

# TURKISH INDUSTRIAL PROPERTY CODE

*(The present Code was enacted on 22 December 2016 and came into force on 10 January 2017 for Trademarks, Geographical Indications and Traditional Specialities, Designs, and Patents and Utility Models in Turkey)*

**Notes:**

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- *The cover page and the table of contents are not a part of the Code.*

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## INDUSTRIAL PROPERTY CODE

Law Number	: 6769
Date of Enactment	: 22/12/2016
Official Gazette of the Publication	: Date: 10/01/2017 Number: 29944
Publication Book	: Order: 5 Volume: 58

### PRELIMINARY PROVISIONS

#### Purpose, Scope, Definitions and Persons that will benefit from Protection

##### Purpose and Scope

**ARTICLE 1-** (1) The purpose of this Code is to protect the rights relating to trademark, geographical signs, design, patent, utility model and traditional product names and thus to contribute to technological, economic and social progress.

(2) This Code encompasses applications, registrations and post-registration processes regarding trademarks, geographical signs, design, patent, utility model and traditional product names and legal and criminal sanctions concerning the violation of these rights.

##### Definitions

**ARTICLE 2-** (1) In the enforcement of this Code;

a) Emblem: An emblem, which is established by the Office, indicating that the geographical indications and traditional product names have been registered in line with the provisions of this Code; used on the product or its packaging together with the name it has been registered or applied by the right owners in an easily visible manner in case it cannot be used on the product or its packaging due to its characteristics; and mandatory to be used in case of geographical signs,

b) Plant variety: The plant group within the lowest taxonomic rank defined by the expression of various characteristics resulting from one or more genotypes; distinguished from other genotypes of same species by at least one typical characteristic, and considered as a unit with regard to its suitability for being propagated unchanged,

c) Biological material: Any material that contains genetic information and is self-reproducing or which can be reproduced in a biological system,

ç) Bulletin: The relevant publication where subjects set out in this Code are published regardless of publication medium,

d) Employee: Persons who are under the service of another party due to a private law contract or a similar legal relationship and under personal obligation with respect to this legal relationship to carry out a certain work given by the employer,

e) Office: Turkish Patent and Trademark Office,

f) Board: The Board within the Department of Re-examination and Evaluation,

g) Trademark attorney: The persons who represent the right owners before the Office in the fields relating to trademark, design, geographical signs and traditional product names,

ğ) Paris convention: The Paris Convention for the Protection of Industrial Property dated 20/3/1883 and the amendments to this Convention as duly enforced by the Republic of Turkey, which has been approved with Council of Ministers with the Decree dated 8/8/1975 and numbered 7/10464,

h) Patent attorney: The persons who represent right owners before the Office in the fields relating to patent, utility model and design rights,

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

i) Register: means the recording medium, which contains the information relating to industrial property rights and traditional product names,

j) Fee: The cost relating to services in the scope of this Code determined by the Office according to its relevant provisions inclusive of taxes and fees, if any.

**Persons to benefit from protection**

**ARTICLE 3-** (1) The following shall benefit from protection of this Code;

- a) Citizens of Republic of Turkey,
- b) Natural or legal entities domiciled or engaged in industrial or commercial activities within the borders of Republic of Turkey,
- c) Persons who have the right of application according to the Paris Convention or Agreement Establishing the World Trade Organization,
- ç) According to reciprocity principle, persons whose citizenships are in states that provide Turkish citizens the protection of industrial property rights.

**BOOK ONE**

**Trademarks**

**SECTION ONE**

**Trademark Right and Scope**

**Signs that a trademark may consist of**

**ARTICLE 4-** (1) Trademarks may consist of any signs like words, including personal names, figures, colors, letters, numbers, sounds and the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings and being represented on the register in a manner to determine the clear and precise subject matter of the protection afforded to its proprietor.

**Absolute grounds for refusal in trademark registration**

**ARTICLE 5-** (1) The following signs set out below shall not be registered as trademark:

- a) Signs which may not be trademark according to Article 4;
- b) Signs which are devoid of any distinctive character;
- c) Signs which consist exclusively or includes as an essential element of signs or indications which serve in trade to designate the kind, type, characteristics, quality, quantity, intended purpose, value, geographical origin, or the time of production of goods or of rendering of the services or other characteristics of goods or services,
- ç) Signs which are identical to or indistinguishably similar to a trademark, which has been registered or which has been applied for registration, relating to identical goods and services or to goods and services of the identical type,
- d) Signs which consist exclusively or includes as an essential element of signs or indications used by everyone in the trade area or which serves to distinguish members of a particular professional, vocational or commercial group from others.
- e) Signs which consist exclusively of the shape or another characteristic which results from the nature of the goods themselves or the shape or other characteristics which is mandatory to obtain a technical result or gives substantial value to the goods;
- f) Signs which would deceive the public, for instance, as to the nature, quality or geographical origin of the goods or service;
- g) Signs which shall be refused pursuant to Article 6ter of the Paris Convention;
- ğ) Signs other than those covered by Article 6ter of the Paris Convention but which are of public interest, and which contain historical, cultural values, and emblems, badges or escutcheons for which the consent of the competent authority has not been given,
- h) Signs that contain religious values or symbols;
- ı) Signs which are contrary to public policy or to accepted principles of morality;



i) Signs which consist of a registered geographical sign or which contain a registered geographical sign.

(2) If a trademark has been used before the application, and through this use, has acquired distinctive character in respect of the goods and services subject to the application, the registration of this trademark may not be refused in accordance with subparagraphs (b), (c) and (d) of the first paragraph.

(3) A trademark application may not be refused according to subparagraph (ç) of the first paragraph if a notarial document indicating the clear consent of the prior trademark proprietor for the registration of the application is submitted to the Office. Procedure and rules regarding the letter of consent shall be determined by regulation.

#### **Relative grounds for refusal in trademark registration**

**ARTICLE 6-** (1) An application for trademark registration shall be refused upon opposition if there exists a likelihood of confusion on the part of the public, including the likelihood of association with the earlier trademark, due to identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered.

(2) A trademark application for the registration of an identical or indistinguishably similar trademark filed by a commercial agent or representative in his own name without the trademark proprietor's consent and without any justifiable ground shall be refused upon the trademark proprietor's opposition.

(3) If a right to a non-registered trademark or to another sign used in the course of trade was acquired prior to the date of application or the date of the priority claimed for the application for registration of a trademark, the trademark application shall be refused upon opposition of the proprietor of that prior sign.

(4) Trademark applications which are identical or similar to the well-known marks within the context of Article 6 bis of the Paris Convention, shall be refused upon opposition in respect of the identical and similar goods or services.

(5) A trademark application which is identical with, or similar to, an earlier registered trademark or application irrespective of whether the goods or services for which it is applied or registered are identical with, similar to or not similar to those for which the latter trademark is applied for, and the use of the latter trademark without due cause would take unfair advantage of, or be detrimental to the distinctive character or the repute of the earlier trade mark due to the reputation the earlier trademark has in Turkey; shall be refused upon opposition of the proprietor of that earlier trademark.

(6) An application for registration of a trademark shall be refused upon the opposition of the right holder if it consists of a person's name, trade name, photography, copyright or any other intellectual property right of another.

(7) An application for registration of a trademark identical to or similar to a collective mark or a guarantee mark with identical or similar goods or services, that is filed within three years following the expiration of the protection of the collective mark or guarantee mark due to non-renewal shall be refused upon opposition of the previous right holder.

(8) An application for registration of a trademark identical to or similar to a registered trademark with identical or similar goods or services, that is filed within two years following the expiration of the protection of the registered trademark due to non-renewal shall be refused upon opposition of previous trademark proprietor provided that the trademark has been used during this period.

(9) Trademark applications filed in bad faith shall be refused upon opposition.

#### **Scope of rights conferred by a trademark and its exceptions**

**ARTICLE 7-** (1) Trademark protection provided by this Code shall be acquired by registration.

(2) Rights arising from trademark registration shall be granted exclusively to the trademark proprietor. The trademark proprietor shall be entitled to claim for prevention, in case of execution without consent, of the acts set out below:

a) Use of any sign identical with the trademark at goods or services that are in the scope of the registration.

b) Use of any sign identical with or similar to a registered trademark and covering identical or similar goods or services with the registered trademark, and is therefore liable to create a likelihood of confusion on the part of the public; including the likelihood of association between the sign and the trademark.

c) Use of any sign identical with, or similar to the registered trademark, irrespective of being for identical, similar or different goods or services, where the use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark due to the reputation it has in Turkey.

(3) The cases set out below may be prohibited, if the sign is used in trade area, in accordance with paragraph two:

a) Affixing the sign to the goods or to the packaging thereof;

b) Putting the goods on the market, offering them as deliverable, or stocking them for these purposes under the sign, or offering or supplying services thereunder;

c) Importing or exporting the goods under the sign;

ç) Using the sign on business papers and advertisements of the undertaking.

d) Using identical or similar sign on internet media as domain name, router code, and keyword or in similar manner with a commercial impression; provided that the person using the sign has no right or legal affiliation for the use of that sign.

e) Using the sign as a trade or company name;

f) Using the sign in comparative advertising in a manner that is against the law.

(4) The rights conferred by the trademark to its proprietor shall take effect against third parties as of the publication date of trademark registration. However, the trademark applicant shall be entitled to institute legal proceeding for compensation in respect of acts that occurred after the date of publication of the trade mark application in the Bulletin, where those acts would, after publication of the registration of the trade mark, be prohibited by virtue of that publication. The court may not decide upon the validity of claims raised before the registration is been published.

(5) The trademark proprietor may not prevent the honest use of his trademark by a third party, in the course of trade in the forms set out below:

a) Natural persons indicating their own name or address;

b) Making explanations concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of the goods or services;

c) Situations where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts or equivalent products.

#### **Use of the trademark in reference works**

**ARTICLE 8-** (1) In case a registered trademark is published in a dictionary, encyclopedia or similar reference work, in printed or electronic form, without an indication that it is a registered trade mark, and giving the impression that it constitutes the generic name of the goods or services for which the trademark is registered; the publisher of the work, at the request of the proprietor of the trademark, immediately in case of electronic publication or in the first edition of publication following the request for printed publications, shall correct the mistake by indicating that it is a registered trademark or remove the trademark from the reference work.

### **Use of trademark**

**ARTICLE 9-** (1) If, within a period of five years following the date of registration, the trademark has not been put to genuine use in Turkey by the trademark proprietor in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the trademark shall be revoked, unless there are proper reasons for non-use.

(2) The cases set out below shall also be deemed as use of trademark within the meaning of the first paragraph:

a) Use of the trademark with different elements which do not alter the distinctive character of the mark;

b) Use of the trade mark on goods or on the packaging solely for export purposes.

