" section in the (m) sub-clause of this subparagraph to "Design", "Trademark application fee (for the first three classes)" in the (a) sub-clause of “4.Trademarks:" subparagraph of the same section to "Trademark application fee (for each class)", "Trademark registration certificate holder" in the (e) sub-clause to "Trademark registration fee", “Hostage operation registration fee" in the (i) sub-clause to “Hypothecc operation registration fee”, “Institute” in the (j) sub-clause to “Corporation”, “International application fee" in the (l) sub-clause to “"Notification Fee of International application”, the title of "5. Geographical indications: " subparagraph to “5. Geographical indication and traditional product name: ", "Geographical indication registration certificate and registration record holder" in the (b) sub-clause of this subparagraph to "Geographical indication and traditional product name registration and registration record holder", “Institute” in the (c) sub-clause to “Corporation”, "geographical indication" in the same sub-clause to "geographical indication and traditional

product name" has been changed as referred after own and (b) sub-clause of “4. Trademarks” subparagraph has been removed from the enforcement.

ARTICLE 187- Of the Civil Servants Law dated 14/7/1965 numbered 657;

a) In the (11) subparagraph of (A) paragraph of the section entitled "Joint Provisions" of Article 36, "Trademark Specialists, Patent Specialists" inscription to "Industrial Property Specialists" and "Trademark Expert" and “Patent Expertise” to “Industrial Property Expert ” was changed.

b) In the (ğ) subparagraph of A-“Special Service Indemnity” section of "II-Indemnities" part of Article 152, "Trademark Experts," and "Patent Experts," were excluded from the text and "Industrial Property Experts" inscription was added after "Defense Industry Experts”.

c) The "Law on the Establishment and Duties of the Turkish Patent Institute" which is located in the eleventh sub-section of (a) subparagraph of the first paragraph of Temporary Article 41 has been changed to "Law on the Establishment and Duties of the Turkish Patent and Trademark Office".

d) "Turkish Patent Institute President" inscription in (d) subparagraph of "I - General Administration Services Class" section of Additional Indicator Sheet numbered Annex (I) to "Turkish Patent and Trademark Office President", "Trademark Experts, Patent Experts" inscription in (g) subparagraph to "Industrial Property Experts" and "Vice President of Turkish Patent Institute" in the "2. Judicial Institutes, Affiliated and Related Institutes and Higher Education Institutes” section of Additional Indicator Sheet numbered Annex (II) was changed

to "Turkish Patent and Trademark Office Vice President".

ARTICLE 188-a) In Law on Establishment and Functions of Turkish Patent Institute No: 5000 dated 6/11/2003; the title of “Law on Establishment and Functions of Turkish Patent Institute” is amended as “Law on Establishment and Functions of Turkish Patent and Trademark Office”, “Turkish Patent Institute” expressions in first paragraph of Article 1 of the same Law are amended as “Turkish Patent and Trademark Office”, “TPE” expressions in first paragraph of article 1 of the same Law are amended as “TÜRKPATENT”, “TPE” expressions in second paragraph of Article 1 of the same Law are amended as “TÜRKPATENT”, “a) Institute: means Turkish Patent Institute” expressions in Item (a) of first paragraph of article 2 of the same Law are amended as “a) Institute: Turkish Patent and Trademark Office”, “b) Board of Directors: means Board of Directors of Turkish Patent Institute” expressions in Item (b) of first paragraph of Article 2 of the same Law are amended as “b) Board of Directors: means Board of Directors of Turkish Patent and Trademark Office”, “c) Advisory Board: means Advisory Board of Turkish Patent Institute” expressions in Item (c) of first paragraph of Article 2 of the same Law are amended as “c) Advisory Board: Advisory Board of Turkish Patent and Trademark Office”, “d) Presidency: means Presidency of Turkish Patent Institute” expressions in Item (d) of first paragraph of Article 2 of the same Law are amended as “d) Presidency: Presidency of Turkish Patent and Trademark Office”, “Institute” expressions in first paragraph of Article 3 of the same Law are amended as “Institute”, “Institute” expressions in first paragraph of