(3) Use of the trademark with the consent of the trademark proprietor shall be deemed to constitute use by the trademark proprietor.

### **Requests relating to trademarks registered in the name of commercial agent or representative**

**ARTICLE 10-** (1) If an identical or indistinguishably similar trademark is registered in the name of the agent or representative without the consent of the trademark proprietor, unless the commercial agent or representative has a justifiable reason, the trademark proprietor may request from the court the prohibition of the use of his trademark and may also request the transfer of the said registration to himself.

## **SECTION TWO**

### **Application, Opposition and Appeals**

#### **PART ONE**

#### **Application, Priority Right and Examination**

##### **Application conditions, classification and division**

**ARTICLE 11-** (1) Trademark application shall consist of;

a) Application form containing information on the identity of applicant,

b) Representation of trademark,

c) List of goods or services for which application is filed,

ç) Information showing that the application fee is paid,

d) If the application has been filed for collective or guarantee trademarks, technical specifications according to Article 32,

e) If priority right is claimed, information showing that the fee of priority right claim is paid,

f) If letters other than the Latin alphabet are used in the reproduction of trademark, their transliteration in the Latin alphabet.

(2) Only one trademark registration can be claimed per application.

(3) Goods or services for which application is filed shall be classified in accordance with Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, which was ratified pursuant to the decision of the

Council of Ministers dated 12/7/1995 numbered 95/7094. The Office may perform necessary corrections on classes and class numbers belonging to goods and services in the application.

(4) Goods or services shall not be presumed as being similar on the ground that they are in the same class and goods or services shall not be regarded as being dissimilar on the ground that they are in different classes.

(5) Trademark application may be divided, upon the request of the applicant, until being registered, into two or more applications in terms of goods or services covered by the application.

(6) Spelling mistakes and obvious mistakes, which do not cover any changes in the content of trademark application, reproduction of trademark or list of goods and services, shall be corrected upon the request of the applicant.

(7) Procedure and rules regarding the application, classification and division shall be determined by regulation.

**Priority right and its effect**

**ARTICLE 12-** (1) Natural or legal entities or their successors in title who are nationals of one of the states that are party to Paris Convention or Agreement Establishing World Trade Organization or those who are domiciled or has an active commercial enterprise therein although they are not nationals thereof, shall enjoy priority right for applying in Turkey within six months following the date of application they duly filed, for a trademark registration of the identical trademark and identical goods or services to competent authorities, in one of those states within the scope of the provisions of Paris Convention. Priority rights which are not used within this period shall be forfeited. It is mandatory to get a document of priority right from the competent authority of the state to which the first application was filed in order to enjoy the priority right.

(2) The natural or legal entities or their successors in title set out in the first paragraph shall enjoy the priority right within the framework of the rules set out in the first paragraph based on the trademark application they duly filed in a state which is not a party to Paris Convention and the Agreement Establishing World Trade Organization.

(3) Natural or legal entities set out in the Article 3, who display under the trademark the goods or services for which the trademark is applied for, at national or international exhibitions in Turkey or official or officially recognized exhibitions in the countries which are parties to Paris Convention or Agreement Establishing World Trade Organization and who presents the certified reproduction of the trademark, shall enjoy the priority right in filing application for registration of the identical trademark in Turkey within six months following the display in the exhibition.

(4) If the goods or services for which trademark specified in the application will be used have been displayed along with the trademark in a visible way in the exhibition before the official opening date, the period of priority right shall commence from the date when the goods are put on the exhibition or the services are displayed.

(5) If more than one application has been filed in terms of goods or services displayed in any exhibition, the first person who displays these goods or services shall benefit from the priority right and if goods or services are displayed at the same time, the person who filed the first application shall benefit from the priority right.

(6) If an application is filed on the basis of priority right, applications filed by third parties after the priority date and which cover identical or indistinguishably similar trademarks with identical or similar goods or services shall be refused.

**The request for priority effect and its effect**

**ARTICLE 13-** (1) The applicant shall state the priority right he wishes to make use of, together with the application by depositing the fee for the request. In case the applicant does not submit the priority right certificate within three months following the date of application, the request for the priority right shall be deemed not to have been made.

(2) The effect and the results of the priority right shall be conferred as of the dates set out in Article 12.

(3) In case more than one priority right is requested for the trademark application, the priority right commences from the date of first valid priority right.

(4) Procedure and rules regarding request for priority right shall be determined by regulation.

**International trademark applications filed under the Madrid Protocol**

**ARTICLE 14-** (1) An international application filed in the scope of Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, which was ratified pursuant to the decision of the Council of Ministers dated 5/8/1997 numbered 97/9731, shall have the same results with an application filed directly to the Office. This application shall be deemed to have been filed in the first hour and minute of date of international application. In case there is more than one international application with the same date, the application with the smaller international registration number shall be deemed to have been filed first.

(2) An international application may not be refused based on a trademark application or registered trademark filed after the application or priority date of the international application but submitted to the Office at earlier date. The trademark application with later date shall be re-examined according to the provisions of the first paragraph of Article 16 by taking into account the earlier dated international trademark application.

(3) Fees received for proceedings carried out by the Office in the scope of Madrid Protocol shall be determined by communiqué.

**Procedural examination, remedy of deficiencies and application date**

**ARTICLE 15-** (1) The Office shall formally examine the conformity of the application with the Articles 3 and 11. In case it is decided that there are no deficiencies, the application shall finalize in date, hour and minute of its date of reception. In case there is deficiency in the application, the applicant shall be given a period of two months to remedy the deficiency. (2) If there is deficiency related to subparagraphs (a), (b), (c) and (ç) of first paragraph of Article 11, the application shall finalize in date, hour and minute of the remedy of the deficiency. The deficiencies related to subparagraphs (d), (e) and (f) of first paragraph of Article 11 shall not affect the finalization of the application date. (3) Application whose deficiencies are not remedied within the prescribed period shall be cancelled. However, in case the application has been filed for goods or services covering more than one class and the nonpayment of the fee regarding classes is not remedied in the prescribed period, the application shall be examined for class or classes covered by the paid fee. Failure to remedy deficiencies related to the priority right in accordance with subparagraph (e) of first paragraph of Article 11 shall cause the loss of the priority right.

(4) The application of natural or legal entities, which is not in the scope of Article 3, shall be refused. Examination of application regarding absolute grounds for refusal and publication

**ARTICLE 16-** (1) If the Office decides that the application does not have any formal deficiencies, it shall examine the application in accordance with Article 5. As a result of the examination, if it is concluded that the application may not be registered for some or all of the goods or services in the scope of the application, the application shall be refused for those goods or services.

(2) An application, which has fulfilled the conditions of application and has not been refused according to the Article 15 and first paragraph of this Article, shall be published in the Bulletin.

(3) In case the application is decided to be refused in accordance with the Article 15 and first paragraph of this Article after the publication, this decision shall also be published in the Bulletin.

## **PART TWO**

### **Observations of Third Parties, Oppositions and Appeals, and Examination of the Oppositions and Appeals** **Observations of third parties**

**ARTICLE 17-** (1) After the publication of the trademark application, everyone may submit to the Office their observations with grounds and in writing that the trademark application should not be registered within the scope of the subparagraphs of the Article 5, with the exception of subparagraph (ç), until the registration of the trademark. However, these persons may not be party to the proceedings before the Office.

(2) The Office shall evaluate these observations and if it comes to the conclusion that these observations are correct, it shall refuse the trademark application partially or as whole.

#### **Opposition against publication**

**ARTICLE 18-** (1) Oppositions concerning a trademark application that was published in the Bulletin should not be registered in accordance with Articles 5 or 6, shall be filed by relevant persons within two months following the publication of the trademark application.

(2) The opposition shall be made to the Office in writing and with grounds. If the grounds for opposition are not submitted to the Office within the period set out in the first paragraph, the opposition shall be deemed not to have been made. In order for the examination of the opposition, it is mandatory that the opposition fee is paid within the period of the opposition and that the information regarding the payment of the fee is submitted to the Office within the same period.

#### **Examination of the opposition against publication**

**ARTICLE 19-** (1) The Office shall request the applicant to submit his observations concerning the oppositions within the prescribed period. The Office, if it considers necessary, may request the parties to submit additional information and documentation. If observations or requested additional information and documents are not submitted to the Office within the prescribed period, the opposition shall be examined in accordance with the existing information and documents.

(2) Regarding oppositions filed in the scope of the first paragraph of Article 6, provided that the trademark, which is the ground for opposition, has been registered for at least five years at the date of application or date of priority of the application for which the opposition is filed, upon the request of the applicant, it shall be requested from the opponent to submit evidence proving that he had genuinely used his trademark on the goods and services relating to the opposition during the five-years period before the date of application or the date of priority of the latter application or whether he has a proper reason for not using his trademark during that period. In case the opponent fails to prove the aforesaid, opposition shall be refused. If it is proven that the trademark, which is the ground for opposition, has been used only for some of the goods or services which are covered by registration, then the opposition shall be examined taking into account the goods or services whose use is proven.

(3) As a result of the examination, if it is concluded that the trademark should not be registered for some or all of the goods or services for which application is filed, the application shall be refused concerning these goods or services. Otherwise, the refusal of the opposition shall be decided.

(4) The Office, if it considers necessary, may encourage the parties for reconciliation.

For matters related to the friendly settlement, the provisions of Turkish Mediation Act on Civil Disputes dated 7/6/2012 numbered 6325 shall be applied.

(5) Procedure and rules relating to the opposition against publication shall be determined by regulation.

#### **Appeals**

**ARTICLE 20-** (1) Parties adversely affected from decisions taken by the Office within the context of this Book may appeal against the decisions before the Office.

(2) Appeal shall be made in written and with grounds to the Office within two months from the notification date of the decision. In case the grounds of the appeal are not submitted within this time, the appeal shall be deemed not to have been made. In order for the examination of the appeal, it is mandatory that the appeal fee is paid within the period of the appeal and that the information regarding the payment of the fee is submitted to the Office within the same period. After the expiration of the appeal period, the grounds for appeal may not be altered and new grounds may not be added.

**Examination of appeals**

**ARTICLE 21-** (1) Appeals, which do not have any formal deficiency, shall be examined by the Board.

(2) The Board shall request from the parties to submit their observations concerning the appeals within the prescribed period. If the Office considers necessary, it may request the parties to submit additional information and documentation. If requested additional information and documents or observations are not be submitted to the Office within the prescribed period, the appeal shall be examined in accordance with the existing information and documents.

(3) The Board, if it considers necessary, may encourage the parties for reconciliation in accordance with the fourth paragraph of the Article 19 for appeals against decisions based on the third paragraph of the Article 19.

(4) The Board shall give the final decision of the Office as a result of the examination and evaluation it shall conduct.

**SECTION THREE**

**Registration, Term of Protection and Renewal**

**Registration**

**ARTICLE 22-** (1) An application; which have been filed without deficiency or whose deficiencies have been remedied; have been examined and published pursuant to Article 16, against which there has been no opposition or such opposition has been ultimately rejected, and all stages have been completed upon submission to the Office of missing documents within the prescribed period, including information demonstrating that registration fee is paid, shall be recorded in the registry by registration and shall be published in the Bulletin. In case of failure to deposit the fee concerning registration of the trademark and submitting to the Office the information concerning the payment within the prescribed period, the application shall be abolished.

(2) A trademark, which has been registered without completion of the stages set out in the first paragraph, shall not be deemed as a registered trademark; its application procedures shall be continued from the incomplete stage and this situation shall be published in the Bulletin. In case it is decided to re-register these applications, the registration fee shall not be claimed again. However, after two years from the registration date, the registration of trademark shall not be affected from incomplete stage.

(3) Registry shall be open to public. In case of demand and on the condition that the fee is deposited, a copy of registration shall be given.

(4) Procedure and rules regarding recording to the registry, publication and registration shall be determined by regulation.

**The term of protection and renewal**

**ARTICLE 23-** (1) The term of protection for registered trademark is ten years from the date of application. This term shall be renewed for periods of ten years.

(2) Request for renewal needs to be made by the trademark proprietor within six months before the expiry of the protection date and the information regarding the payment of the fee needs to be submitted to the Office within the same period. In case no request is made or the information regarding payment of the renewal fee is not submitted to the Office within this period, renewal request may be made within six months after the expiry of the protection date, provided that an additional fee is paid.

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

(4) The request of any of the companies included in the group shall be sufficient for the renewal of a collective trademark.

(5) Renewal shall take effect from the day following the date on which the previous registration expires. The renewal shall be recorded in the registry and published in the Bulletin.

## **SECTION FOUR**

### **License**

#### **License**

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

(2) License may be granted as exclusive license or non-exclusive license. Unless otherwise agreed in the contract, the license shall not be exclusive. In the non-exclusive license contracts, licensor may use the trademark himself or may grant licenses to third parties. In the exclusive license contracts, licensor may not grant license to another person and unless the right has been apparently reserved, may not use the trademark himself.

(3) Unless otherwise agreed in the contract, licensors may not transfer their rights arising from the license to third parties or grant sub-licenses.

(4) The licensor shall take measures to guarantee the quality of goods to be produced or services to be offered by the licensee. The licensee is obliged to comply with the terms of the license contract. Otherwise, the trademark proprietor may claim his rights arising from registered trademark against the licensee.

## **SECTION FIVE**

### **Termination of Right**

#### **PART ONE**

#### **Invalidation and Revocation**

#### **Grounds for invalidation and request for invalidation**

**ARTICLE 25-** (1) If one of the conditions mentioned under Articles 5 or 6 exist, invalidation of trademark shall be decided by the court.

(2) Persons who have interests, public prosecutors or relevant public institutions and organizations may request the court to decide on the invalidity of trademark.

(3) Trademark invalidation proceedings shall be claimed against persons who are registered in the register as trademark proprietor as of the date of filing of invalidation proceeding or their successors in title. The Office shall not be designated as a party to trademark invalidation proceedings.

(4) If a trademark has been registered contrary to subparagraphs (b), (c) and (d) of first paragraph of Article 5 but it has acquired distinctive character as a result of use with regards to the registered goods or services before the invalidation request against the trademark, such trademark shall not be invalidated.

(5) If invalidation is requested partially for some goods or services for which the trademark is registered, decision regarding the partial invalidation shall be given for only such



goods or services. An invalidation decision which has the result of altering the representation of the trademark may not be given.

(6) Where a trademark proprietor has acquiesced in the use of a later trademark for a period of five successive years while being aware or should have been aware of this situation, trademark proprietor may not allege his trademark as an invalidation ground unless the registration of the later trademark is in bad faith.

(7) In the invalidation proceedings filed pursuant to first paragraph of Article 6, the provision of second paragraph of Article 19 may be asserted as a defense. In this case, date of proceeding shall be taken as the basis in determining the five-year period regarding use. If the plaintiff's trademark has been registered for at least five years at the application date or at the date of priority right of trademark for which invalidation is requested, the plaintiff shall also prove the fulfillment of the conditions specified in the second paragraph of Article 19 at the aforesaid date of application or date of priority right.

#### **Grounds for revocation and revocation request**

**ARTICLE 26-** (1) Upon request, the revocation of the trademark shall be decided by the Office in the following situations:

a) Existence of conditions set out in the first paragraph of the Article 9.

b) Trademark becoming generic for the registered goods or services due to trademark proprietor's actions or as a consequence of necessary measures not taken by the trademark proprietor.

(c) Trademark misleading the public concerning the nature, quality or geographic origin of the goods or services for which it is registered, as a result of the use by the trademark proprietor himself or with the trademark proprietor's consent.

(ç) Use of trademark contrary to Article 32.

(2) Interested persons may request revocation of trademark from the Office.

(3) Revocation requests concerning a trademark shall be asserted against persons registered as trademark proprietors at the date of request or their successors in title.

(4) In case trademark is put in a genuine use with regard to the registered goods or services between the expiration period of five years and the date when revocation request is submitted to the Office, the revocation requests related to subparagraph (a) of first paragraph shall be refused. If the use has been carried out by considering that revocation request would be made, the use carried out within three months prior to the submission of the request to the

Office shall not be taken into consideration.

(5) If revocation relates to some goods or services for which the trademark is registered, then the decision for partial revocation shall be given for only those goods or services. A revocation decision which has the result of altering the representation of the trademark may not be given.

(6) If right owner changes during examination of the revocation, the proceedings shall continue with respect to the person who appears as the right owner in the registry.

(7) Revocation requests shall be notified to proprietor of the trademark for which the revocation is requested. The trademark proprietor shall submit his evidences and responses to the Office within one month. In case an extension is requested within this one month period, the Office shall grant an additional one month. The Office, if it considers necessary, may demand additional information and documentation. The Office shall give a decision with respect to the file within the framework of claims and defenses as well as the presented evidences.

#### **The effect of invalidation and revocation**

**ARTICLE 27-** (1) If a decision related to invalidation of trademark is given in accordance with Article 25, such a decision will be effective from the application date of

trademark and the trademark shall be deemed not to have had the protection provided by this Code.

(2) If a decision for revocation of trademark is given in accordance with Article 26, such a decision shall be effective on the date when the request for revocation is submitted to the Office. However, in case the conditions for revocation have occurred at an earlier date, it may be decided, upon request, that the revocation decision be effective as of that date. (3) Without prejudice to compensation claims of parties damaged due to negligence or bad faith of the trademark proprietor, retroactive effect of decision on invalidity or revocation regulated in the second sentence of second paragraph shall not affect the following cases: (a) Final and enforced judgments of courts in proceedings filed due to infringement of the rights provided by trademark, prior to the decision.

(b) Contracts established and performed prior to the decision.

(4) The fee paid pursuant to contracts in the scope of subparagraph (b) of third paragraph, may be requested to be returned partially or fully on the basis of equity.

(5) The final decisions regarding the invalidity or revocation of the trademark shall be effective for everyone.

(6) After finalization of the invalidation decision, the court shall ex officio send this judgment to the Office.

(7) After finalization of invalidation or revocation decision, the trademark shall be removed from the register and this situation shall be published in the Bulletin.

## **PART TWO**

### **Other Termination Conditions and Its Results**

#### **Termination and its results**

**ARTICLE 28-** (1) Trademark right shall terminate in the following conditions:

a) Expiry of term of protection and not renewing the trademark in prescribed time.

b) Surrender by the trademark proprietor of his trademark right.

(2) The termination of a trademark right shall take effect as of the time of occurrence of the reason for termination.

(3) Trademark proprietor may surrender all or a part of the goods or services in the scope of the registration. The surrender shall be declared in writing to the Office and termination of trademark right due to surrender shall be published in the Bulletin. The surrender shall take effect at the date of entry in the register.

(4) Trademark proprietor may not surrender his trademark right without the consent of the licensees and right owners recorded in the register. If right ownership on trademark has been claimed by a third party and an interlocutory injunction taken in this matter has been entered in the register, rights arising from a trademark may not be surrendered without the consent of the that party.

(5) Trademark application may be withdrawn by the applicant before the registration of the trademark. The provisions relating to the surrendering of the trademark right shall also be applied for withdrawal of trademark application.

## **SECTION SIX**

### **Trademark Right Infringement**

#### **Acts considered as infringement of trademark right**

**ARTICLE 29-** (1) The acts below shall be considered as infringement of trademark right;

a) To use the trademark as set out in Article 7 without the consent of the trademark proprietor;

b) To counterfeit the trademark by using the trademark or a confusingly similar trademark without the consent of the trademark proprietor;

c) While being aware or should be aware that the trademark is counterfeited by use of the trademark or a confusingly similar trademark, to sell, distribute, put on the market in a different form, possess for commercial purpose, import, export the products carrying infringed trademark or to offer to make a contract related to this product,

ç) To broaden or to transfer to third parties, without consent, the rights given by the trademark proprietor through license.

(2) Provisions of second paragraph of Article 19 may be used as a defense in infringement proceedings. In this situation, the date of the proceeding shall be taken into account for determining the five-year period related to the use.

#### **Criminal provisions related to trademark infringement**

**ARTICLE 30-** (1) A person who produces or provides services, puts on the market or sales, imports or exports, buys for commercial purposes, possesses, transports or stores, while infringing a trademark right through quotation or likelihood of confusion, shall be sentenced from one year to three years of imprisonment and punished with judicial fine up to twenty thousand days.

(2) A person who removes the sign indicating the trademark protection from a product or packaging without authorization shall be sentenced from one year to three years of imprisonment or punished with judicial fine up to five thousand days.

(3) A person who makes, without authorization, a disposition of a trademark right, which is owned by someone else, by transferring, licensing or pledging shall be sentenced from two years to four years of imprisonment and shall be punished with judicial fine up to five thousand days.

(4) If the crimes indicated in the provisions of this Article are committed by acts of a legal entity, additionally specific security measures shall be taken.

(5) To give a sentence due to the crimes indicated in this Article, it is mandatory that the trademark is registered in Turkey.

(6) Investigation and prosecution of the crimes indicated in this Article are subject to complaint.

(7) If a person, selling or putting on the market a counterfeit product, submits information about where he acquired those goods and, thus, contributes to the detection of the producers and the seizure of the products, he shall not be sentenced.