Article 4 of the same Law are amended as “Institute”, “Institute’s” expressions in first paragraph of Article 5 of the same Law are amended as “Institute’s”, “Institute” expressions in second paragraph of Article 5 of the same Law are amended as “Institute”, “Institute’s” expressions in third paragraph of Article 5 of the same Law are amended as “Institute’s”, “Institute” expressions in fourth paragraph of Article 5 of the same Law are amended as “Institute”, “to Institute” expressions in first paragraph of Article 6 of the same Law are amended as “to Institute”, “Institute’s” expressions in Item (a) of second paragraph of Article 6 of the same Law are amended as “Institute’s”, “Institute” expressions in Item (b) of second paragraph of Article 6 of the same Law are amended as “Institute”, “Institute’s” expressions in Item (c) of second paragraph of Article 6 of the same Law are amended as “Institute’s”, “Institute’s” expressions in Item (f) of second paragraph of Article 6 of the same Law are amended as “Institute’s”, “Institute’s” expressions in Item (j) of second paragraph of Article 6 of the same Law are amended as “Institute’s”, “Institute’s” expressions in Item (l) of second paragraph of Article 6 of the same Law are amended as “Institute’s”, “Institute’s” expressions in first paragraph of Article 8 of the same Law are amended as “Institute’s”, “to Institute” expressions in first paragraph of Article 8 of the same Law are amended as “to Institute”, “Institute’s” expressions in first paragraph of Article 9 of the same Law are amended as “Institute’s”, “Institute” expressions in first paragraph of Article 9 of the same Law are amended as “Institute”, “Institute” expressions in second paragraph of Article 9 of the same Law are amended as “Institute”, “Institute” expressions in fourth paragraph of Article 9 of the same Law are

amended as “Institute”, “Institute’s” expressions in fourth paragraph of Article 9 of the same Law are amended as “Institute’s”, “at Institute” expressions in fourth paragraph of Article 9 of the same Law are amended as “at Institute”, “Institute’s” expressions in first paragraph of Article 11 of the same Law are amended as “Institute’s”, “Institute’s” expressions in first paragraph of Article 16 of the same Law are amended as “Institute’s”, “Institute” expressions in Item (a) of first paragraph of Article 17 of the same Law are amended as “Institute”, “Institute’s” expressions in first paragraph of Article 20 of the same Law are amended as “Institute’s”, “Institute” expressions in fifth and sixth paragraphs of Article 23 of the same Law are amended as “Institute”, “Institute” expressions in first paragraph of Article 24 of the same Law are amended as “Institute”, “Institute’s” expressions in first paragraph of Article 25 of the same Law are amended as “Institute’s”, “to Institute” expressions in first paragraph of Article 25 of the same Law are amended as “to Institute”, “Institute’s” expressions in second, third, fourth and fifth paragraphs of Article 25 of the same Law are amended as “Institute’s”, “Institute” expressions in fifth paragraph of Article 25 of the same Law are amended as “Institute”, “Institute” expressions in first paragraph of Article 28 of the same Law are amended as “Institute”, “Institute’s” expressions in first paragraph of Article 28 of the same Law are amended as “Institute’s”, “Institute’s” expressions in first paragraph of Article 29 of the same Law are amended as “Institute’s”, “Institute” expressions in first paragraph of 2nd provisional article of the same Law are amended as “Institute”.

b) “Turkish Patent Institute” expression in Item (25) of “B) Other Special

Budgeted Administrations” section of Special Budgeted Administrations list No: (II) based on Public Finance Management and Control Law No: 5018 dated 10/12/2003 is amended as “Turkish Patent and Trademark Office”.

c) In Law on Protection of Integrated Circuit Topographies No: 5147 dated 22/4/2004; “a) Institute: means Turkish Patent Institute,” expression in Item (c) in first paragraph of Article 2 is amended as “a) means Turkish Patent and Trademark Office,” “Institute’s” expression in Item (h) in first paragraph of Article 2 is amended as “Institute’s”, “to Institute” expression in third paragraph of Article 6 is amended as “to Institute”, “is Institute.” expression in first paragraph of Article 13 is amended as “is Institute.”, “Institute” expression in first paragraph of Article 15 is amended as “Institute”, “to Institute” expressions in second and third paragraphs of Article 15 are amended as “to Institute”, “Institute” expressions in first and second paragraphs of Article 16 are amended as “Institute”, “Institute” expression in first paragraph of Article 18 is amended as “Institute”, “to Institute” expression in fourth paragraph of Article 19 is amended as “to Institute”, “Institute” expression in fourth paragraph of Article 19 is amended as “Institute”, “Institute” expression in second paragraph of Article 21 is amended as “Institute”, “to Institute” expression in second paragraph of Article 22 is amended as “to Institute”, “Institute” expressions in title and first paragraph of Article 23 are amended as “Institute”, “Institute” expression in fourth paragraph of Article 26 is amended as “Institute”, “Institute” expressions in title and first paragraph of Article 30 are amended as “Institute” and “to Institute” expressions in title and first paragraph of Article 30 are amended as “to Institute”, “Institute’s” expressions in second