### **SECTION SEVEN**

#### **Collective and Guarantee Mark**

##### **Guarantee mark and collective mark**

**ARTICLE 31-** (1) A guarantee mark is a sign that serves for guaranteeing the common characteristics of the undertakings, production methods, geographical origin and quality of those undertakings, under the control of the proprietor of the mark.

(2) The use of a guarantee mark for goods or services of the trademark proprietor or undertakings economically linked to proprietor is prohibited.

(3) Collective mark is a sign used by a group of undertakings of producers or traders or providers of services.

(4) Collective mark serves the purpose of distinguishing the goods and services of the undertakings from those of other undertakings.

##### **Technical specifications for the guarantee mark or collective mark**

**ARTICLE 32-** (1) It is mandatory to submit a technical specification indicating the procedure and rules for use of the mark when filing an application for registration of a guarantee or a collective mark.

(2) The technical specification of the guarantee mark shall indicate the common characteristics of the goods and services under guarantee, methods of using the mark, how and how often the inspections shall be made after the right concerning the use of the mark is granted and the sanctions to be imposed in case of use contrary to the technical specification.

(3) The technical specification of the collective mark shall specify the undertakings authorized to use the collective mark and the membership conditions for the community composed of these undertakings, terms of using the mark and, if available, the sanctions. All undertakings in the group shall act collectively for the registration of collective mark and the surrender from the collective mark right.

(4) Each undertaking in the group shall be authorized to file legal proceeding by itself.

(5) Amendments to be made in the technical specification shall not be applicable until they are approved by the Office.

(6) In case the technical specification does not contain the requirements set out in second and third paragraphs or it is contrary to public order or accepted principles of morality, the owner of the mark shall be notified by the Office to make required amendments in technical specification. If the owner of the mark does not make the required amendments and correct the technical regulation within six months following the notification, the request for the registration of the guarantee mark or the collective mark shall be rejected

(7) In case of application of relevant persons, public prosecutors or the relevant public institutions on the grounds that the owner does not take necessary measures in order to prevent the continuous use of the collective mark or the guarantee mark contrary to the technical specification, the mark shall be revoked unless the said contrary use is corrected within the prescribed period.

(8) Procedure and rules regarding the technical specification are specified with a regulation.

## **BOOK TWO**

### **Geographical Indication and Traditional Speciality Guaranteed**

#### **SECTION ONE**

#### **Geographical Indication and Traditional Speciality Guaranteed Right**

##### **Products within the scope of protection**

**ARTICLE 33-** (1) Food, agricultural, mining, handicraft and industrial products resulting from unification of natural and human factors, which comply with the provisions in this Book, shall be entitled to geographical indication or traditional speciality guaranteed protection provided that they are registered.

##### **Appellation of origin, designation of origin, and traditional speciality guaranteed**

**ARTICLE 34-** (1) Geographical indication is the sign indicating a product that has become associated with a locality, area, region or country where it originates due to an apparent characteristic, its reputation or other features. Geographical indications shall be registered as appellation of origin or designation of origin according to the features set out below:

a) The names that identify products, which originate from a locality, region or in exceptional cases a country with designated geographical boundaries; that derive their all or principal characteristics from the natural or human factors exclusively attributed to this

geographical area where their production, processing and all other operations take place, are appellation of origin.

b) The names identifying products, which originate from a locality, region or in exceptional cases a country with designated geographical boundaries; that is associated with this region due to an apparent characteristic, its reputation or other features; where at least one of the steps from production, processing or other operations take place within the boundaries of the designated geographical area, are designation of origin.

(2) Names that are traditionally used to designate products which fulfill the conditions stated in the first paragraph of this Article, which are used in daily language and do not contain a geographical name may also be considered as appellation of origin or designation of origin even if those names do not include a geographical name.

(3) Names that are not considered as appellation of origin or designation of origin but are proven to have been traditionally used in the relevant market for at least thirty years to describe the product and fulfill at least one of the following conditions, shall be identified as traditional speciality guaranteed:

a) Originating from traditional method of production or processing or traditional composition.

b) Produced with traditional raw material or ingredients.

**Names that shall not be registered**

**ARTICLE 35-** (1) The following shall not be registered as geographical indication:

a) Names that are not within the scope of Article 34.

b) Names that have become generic names of products.

c) Plant species and varieties or animal breeds or other similar names, which may mislead the public as to the true origin of the product.

ç) Names contrary to public order or general principles of morality.

d) Names that are not protected, whose duration of protection have expired or not used in their own country although having been applied by persons fulfilling the conditions set out in Article 3.

e) Names that are wholly or partially homonymic with a name that is registered or has already been filed, and which may mislead the public.

(2) The following shall not be registered as a traditional speciality guaranteed:

a) Names not fulfilling the conditions stated in Article 34 regarding traditional specialities guaranteed.

b) Names expressing the general feature of the product.

c) Names that may mislead the public about the characteristic of the product.

ç) Names contrary to public order or general principles of morality.

d) Names that are not protected, whose duration of protection have expired or not used in their own country although having been applied by persons fulfilling the conditions set out in Article 3.

## **SECTION TWO**

### **Application and Objections**

#### **PART ONE**

##### **Application for Geographical Indication and Traditional Speciality Guaranteed Right of Application**

**ARTICLE 36-** (1) The following shall have the right to apply for registration of a geographical sign or a traditional product name:

a) Producer groups.

b) Public institutions and organizations as well as professional organizations accepted as public institutions related with the product or geographical area of the product.

c) Associations, foundations and cooperatives operating for public interest in relation to the product or authorized to protect the economic interests of their members.

ç) The relevant producer in case the product is produced only by a single producer, provided that he proves this case.

(2) Within the scope of this Book producer means; the person producing or processing agricultural products, foodstuff, mining products, handicrafts and industrial products or the persons who carry out any action in the supply chain that affects the characteristics of the product subject to the registration; producer groups means the association, irrespective of its legal formation or composition, composed of producers of the same products.

#### **Application conditions**

**ARTICLE 37-** (1) Geographical indication application shall include the following:

a) Application form that contains information on the identity of the applicant and which category he is associated with concerning the persons with the right to apply within the meaning of Article 36.

b) In case the applying natural or legal entity is the only producer of the product, information and documents proving this case.

c) The name of the geographical indication requested to be registered, information and documents about the eligibility of the product as an appellation of origin or as a designation of origin, the product group that it belongs to, and its compliance with the definition of geographical indication.

ç) Description of the product; technical information and documents describing the physical, chemical, microbiological and organoleptic properties of the product, and if necessary its raw materials.

d) Information and documents clearly identifying and designating the boundaries of the geographical area.

e) Information and documents regarding the production method of the product, and if relevant, local production techniques, practices and traditions which give the product its speciality.

f) Information and documents proving the link between the characteristics, reputation or other features of the product subject to the registration within the meaning of geographical indication definition and the defined geographical area.

g) Information and documents related to the historical background of the product in the specified geographical area.

ğ) Information and documents explaining the control procedures in detail in accordance with the provisions of Article 49.

h) Information explaining the use of geographical indication, and if any, the procedures on labeling and packaging.

ı) Information that the application fee has been paid.

(2) Applications for traditional speciality guaranteed shall include the following:

a) Application form that contains information on the identity of the applicant and which category he is associated with concerning the persons with the right to apply within the meaning of Article 36.

b) The name of the traditional specialty guaranteed subject to the registration and its product group, and information and documents proving that it is in compliance with the description in Article 34.

c) Description of the product, technical information and documents describing the physical, chemical, microbiological and organoleptic properties of the product and, if necessary, of its raw materials.

ç) The description of production method where the raw material and other components existing within the product are explained together with their features and the product preparation techniques, which indicate the product characteristic.

d) Information and documents explaining the control procedures in detail in accordance with the provisions of Article 49.

e) Information and documents explaining the use of the traditional specialty guaranteed and the labeling and packaging procedures, if any.

f) Information that the application fee has been paid.

(3) Other procedure and rules regarding applications for geographical indication and traditional specialty guaranteed shall be determined by the implementing regulation.

#### **Examination and publication of the application**

**ARTICLE 38-** (1) The Office shall examine the applications on geographical indication or traditional specialty guaranteed according to Articles 33 to 37 and 39.

(2) If the information related to identity of the applicant is missing in the application form, the application shall be deemed not to have been made. The decision of the Office on deeming the application not to have been made shall be final and may not be subject to objection in the scope of Article 40.

(3) If it is found out that the conditions set out in Article 37 are not met, except for the information regarding the identity of the applicant, the Office shall request the remedy of these deficiencies. If the missing information and documents are not submitted in prescribed period or the submitted information and documents do not meet the requirements, the application shall be refused. If requested, additional period shall be granted not more than two times to remedy the deficiencies.

(4) The Office may request opinion from relevant institutions and organizations for evaluating technical information. In case fee is demanded by relevant institutions and organizations, such fee shall be paid by the Office.

(5) Applications examined and found eligible under this article shall be published in the Bulletin.

(6) Procedure and rules regarding examination and publication of application shall be determined by the implementing regulation.

#### **Applications originating from foreign countries**

**ARTICLE 39-** (1) Without prejudice to the provisions of international agreement, in order to apply the provisions of this Code to geographical indication or traditional specialty guaranteed applications originating from foreign countries, in addition to the conditions set out in Article 37 the following conditions shall also be sought whether:

a) The geographical indication or traditional specialty guaranteed subject to the application is being protected by the country of origin or the international community of which the country of origin is a member to.

b) The control requirements set out in Article 49 have been satisfied in the country of origin.

c) Country of origin is providing equal protection for geographical indication or traditional specialty guaranteed applications to be made from Turkey.

(2) If the geographical indication or traditional specialty guaranteed application originating from foreign country is identical to geographical indication or traditional specialty guaranteed that is protected in Turkey, the examination shall be carried out taking into consideration the local and traditional use of similar names and the risk of confusion by the

consumer. The use of such geographical indications or traditional specialties guaranteed shall be allowed only under the condition that the country of origin is clearly indicated and is visible on the label.

## **PART TWO**

### **Objection and Examination of the Objection**

#### **Objection and Examination**

**ARTICLE 40-** (1) The applicant may file an objection with grounds and in writing related to an application refused in the scope of Article 38 within two months of the date of notification of the decision.

(2) Third parties claiming that the registration request does not conform with Articles 33 to 37 and 39 or the proprietor of an earlier dated trademark claiming that the registration request does not conform to Article 48 may file a written objection with grounds within three months of the publication in the Bulletin of the request for registration. The applicant shall be given information of the objection and his opinion shall be requested.

(3) It is mandatory to pay the fee for objection within the prescribed objection period and to submit information to the Office that it has been paid. Otherwise the objection shall be deemed not to have been made. No fee shall be charged for oppositions filed by public institutions and organizations.

(4) Objections filed in line with the first and second paragraphs shall be examined by the Board within the framework of the rules set out by the implementing regulation. The Board may request opinion from relevant institutions and organizations for evaluation of the issues stated in the objection. In case fee is requested by the institutions and organizations, such fee shall be paid by the objecting party.

(5) The Office, if considers necessary, may encourage the parties for reconciliation.

Regarding issues on reconciliation, the provisions of the Law No. 6325 shall be applied.

(6) If an amendment is made on the format or content of the application upon examination of the objection, the final version of the application shall be published in the Bulletin by also indicating the amended section. No objections may be filed for this publication.

(7) If, upon objection, the application is refused, the decision shall be published in the Bulletin.

## **SECTION THREE**

### **Registration and Amendment Requests**

#### **Registration**

**ARTICLE 41-** (1) If no objection has been filed against the application within three months of its publication in the Bulletin or the objections filed against the application have decisively been rejected or if the application has been amended as a result of an objection; the application shall be registered, entered in the register and published in the Bulletin provided that the registration fee has been paid and information on its payment has been submitted to the Office within two months of the date of notification.

(2) Register is open to the public. Upon request, a copy of the register shall be provided.

(3) Procedure and rules related to the entry to the register, publication and registration shall be determined by the implementing regulation.

#### **Amendment requests**



**ARTICLE 42-** (1) In case of a change in the specifications subject to registration, an amendment request may be filed by parties with legitimate interest provided that the amendment fee has been paid.

(2) The amendment request shall be examined within the provisions of Article 38 and amendments that are found suitable shall be published in the Bulletin. Objections in writing and with grounds may be filed against the amendment within three months of its publication.

These objections shall be examined according to the Article 40. If no objection has been filed or the filed objections have been rejected, the amendment shall be published in the Bulletin and become final as of the date of its publication. The amendments shall be implemented by the related parties within one year at the latest.

(3) Procedure and rules related to amendment requests shall be determined by the implementing regulation.

#### **Change of applicants or registering parties**

**ARTICLE 43-** (1) In case the court decides that applicants or registering parties of a geographical indication or traditional specialty guaranteed fail to satisfy the requirements set out in Articles 36 and 49 or if this situation is ex-officio found by the Office or if a declaration of amendment is submitted in writing to the Office by applicants or registering parties; this decision, finding or declaration shall be published in the Bulletin. Within three months of the publication, requests for amendment to the application or registration records may be filed by relevant parties satisfying the conditions specified in Article 36. If no request is submitted or the submitted requests are found unsuitable, the rights conferred by the geographical indication or traditional specialty guaranteed terminates and this situation shall be published in the Bulletin. In case of multiple requests, the Office shall accept the most appropriate request in accordance with the procedure set out by the implementing regulation.

(2) If an agreement is reached between the applicant or the registrant and the relevant party who meets the conditions specified in Articles 36 and 49, a request for amendment of the records shall be made to the Office provided that the necessary documents are submitted and the fees are paid. If the request is accepted, the amendment shall be published in the Bulletin.

(3) Changes in the name, address, characteristics of the firm or the title of the registrant of the geographical indication or traditional specialty guaranteed shall be recorded in the register and published in the Bulletin.

### **SECTION FOUR**

#### **Scope of Right, Use and Control**

##### **Acquisition of geographical indication protection and the scope of rights arising from registration**

**ARTICLE 44-** (1) The protection of geographical indication related to a product shall be acquired through registration within the framework of this Code.

(2) Registrant of the geographical indication and those who are entitled to use the registered geographical indication shall have the right to demand the prevention of the following acts of the third parties:

a) Direct or indirect commercial use of the geographical indication or the emblem foreseen to be used in line with the Article 46 to benefit from its reputation or related products which are under the scope of the register or may be associated with those products, although they do not satisfy the product properties specified in the registration.

b) Misleading use or the imitation of the registered geographical indication on a product which does not satisfy the product properties specified in the registration or which is similar enough to be associated with it, even if there are explanations such as the true place of

origin or specifications or the name of the product accompanied by expressions such as style, type, method, as produced in or other similar descriptions, even when translated into another language.

c) Use of false or misleading explanation or indications about the origin and the natural or essential qualities of the product stated in the registration, on the inner or outer packaging, promotional and advertising material or on any type of written material related to the product having the geographical indication on it.

ç) Deceptive use of the emblem of registered geographical indication.

(3) The rights conferred against third parties by the registration of the geographical indication enter into force as of its publication date in the Bulletin. However, the applicant shall be entitled to institute legal proceeding for compensation in respect of acts that occurred after the publication of the geographical indication in the Bulletin, where those acts would, after publication of the registration of the geographical indication, be prohibited by virtue of that publication. The court may not decide on the validity of claims raised before the registration is published.

(4) Registered geographical indications shall not be deemed to have become generic.

(5) Even when a portion of the name under geographical indication protection is formed of the generic name of the product, the protection conferred by geographical indication shall not cover those generic names.

(6) Generic name is the name that has become the common name of the product, although it relates to the region or the locality where this product was originally produced or marketed. In determining whether a name has become generic or not, the use of this name by the public where the product is consumed and other related legislation shall be taken into consideration.

(7) The registered geographical indication shall not confer any exclusive rights to the registrant.

#### **Acquisition of traditional specialty guaranteed protection and the scope of rights arising from registration**

**ARTICLE 45-** (1) Traditional specialty guaranteed protection shall be acquired through registration within the framework of this Code.

(2) Registrants of the traditional specialty guaranteed and those who are entitled to use the registered traditional specialty guaranteed shall have the right to request the prevention of the following acts of the third parties:

a) Use of the emblem foreseen to be used in line with the Article 46 to benefit from its reputation for products which do not carry the properties specified in the traditional specialty guaranteed register or its commercial use on products resembling the registered product.

b) Deceptive use of the emblem of registered traditional specialty guaranteed.

c) Giving any misleading statements or indications on the product's inner or outer packaging, promotional and advertising material or on any type of written material related to the product that the product carries the characteristics specified in the register even though the product does not carry the properties specified in traditional specialty guaranteed register and the emblem foreseen to be used in line with the Article 46 for the registered product.

(3) The rights against third parties conferred by the registration of the traditional specialty guaranteed shall enter into force as of its publication date in the Bulletin. However, the applicant shall be entitled to institute legal proceeding for compensation in respect of acts that occurred after the publication of the traditional specialty guaranteed in the Bulletin, where those acts would, after publication of the registration of the geographical indication, be prohibited by virtue of that publication. The court may not decide on the validity of claims raised before the registration is published.

(4) The registered traditional specialty guaranteed shall not confer any exclusive rights to the registrant.

(5) The protection provided to traditional specialty guaranteed under this Code shall not prejudice rights that have been acquired in the scope of other industrial property rights, in particular geographical indications and trademarks.

**Use of registered geographical indication and traditional specialty guaranteed**

**ARTICLE 46-** (1) Registered geographical indications and traditional specialties guaranteed shall be used by those operating in the production or marketing of products that comply with the specifications provided in the registration. These persons shall inform the registrant concerning their production and marketing activities of the product subject to the geographical indication and the traditional specialty guaranteed.

(2) The persons having the right to use the registered geographical indication or traditional specialty guaranteed shall use that geographical indication or traditional specialty guaranteed together with the emblem on the product or its packaging. It is mandatory to use emblem for geographical indications.

(3) In cases where geographical indication or traditional specialty guaranteed cannot be used together with the emblem on the product itself or its packaging due to the nature of the product, the emblem and the registered indication or name shall be displayed by the persons having the right to use them in a visible manner at their businesses.

(4) Use of traditional specialty guaranteed without an emblem shall not be governed by the provisions of this Code.

(5) Procedure and rules regarding the use of registered geographical indications, traditional specialties guaranteed and the emblems shall be determined by the implementing regulation.

**Use in good faith**

**ARTICLE 47-** (1) Provided that it has not been used to mislead the public in commerce, the use of a natural person's name or legal entity's title by those persons or their successors shall not be considered as infringement of conditions stated in Articles 44 and 45.

**Relation with trademarks**

**ARTICLE 48-** (1) After the registration of the geographical indication, a trademark application filed in order to be used in the forms stated in Article 44 or to be used for the goods or services related to the geographical indication shall be refused, in case it has been registered, it may be invalidated through legal proceeding.

(2) If a trademark identical with or similar to the geographical indication was registered in good faith or the rights to use that trademark were acquired through use in good faith before the protection of the geographical indication, rights arising from geographical indication shall not prejudice the registration of the trademark application or the right to use the trademark in good faith.

(3) Taking into account the reputation, prestige and duration of use of a registered trademark, names that may harm that trademark's existence or be misleading about its true origin due to being identical with or similar to that trademark shall not be allowed to be registered as geographical indication or traditional specialty guaranteed upon objection by the earlier right holder.

**Control of use**

**ARTICLE 49-** (1) Control of use of geographical indications and traditional specialties guaranteed shall cover; any type of operation related to controlling the conformity of their use to the specifications indicated in the register during production, marketing or distribution stages or their use in the market.

(2) Control shall be carried out by the control authority specified in the application and whose competence has been approved by the Office. Change of the control authority stated in the register may be made upon approval of the Office.

(3) Control reports shall be submitted to the Office once a year after registration is published in the Bulletin. However, in case of complaints, the Office may request earlier submission of the reports.

(4) If a deficiency is found upon examination of the control reports, the registrant shall be notified and asked to correct the deficiencies within six months. If the deficiency is not remedied within the prescribed period or it is determined that control activities were not carried out in line with the procedure, the provisions of Article 43 shall be applied.

(5) The registrant may claim the costs related to the controls from the parties subject to those controls.

(6) Procedure and rules for control shall be determined by the implementing regulation.

(7) The control stated in this Book covers the controls made by the control authority established by the applicant and shall not prejudice the provisions of the Law on Veterinary

Services Plant Health Food and Feed dated 11.06.2010 numbered 5996 and other laws related to the control of geographical indications and traditional specialties guaranteed.

**SECTION FIVE**  
**Termination of Right**  
**PART ONE**  
**Invalidity**

**Invalidity Request and Grounds for Invalidity**

**ARTICLE 50-** (1) Invalidity of a geographical indication or traditional specialty guaranteed may be requested from the court by persons who have interest.

(2) The court shall decide the registered geographical indication or traditional specialty guaranteed invalid, in case:

a) The register is not in compliance with any one of the conditions set out in the Articles 33, 34, 35, 37 or 39,

b) The registration has not been made by those who have right to apply in line with the Article 36,

c) Controls are not carried out as set out in Article 49.

(3) The legal proceeding concerning the invalidity of geographical indication or traditional specialty guaranteed shall be instituted against the person who is recorded in the register as the registrant. The Office shall not be addressed as a party to these proceedings.