paragraph of Article 31 are amended as “Institute’s”, “Institute” expressions in second paragraph of Article 31 are amended as “Institute”, “to Institute” expressions in second paragraph of Article 37 are amended as “to Institute”, “Institute’s” expressions in third paragraph of Article 37 are amended as “Institute’s”, “by Institute” expressions in fifth paragraph of Article 37 are amended as “by Institute”, “Institute” expressions in sixth paragraph of Article 37 are amended as “Institute”, “Institute’s” expressions in first paragraph of Article 38 are amended as “Institute’s”, “Institute” expressions in first paragraph of Article 41 are amended as “Institute”.

ARTICLE 189-(1) First paragraph of Article 76 of Law on Intellectual and Artistic Works No: 5846 dated 5/12/1951 is amended as follows.

“Competent courts in suits and proceedings arising from legal relationships regulated by this Law and criminal proceedings arising from this Law are the courts specified in first paragraph of Article 156 of Industrial Property Law.”

References

ARTICLE 190-(1) All references made to the Turkish Patent Institute in other regulations are deemed to be made to Turkish Patent and Trademark Office; all references made to the Trademark Expert and Patent Expert and Trademark Assistant Expert and Patent Assistant Expert in other regulations are deemed to be made to Industrial Property Expert and Industrial Property Assistant Expert.

Annulled regulation

ARTICLE 191- (1) Item (d) of first paragraph of Article 4 and Item (e) of first paragraph of Article 13 of Law on Establishment and Functions of Turkish Patent Institute No: 5000 dated 6/11/2003 are annulled.

(2) Article 39 of Law on Protection of Integrated Circuit Topographies No: 5147 dated 22/4/2004 is annulled.

(3) Statutory Decree on Protection of Patent Rights No: 551 dated 24/6/1995, Statutory Decree on Protection of Industrial Demarks No: 554 dated 24/6/1995, Statutory Decree on Protection of Geographical Marks No: 555 dated 24/6/1995, Statutory Decree on Protection of Brands No: 556 dated 24/6/1995 and Statutory Decree No: 556 dated 22/9/1995 on amendment of Statutory Decree No: 551 are annulled.

Implementation of provisions of Statutory Decrees No: 551, 554, 555 and 556

PROVISIONAL ARTICLE 1-(1) National and international brand and design applications and geographical indication applications submitted to the Institute before the date of issuance of this Law shall be finalized according to provisions of regulations in force at the date of application. However, geographical indication applications which are made to the Institute but not issued before the date of issuance of this Law are issued in the Bulletin reserving the provisions of repealed Statutory Decree No: 555 with regards to objection period.

(2) National patent applications and beneficial model applications filed before the date of issuance of this Law are finalized according to provisions of regulations in force at the date of application. In finalizing additional patent applications or converting additional patent application or additional patent to independent patent application or patent made before this article comes into force, provisions of regulations in force at the date of original patent application are implemented. In converting patent granted without examination into patent application with examination or patent application into utility model application or utility model application into patent application, invalidation of patent and utility models, provisions of regulations in force at the date of application are implemented. Patent applications and utility model applications filed by means of international or regional agreements which enter national stage before the date when this article comes into force are finalized according to provisions of regulations in force at the date when the application enters national stage.

(3) Same article continues to be implemented for patents within the scope of provisional Article 4 of repealed Statutory Decree No: 551.

(4) For patents and utility models granted according to provisions of previous regulations, such provisions of code with the exception of Articles 99, 138, 144 and fifth Clause of Article 113 and eighth paragraph of Article 121 are implemented.

Implementation of available regulations

PROVISIONAL ARTICLE 2-(1) Until regulations stipulated in this Law

come into effect provisions of available regulations which are not contrary to this Law continue to be implemented.