**Effects of Invalidity**

**ARTICLE 51-** (1) In case a geographical indication or traditional specialty guaranteed has been decided as invalid by the court, the legal protection provided by this

Code for the registered geographical sign or traditional product name shall be deemed not to have arisen.

(2) Without prejudice to claims of compensation by persons having the right to use a registered geographical sign or traditional product name for damages caused by bad faith, the retroactive effects of invalidity shall not extend to the following:

a) Any final judgments for infringement of registration rights reached and enforced prior to the decision of invalidity;

b) Contracts concluded and executed prior to the decision of invalidity.

(3) Partial or total reimbursement of sums paid under the contracts may be claimed on grounds of equity, in scope of subparagraph (b) of second paragraph.

(4) Final court decision shall be notified to the Office by the Court ex officio. The geographical sign or traditional product name deemed as invalid, shall be cancelled from the register and information regarding the cancellation is published in the Bulletin.

## **PART TWO**

### **Withdrawal of Rights and Responsibilities**

#### **Withdrawal of rights and responsibilities provided by registration**

**ARTICLE 52-** (1) The registrant may withdraw from the rights provided by the registration and the responsibilities related to inspections. The demand of withdrawal is published in the Bulletin.

(2) If a request for the change of registrant is filed by natural or legal entities who meet the provisions specified in Article 36, within three months after publication in the

Bulletin, this request shall be examined in frame of the provisions stated in Article 43.

(3) If there shall be no request of change of the registrant within three months, geographical sign or traditional product name shall be cancelled from the register by the Office and the information regarding the cancellation shall be published in the Bulletin. Withdrawal shall produce effect from the date of its entry to the register.

(4) Procedure and rules related to withdrawal shall be determined by the implementing regulation.

## **SECTION SIX**

### **Infringement of Right**

#### **Acts deemed as infringement of geographical sign right**

**ARTICLE 53-** (1) The following uses of a registered geographical sign shall be considered as infringement:

a) Any direct or indirect commercial use of a registered geographical sign or the emblem outlined in Article 46 in relation to the products within the scope of the register or comparable products in a way to exploit the reputation of the registered geographical sign where they do not carry the properties specified in the register.

b) Any deceptive use, replicas or any associative use about the place of origin or the translation of the geographical sign or the geographical sign itself even it is accompanied by expressions such as 'style', 'type', 'method', 'as produced in'.

c) Any use of false or misleading indication or description about the origin or the properties specified in geographical sign register of the product, on the inner or outer packaging, promotional material or on any type of written material related to the product.

ç) Any deceptive use of the emblem of registered geographical sign.

(2) Those who have the right to use the geographical sign may request a claim to be filed before court by notifying the registrant through a notary public. If the registrant does not accept this request or file a claim within three months from the notification date, those who have the right to use the geographical sign may file a claim by including the notification made to the registrant. The legal proceeding shall be notified to the registrant. However, in the event of a serious risk of harm, those who have the right to use may request from the court for a precautionary ruling be made, regardless of the time requirements. If a precautionary ruling is made, the specified time requirement to file a claim is not applied.

(3) The fact that the record of registration of the geographical sign is not presented on the product, packaging or invoice does not exclude the action from being an act of infringement. However, the records and signs related to registration shall be taken into consideration during the evaluation of the fault.

(4) Where a geographical sign application is published, the applicant is entitled to appeal to the Court for acts of infringements stated in this article. If the aggressor has been

informed about the application and its scope, the requirement of the application to be published is disregarded. If the court decides that the aggressor violates the rights in bad faith, the act of infringement shall be accepted prior to the publication of application.

**Acts deemed as infringement of traditional product name right**

**ARTICLE 54-** (1) The following uses of a registered traditional product name shall be considered as infringement:

a) Any commercial use of a registered traditional product name together with the emblem outlined in Article 46 to exploit the reputation of the registered traditional product name for products which do not carry the properties specified in the register or the commercial use of the emblem allocated to the traditional product name on products which resemble the registered product.

b) Any deceptive usage of the emblem.

c) Any use of misleading indications or descriptions on the inner or outer packaging, promotional and advertising material or on any type of written material related to the product which does not carry the properties specified in the traditional product name register and the emblem outlined in Article 46.

(2) If an infringement of traditional product name right is determined by those who have the right to use the traditional product name may request a claim to be filed before court by notifying the registrant through a notary public. If the registrant does not accept this request or file a claim within three months from the notification date, those who have the right to use the traditional product name may file a claim by including the notification made to the registrant. The legal proceeding shall be notified to the registrant. However, in the event of a serious risk of harm, those who have the right to use may request from the court for a precautionary ruling be made, regardless of the time requirements. If a precautionary ruling is made, the specified time requirement to file a claim is not applied.

(3) Where a traditional product name application is published, the applicant is entitled to appeal to the court for acts of infringements stated in this article. If the aggressor has been informed about the application and its scope, the requirement of the application to be published is disregarded. If the court decides that the aggressor violates the rights in bad faith, the act of infringement shall be accepted prior to the publication of application.

**BOOK THREE**

**Design**

**SECTION ONE**

**Design Right and Its Scope**

**Design and Product**

**ARTICLE 55-** (1) Design shall be the appearance of the whole or a part of a product resulting from the features of, the line, contour, colour, shape, material or texture of the product itself or its ornamentation.

(2) Product means any industrial or handicraft item, including parts intended to be assembled into a complex product, products like packaging, presentations of more than one object perceived together, graphic symbols and typographic typefaces, but excluding computer programs.

(3) Complex product shall be a product which is composed of components which can be replaced or renewed by disassembly and reassembly of the product.

(4) A design shall be protected as a registered design in case it is registered in accordance with the provisions of this Act and a design shall be protected as non-registered design in case it is presented to the public for the first time in Turkey.

**Novelty and Individual Character**

**ARTICLE 56-** (1) Design shall be protected by this Code provided that it is new and has an individual character.

(2) The design of a part of a complex product shall be considered to be new and to have a distinctive character:

a) if the component part is mounted to the complex product, remains visible during normal use of the complex product;

b) if the visible features of the component part fulfill the requirements as to novelty and individual character.

(3) The normal use explained in this article shall mean use by the end user, excluding maintenance, servicing or repair work.

(4) If an identical design isn't presented to the public in any part of the world;

a) before application or priority date for the registered design;

b) before the design is presented to the public for the first time for non-registered design, it shall be accepted as a new design.

If the design differs only in immaterial details, it shall also be accepted as identical.

(5) If overall impression created by a design on the informed user differs from overall impression created by any design presented to the public on the same user;

a) before application or priority date for the registered design;

b) before the design is presented to the public for the first time for non-registered design, it shall be accepted that this design has an individual character.

(6) In assessing distinctive character, the degree of freedom of the designer in developing the design shall be taken into consideration.

#### **Disclosure**

**ARTICLE 57-** (1) Making available to the public means releasing on the market, use, description, publication, promotion or so on by means of exhibition and sale. Disclosure to a third person under conditions of confidentiality shall not be deemed as making available to the public.

(2) A disclosure shall not affect the novelty or individual character, if a design for which protection is claimed has been made available to the public during the 12-month period preceding the date of filing of the application or, if priority is claimed, the date of priority by the designer his successor in title or a third person in consent with the designer or his successor or in abuse of the relation with the designer or his successor.

#### **The scope of protection and conditions out of the scope of protection**

**ARTICLE 58-** (1) Design owner may use his rights arising from this Code against designs which have no individual character compared to his own design.

(2) In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

(3) Design protection provided under this Act shall not prejudice to the protection prescribed by Intellectual and Artistic Works Act dated 05/12/1951 and numbered 5846 in the event that it covers the conditions specified by this Code.

(4) The following shall not be in the scope of protection:

a) designs contrary to public policy or morality;

b) appearance characteristics dictated by the technical function;

c) appearance characteristics of the product which must necessarily be reproduced in its exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in

ç) Designs that include the inappropriate use of sovereignty signs taking place in the scope of Article 6 ter of the Paris Convention and that covers signs, arms, certificates of achievement or denominations which are outside of this scope but interest the public order

and becoming public knowledge in terms of religious, historical and cultural values and for which registration permit shall not be granted by relevant authorities.

(5) Designs that provide the connection establishment in different ways as finite or infinite with each other of these units in a modular system composed of different or equivalent units provided that the conditions specified in Article 56 are met.

**The scope of the design right and its limitations**

**ARTICLE 59-** (1) A design shall confer on its holder the exclusive right to use it.

Third parties without the consent of the design right holder cannot produce, put on the market, sell, import, use for commercial purposes or keep in stock for those purposes the product in which the design is incorporated or to which it is applied, or cannot make a recommendation for contract.

(2) Unregistered design gives the right owner the right to prevent acts mentioned in the first paragraph, in case copies of identical designs or in respect of overall impression copies of indistinguishably similar designs are used. A design by an independent designer not being able to know through reasonable ways that the protected design is presented to the public prior to his design, shall not be deemed to have copied the design in the scope of the protection.

(3) The rights conferred by a design right shall not be exercised in respect of:

(a) acts done privately and for non-commercial purposes;

(b) acts done for experimental purposes;

(c) acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention shall be made of the source.

c) training or reference purpose reproductions provided that they comply with good faiths and they don't endanger unnecessarily the normal use of design and they show the sources.

ç) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of Turkey concerned, and the importation of spare parts and accessories for the purpose of repairing such craft, and the execution of repairs on such craft.

(4) The use of the design of a component part used for the purpose of the repair of a complex product so as to restore its original appearance within three years after design is released to the market for the first time shall not be deemed as an infringement of the design right provided that no misleading information shall be given about the source of these parts.

(5) The use of equivalent parts published by the Ministry of Science, Industry and

Technology, within the scope of the fourth paragraph and the use within three years after the design is released to the market for the first time shall not be deemed as infringement of the design right.

(6) In concern with designs for which deferment of publication is demanded, the provisions of second paragraph shall be applied until visual representation of the design shall be published in the Bulletin.

**Right arising from previous use**

**ARTICLE 60-** (1) Natural persons and legal entities that use the design in the registered scope of protection independently of the registered design in good faith for commercial purposes inside the country or that took serious and true measures for use, shall be given the right to use due to previous use and shall be limited to these preparations to meet the reasonable requirements of the enterprise. Right arising from previous use shall be registered and published in the bulletin.

(2) Right arising from previous use cannot be extended and transferred by granting license. Transfer of this right shall be possible through the transfer of the enterprise.



**SECTION TWO**  
**Application, Examination and Registration**  
**PART ONE**

**Design Application, Priority Right and Examination**

**Application requirements, classification and multiple application**

**ARTICLE 61-** (1) Design application shall cover;

- a) the application form containing information about applicant's identity;
- b) the visual representation that reflects the appearance of the design and that enables reproduction through publication;
- c) the name of the product in which the design is incorporated or to which it is applied;
- ç) the name of the designer or the names of the members of the group having designed the design;
- d) information containing how registration request right has been obtained from the designer or the designers;
- e) if any, the request of postponement of the publication;
- f) if engaged, the information related to the attorney.

(2) If the subject of application consists of a two-dimensional design and a request as per Article 66 shall be made to postpone the publication, a sample of the design may be given instead of visual representation as demanded in subparagraph (b) of first paragraph.

(3) Also a description of the visual representation or sample of the design can be presented and information related to the class of products in which the design is used or applied can be indicated in the application. Product name, product class and information given in the description shall not affect the scope of protection.

(4) In the event that the fees related to the application shall not be paid and the proof of payment shall not be submitted in time to the Office, the application shall be deemed to be invalid.

(5) For the classification of the products for which design is used or applied, the provisions of Locarno Agreement on International Classification of Designs which our country ratified by Decree of the Council of Ministers dated 5/8/1997 numbered 97/9731 shall be applied.

(6) Written statements of the visual representation specified in subparagraph (b) of first paragraph shall not provide exclusive rights related to concepts they express.

(7) The registration demand for multiple designs can be made as multiple applications provided that additional application fee shall be paid. In multiple applications, except for the ornamentation, each product design is used for and applied to, shall be of the same class.

(8) Multiple applications or designs forming multiple registrations shall be evaluated separately in the implementation of this Act.

(9) In case of multiple applications, if a registration is requested for designs not complying with conditions specified in seventh paragraph or the number of designs exceeds the determined number, the Office requests relevant parties to carry out separate applications for these designs. For each divided application, application date shall be the date of the first application. If priority right shall be demanded in the first application, this right shall be recognized in each divided application.

(10) The designer, if his name shall not be indicated in application form, has the right to request his name to be indicated as a designer. But the designer may request his name to be kept secret. The applicant shall describe how the design application right has been obtained if not being the designer or if being one or some of the designers.

(11) Spelling mistakes and obvious mistakes in fact in the design application shall be corrected upon applicant's request provided that no change in the sample of the design shall be made.

(12) The number of designs that shall be part of a multiple application or other procedure and rules on the application shall be determined by a regulation.

**Priority Right Claim and Its Effect**

**ARTICLE 62-** (1) Natural persons or legal entities or their successors that are citizens of one of the contracting countries to the Paris Convention or Agreement Establishing the

World Trade Organization or natural persons or legal entities or their successors that have a settlement or a commercial organization in one of these countries, even if not being a citizen of any of these countries, shall benefit from the priority right to make application in Turkey for identical design in the scope of the provisions of Paris Convention within six months starting from the date of their application made duly by them to competent authorities for the registration of the design or utility model. The priority rights not be used within this period shall be forfeited. To benefit from the priority right, the document of priority from the competent authorities to which the first application has been made shall be obtained.

(2) Natural persons or legal entities mentioned in the first paragraph or their successors shall benefit from the priority right in the frame of the provisions of first paragraph based on design application made duly by them in any country that is not a party of Paris Convention or Agreement Establishing the World Trade Organization.

(3) The subsequent application made in the same country and covering the same subject with the previous first application shall be deemed as the first application in determining the priority right provided that the previous application is withdrawn or is accepted as withdrawn or refused without presentation to the public for review and without having granted any right as of the date of the subsequent application or forming a basis for a priority right. The previous application shall not be taken as a ground for the demand of a priority right.

(4) The provisions of this article shall be applied for natural or legal entities mentioned in subparagraph (ç) of the first paragraph of Article 3.

(5) Natural persons or legal entities mentioned in Article 3 exhibiting the design for which application has been made or the product to which design has been applied on national or international exhibitions in Turkey or international official exhibitions or on exhibitions recognized to be official in contracting countries to Paris Convention or Agreement

Establishing the World Trade Organization, shall benefit from the priority right to make application in Turkey within six months starting from the date of exhibition.

(6) If the design for which application has been made or the product to which design has been applied shall be exhibited in a visible way in the exhibition before the official opening date, then the priority right shall commence from date of exhibition of product.

(7) If more than one application shall be made for a product that is identical or similar to product exhibited in any exhibition, the first exhibitor shall benefit from the priority right and if product shall be exhibited at the same time, the first application shall benefit from the priority right.

(8) In case the application shall be made on the basis of a priority right within periods specified in first and fifth paragraphs, applications by third persons and design registrations on behalf of those after the priority date shall be invalid.

**Priority Right and its effect**

**ARTICLE 63-** (1) Request for the priority right shall be made with the application.

Related documents shall be submitted to the Office within three months after the application date. Otherwise the request for the priority right shall be deemed to be void.

(2) The priority right and provisions arise according to the date of the application for the priority right according to Article 62 or according to the dates of paragraphs 5 and 6 of Article 62.

(3) If more than one priority rights are demanded for a design, the priority right shall start of the date of the first priority right.

(4) The priority right based on exhibition shall not extend the priority period granted by paragraph 1 of Article 62.

(5) Procedure and rules relating to the demand for the priority right shall be determined by a regulation.

#### **Examination**

**ARTICLE 64-** (1) Office examines compliance of the application with conditions specified in Articles 61 and 63. As a result of examination, if no deficiency in terms of conditions specified in subparagraphs (a) and (b) of first paragraph of Article 61 has been determined, application date finalizes as of the date of the receipt of the application by the Office.

(2) If deficiencies determined as a result of examination in accordance with Articles 61 and 63 are remedied in due time, application date finalizes as the date of application. If deficiencies concerning information and documents listed in subparagraphs (a) and (b) of first paragraph of Article 61 are remedied in due time, application date finalizes as of the date of the remedy of deficiencies in question.

(3) Design protection shall begin from the date of the finalization of the application.

(4) If deficiencies could not be remedied in due time, the application shall be deemed invalid.

(5) Failure to remedy the deficiencies related with priority right in due time shall only cause the loss of the priority right.

(6) The Office rejects the design registration requests;

a) not complying with design and product description,

b) violating public policy or morality,

c) made by natural persons and legal entities not included in the scope of Article 3,

ç) containing the inappropriate use of sovereignty signs taking place in the scope of repeating Article 6 ter of Paris Convention and that covers signs, arms, certificates of achievement or denominations which are outside of this scope but interest the public order and becoming public knowledge in terms of religious, historical and cultural values and for which registration permit shall not be granted by relevant authorities.

d) determined not to be new.

(7) If refusal decision given in subparagraph (b) and (ç) of sixth paragraph shall be relating to only a section of the design, partial refusal decision shall be given for only that section. As a result of a partial refusal, the remaining section must provide the protection conditions and maintain the design identity to ensure the continuity of registration.

## **PART TWO**

### **Registration and Publication**

#### **Registration and Publication**

**ARTICLE 65-** (1) A not refused finalized application in accordance with Article 64 shall be recorded in the registry as registered a design and published in the Bulletin.

(2) The registry shall be open to the public. An example of the registration provided upon request and payment of the related fee.

(3) Procedure and rules relating to record in the registry, publishing process and registration operations shall be determined by a regulation.

#### **Postponing of the publication**

**ARTICLE 66-** (1) The applicant along with the application may request the postponing of the publication for a period of thirty-month starting from the application date or, if any, the priority date.

(2) An application demanding the postponing of the publication and not rejected in accordance with Article 64 shall be registered and recorded in the registry. But the information and documents related to the visual representation of the design and application files shall be made available to third parties examination.

(3) Demand for postponement of the publication regarding design recorded in the registry shall be published in the Bulletin.

(4) The Office shall submit and publish all records and documents relating to the application to third parties for review on the date of expiration of the postponement of the publication or upon right owner's request on an earlier date. However, the publication fee shall be paid prior to publication. If only a sample of the product for which design is used for or applied to given during application, then the visual representation of the design being suitable for publication shall also be submitted. If these conditions shall not be fulfilled in the due time, protection provided by this Code as from application date of design recorded in the registry shall be deemed invalid.

(5) Information in the registry and the application file must be notified to the defendant to ensure that an infringement could be sued within the postponement duration of the publication.

(6) The publication date of a design for which postponement of publication has been demanded shall be the date of publication of visual representation.

(7) These provisions can also be applied for some of the designs in multiple applications.

### **PART THREE**

#### **Opposition and Examination of Opposition**

##### **Opposition to decision and registration**

**ARTICLE 67-** (1) Applicants may raise a justified, written objection against decisions given in accordance with Article 64 within two months from the date of notification.

(2) Third parties may object in writing to the issuing of registration certificate within three months from the publication date by paying the fee claiming that the design is not fulfilling the definitions specified in the first and second paragraphs of Article 55, failing to meet the conditions specified in Articles of 56 and 57 and that the design is in the scope of the fourth paragraph of Article 58 and subparagraph (c) of sixth paragraph of Article 64 and that the application is made in bad-faith and that it contains the unauthorized use of intellectual property rights.

(3) In case the fee for objections made in accordance with the second paragraph has not been paid or the proof of payment has not been submitted to the Office in due time, the objection shall be deemed as invalid.

##### **Examination of the Opposition**

**ARTICLE 68-** (1) Oppositions made as per Article 67 shall be examined by the Board.

(2) The applicant's opinion shall be taken at the stage of examination of the oppositions made against decisions given pursuant to Article 64, if necessary.

(3) Objections made as per second paragraph of Article 67 shall be notified to the applicant in order that he can state his opinions. The board may request the opposing party to submit the additional information and documents in order to deliver within one month after the notification date. If requested additional information and documents shall not be submitted

to the Office in time, the objection shall be examined in the scope of existing information and documents.

(4) If it is determined that there are deficiencies in the application in the scope of provisions of Article 64 and the regulation during the duration of objection or at the stage of examination of the objection, operations shall be maintained starting from stage that has not been completed and decisions taken shall be published in the Bulletin, if necessary.

(5) If objection made under the second paragraph of Article 67 shall be accepted, registration of the design shall be deemed invalid. If an objection made for a part of the design as per the second paragraph of Article 64 for unauthorized use of intellectual property right shall be accepted, only that part of the registration shall be deemed invalid. At the end of partial invalidation, remaining part shall meet the conditions related to protection and keep the design identity to ensure the continuity of registration. At the stage of examination of multiple applications, design registrations not forming the subject of objection, but understood to be deemed invalid pursuant to additional documents attached to the objection, shall ex-officio be deemed invalid in accordance with procedures specified in paragraph three.

(6) If registration shall be decided to be invalid under this Article, invalidity results specified in Article 79 enter into force. Invalidity decision shall be published in the Bulletin.