Destruction of criminal goods

PROVISIONAL ARTICLE 3-(1) Regardless of whether goods are at property and evidence unit or in the possession of the plaintiff or delivered to another person for safe keeping pursuant to fifth Clause of Article 132 of Code of Criminal Procedure No: 5271 dated 4/12/2004; a duly annotated notification is given on its own motion by Chief Public Prosecutor's Office in judicial framework of the court rendering the verdict to persons whom punitive articles of repealed Statutory Decrees No: 551, 554, 555 or 556 are implemented due to crime committed before the date of 1/1/2009 and a decision regarding confiscation of criminal goods is made and finalized but not executed. Such persons are informed that they have a right to go to law and reclaim such goods in one month. In the event that such owners do not make a request in due time or they make a request but do not take delivery of such goods in one month starting from notification of decision of restitution by the court, it shall be decided to destruction of goods by the court upon the request of Chief Public Prosecutor's Office. Decision of destruction is sent to Chief Public Prosecutor's Office to be performed immediately

(2) Regardless of whether goods are at property and evidence unit or in the possession of the plaintiff or delivered to another person for safe keeping pursuant to fifth Clause of Article 132 of Code of Criminal Procedure; a duly annotated notification is given on its own motion by Chief Public Prosecutor's Office in

judicial framework of the court rendering the verdict to persons whom punitive articles of repealed Statutory Decrees No: 551, 554, 555 or 556 are implemented before the effective date of hereby article and a decision regarding restitution of goods is made and finalized and such persons are asked to take delivery of such goods in one month. Upon the request of Chief Public Prosecutor's Office, the court decides to destruction of goods which are not taken delivery by their owners in such period. Decision of destruction is sent to Chief Public Prosecutor's Office to be performed immediately

(3) Destruction procedures to be carried out pursuant to this article are carried out by a commission consisting of property officer and two court clerks at Public Prosecution Office and an official report is made regarding this. Which court clerks will join in the commission is determined by justice commissions. No payment is made to the owner for destruction goods. Destruction expenses are covered by Treasury as litigation expense providing that they are collected from the owner.

Exercise of cancellation power by courts

PROVISIONAL ARTICLE 4- (1) Until the provision of Article 26 comes into force, the cancellation power shall be exercised by the courts in accordance with the principles and procedures referred to.

(2) The cancellation law cases which are seen by the courts on the date of entry into force of the Article 26 shall be concluded by the courts.

(3) After the judgments of the courts have been finalized according to the

provisions of this article, ex officio shall be sent to the Institute by court.

Renewal requests

PROVISIONAL ARTICLE 5- (1) The provisions of Decrees 554 and 556 of the Decree-Law are applied in respect of renewal requests, until the second Clause of Article 23 and the fourth Clause of Article 69 come into force.

Pending law cases

PROVISIONAL ARTICLE 6- (1) Intended to be repealed by this law;

Article 146 of the Decree Law No. 551,,

Article 58 of the Decree Law No. 554,

Article 30 of the Decree Law No. 555,

Article 71 of the Decree Law No. 556,

specialized courts established in accordance with these articles shall be deemed as courts established in accordance with the first Clause of Article 156 of this Law and the proceedings pending in these courts shall continue to be observed.

Effective date

ARTICLE 192- (1) The following articles and provisions of this law shall become effective at the times below:

a) Article 26, seven years after the date of its publication,

b) The second Clause of Article 23 and provisions relating to the period of the renewal requests to be made in the fourth Clause of Article 69 and the provisions

regarding the obligation to use the emblem issued in Article 46, one year after the date of its publication

c) Other provisions at the date of publication

Implementation

ARTICLE 193- (1) The provisions of this Law shall be implemented by the Council of Ministers.

LIST NUMBER (1)

INSTITUTE: TURKISH PATENT AND TRADEMARK OFFICE

ORGANIZATION : CENTRAL

CLASS OF THE CREATE D STAFF	TITLE	DEGREE	NUMBER OF FREE POSITIONS	TOTAL
GIH	President of Turkish Patent and Trademark Office	1	1	1
GIH	Vice President of Turkish Patent and Trademark Office	1	2	2
GIH	Head of Innovation and Promotion Department	1	1	1
GIH	Head of Information Technology Department	1	1	1
GIH	Head of Support Services Department	1	1	1
GIH	Head of Design Department	1	1	1
GIH	Head of Geographical Indications Department	1	1	1
GIH	Head of the European Union and External Relations Department	1	1	1

(シエトロ仮訳)

(Tentative translation by JETRO)

GIH	President of the Review and Evaluation Department	1	1	1
GIH	Head of Strategy Development Department	1	1	1
GIH	Industrial Property Expert	6	160	160
GIH	Assistant Industrial Property Expert	7	100	100
AH	Lawyer	7	10	10
TOTAL		281	281	

(ジェトロ仮訳)

(Tentative translation by JETRO)

ジェトロ仮訳

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