#### **PART FOUR**

##### **Term of Protection and Renewal**

###### **Term of Protection of the Design and Renewal**

**ARTICLE 69-** 1) The term of protection of a registered designs covers a period of five-year as from the date of filing. This period may be prolonged in total up to twenty five-year by means of renewing in five-year periods.

(2) The term of protection of unregistered designs covers a period of three-year as from first presentation date to the public of the design for which protection is demanded.

(3) The registration of the design is renewed upon the request of the design owner provided that the proof of payment of the renewal fee is submitted to the Office in time.

(4) Request for renewal shall be made by the design owner within six months before the expiry of the protection date and the information demonstrating payment of the renewal fee shall be submitted to the Office within the same period. If no request is made or the information demonstrating payment of the renewal fee is not submitted to the Office within this period, renewal request may be made within six months after the expiry of the protection date provided that additional fee is paid.

(5) The renewal shall take effect from the day following the expiration of the previous day protection period. The renewal operation shall be recorded in the register and published in the Bulletin.

(6) Design right related to non-renewable designs expires on the day when duration of protection ends.

#### **SECTION THREE**

##### **Right Ownership and Disseize**

###### **Right Ownership**

**ARTICLE 70-** (1) Design right belongs to the designer or his successors and it may be transferred.

(2) If design application or design belongs to more than one person, the partnership claim on the right shall be determined pursuant to the agreement concluded between the parties and if there is no such an agreement between the parties, it is determined in accordance with the provisions related to joint ownership in the Turkish Civil Code dated 22/11/2001

numbered 4721. Each right owner can make the following actions on his behalf independently of the others:

- a) he can freely dispose on the share belonging to himself;
- b) he can use the design by means of notifying the other right owners;
- c) in the event that rights arising from design are infringed in any way, he can sue a claim against third persons. In this case, a notification shall be sent by the claimant to the other right holders in order that they can participate in the legal proceeding in question.

(3) Right owners shall be obliged to decide unanimously to grant third persons a license for those to use the design. However, in case of absence of unanimity to grant a license, the court may grant the licensing authority to one or more of the right owners on an equitable basis.

(4) It is not possible to transfer the design application or design registration or to divide those to establish any right on them, even if more than one person becomes right owner of these.

#### **Disseize of design**

**ARTICLE 71-** (1) If an application for design is made by a person not being the legal right owner or if the design is registered on behalf of this person or if an unregistered design shall be presented to the public by a person not being the legal right owner, then the person claiming to be the legal right owner may demand the court to transfer the design owner right to himself or to be recognized as the owner of the design without prejudice to his rights and demands arising from the design right.

(2) If a partial right shall be alleged on the design, the recognition of the right owner may be demanded in accordance with the first paragraph and according to rules related to joint ownership.

(3) If demands specified in first and second paragraphs are not alleged within three years after the publication of the registered design or the presentation to the public of the unregistered design, these become void. But in the event that the person not being the legal right owner acts in bad faith, lapse of time shall not be applied.

(4) Demands alleged in legal proceedings instituted in accordance with provisions of this article, final decisions given by the court or any other circumstances finalizing the legal proceedings shall be registered and published upon demand in the Bulletin and have effect on third persons in good faith as of the date of registration in the register.

(5) If an application is registered while the legal proceeding continues, the proceeding regarding application's disseize turns into a proceeding regarding design's disseize.

#### **Results of termination of disseize**

**ARTICLE 72-** (1) If any change in ownership of the design occurs pursuant to the provisions of Article 71, all rights of third parties related to design in question terminates when this change is entered in the registry.

(2) If a person understood not to be the legal right owner later or the person making a license agreement with this person, begins to use the design before the record date in the registry of the legal right owner or performs serious preparations to use the license, he may request the legal right owner to grant a non-exclusive license within two months. This period starts from the notification date of the registration of the real right owner by the Office to the concerned persons.

(3) In case a person understood not to be the legal right owner later or the person receiving a license from this person acts in bad faith using or making serious preparations to use the license, the provisions of the second paragraph shall not apply.

**SECTION FOUR**  
**Employees' Designs**

**Ownership in service relationships and in other work relationships**

**ARTICLE 73-** (1) Unless otherwise agreed upon due to special contracts made between parties or because of the nature of work, right owners of designs that are made by employees' due to their obligations in a business organization or right owner of designs that are performed by employees based on experiences and operations of business organization shall be the employer.

(2) The right owner of designs that are carried out by employees outside the scope of the first paragraph by means of benefitting from information and tools related to general activity in their business organization shall be the employer, upon request.

(3) The provisions regarding employees' designs shall also be applied to designs of students as well as designs of interns rendering service free of charge without subjecting to a certain time and designs carried out by instructors specified in subparagraph (l) of first paragraph of Article 3 of Higher Education Law dated 4/11/1981 numbered 2547 as a result of scientific studies or researches.

(4) In the designs made in the frame of an employment contract not covered by the scope of a service relationship, the right owner shall be determined in the frame of provisions of the contract concluded between the parties.

**Pricing for the right related to the designs prepared by employees**

**ARTICLE 74-** (1) Employee shall have the right to request a price to be determined by taking into consideration the importance of the design in the scope of the second paragraph of Article 73. If parties may not be able to agree on the price, the price shall be determined by the court.

(2) Sharing of revenue obtained from designs fulfilled by instructors in the scope of third paragraph of Article 73 between the higher education institution and the designer shall be determined by the board of directors of the relevant higher education institution to be given at least half of the revenue to the designer.

**SECTION FIVE**  
**License**

**License**

**ARTICLE 75-** (1) A design right may be subject to a license agreement.

(2) The license may be granted in exclusive or non-exclusive form. Unless otherwise agreed in the license contract, the license shall not be exclusive. In the non-exclusive license, licensor shall use the design himself or can grant other licenses to third parties. In the exclusive license contracts, licensor shall not grant license to another person and shall not use the design himself as long as it reserves his right expressly.

(3) Unless otherwise agreed in the license contract, licensors cannot transfer their rights arising from the license to third parties or grant sub-licenses.

(4) Unless otherwise agreed in the license contract, the licensor can perform all and any actions related to the use of design during the duration of the license. The licensee shall be obliged to comply with the terms of the license contract. Otherwise, the design owner can claim his rights arising from the design to the licensee.

**Liability arising from the transfer of the right or granting of the license**

**ARTICLE 76-** (1) In case it is later determined that the person transferring the design right arising from the application or registration or granting a license shall not be authorized to make such operations, the person in question shall be therefore liable against those concerned.

(2) If a design application is withdrawn or refused or if a design registration is cancelled or deemed invalid, the provisions of Article 79 shall be applied provided a more comprehensive liability through contract in terms of a person transferring his design right or licensor has not been foreseen by the parties. Time to demand the compensation arising from the provision of this article's provision starts on the date of the final court decision forming basis for liability proceeding.

## **SECTION SIX**

### **Termination of the Right**

#### **PART ONE**

##### **Invalidity**

###### **Invalidation**

**ARTICLE 77-** (1) The decision related to invalidity of the design shall be given by the court in the following situations:

(a) if it is proven that the design is not fulfilling the definitions specified in the first and second paragraphs of Article 55, failing to meet the conditions specified in Articles of 56 and 57 and that the design is in the scope of the fourth paragraph of Article 58 and subparagraph (c) of sixth paragraph of Article 64 and that the application is made in bad-faith and that it contains the unauthorized use of intellectual property rights.

b) if it is proven that right belongs to another person or other persons;

c) if filing date of an identical or similar design opened to the public later shall be prior to the filing date of a registered design.

(2) If a request for invalidation is made for a part of the design as per subparagraphs

(b) and (c) of the sixth paragraph of Article 64 for unauthorized use of intellectual property right shall be accepted, only that part of the registration shall be deemed invalid. At the end of a partial invalidation, remaining portion must meet the conditions related to protection and keep the design identity to ensure the continuity of registration.

###### **Request for Invalidity**

**ARTICLE 78-** (1) Persons concerned can request the court to give a decision related to invalidity of design except in circumstances as stated in the second paragraph.

(2) Invalidity of design may be claimed only by an earlier right owner as per subparagraph (c) of first paragraph of Article 77 and may be claimed only by the design right owner as per Articles 70 and 73.

(3) Legal proceeding may be instituted in concern with invalidity of design during duration of protection or within five years the following the expiration design right.

(4) Invalidation proceeding shall be instituted against person registered as the right owner in the registry on date of the claim. Also a notification shall be sent to those that are registered in the registry as the right owners of the design so that they can participate in the proceeding.

(5) Invalidity proceedings for unregistered designs shall be trialed against person claiming to be the right owner.

###### **The effect of invalidity**

**ARTICLE 79-** (1) Decision related to invalidity of the design causes a retroactive effect and protection by this Code shall be deemed as null and void.

(2) Without prejudice to compensation claims of sufferers due to gross negligence or bad faith of the design owner, retroactive effect of invalidation decision shall not affect the following conditions:

(a) final and implemented decisions of courts due to infringement of the rights provided by design prior to the invalidity decision;



(b) contracts established and performed prior to the invalidity decision.

(3) The return of fee paid pursuant to contracts in the scope of subparagraph (b) of second paragraph can be requested partially or fully on an equitable basis.

(4) The final decisions regarding the invalidity of the design shall be effective for everyone. After finalization of the invalidation decision, the court shall send this decision to the Office ex-officio. The design shall be cancelled in the registry by the Office and published in the Bulletin.

## **PART TWO**

### **Other Termination Conditions and Its Results**

#### **Termination and Its Results**

**ARTICLE 80-** (1) Design right shall terminate in the following conditions:

- a) if the duration of protection expires and registration shall not be renewed in time;
- b) if right owner relinquishes his right.

(2) Application or registration owner can relinquish his design right wholly or partially.

(3) Waiver action shall be notified in written to the Office. Waiver action shall have effect as of the record date of registration and shall be published in the Bulletin.

(4) Design owner shall not be able to relinquish his design right without the consent of right and license owners registered in the registry.

(5) If right ownership on design is claimed by a third party and an interlocutory injunction taken in this matter shall be registered in the registry, then the rights arising from a design cannot be relinquished without the consent of this person.

## **SECTION SEVEN**

### **Infringement of Design Right**

#### **Acts deemed as infringement of design right**

**ARTICLE 81-** (1) The following acts shall be deemed as infringement of a design right:

a) to produce, put on the market, sell, offer for contracting, import, use for commercial purposes or stock for those purposes an identical or similar product in which the design is incorporated or to which it is applied without the consent of the right holder;

b) to broaden the rights granted by the design owner through licensing or to transfer these rights to third parties without consent;

c) to disseize the right of a design.

(2) In the event that application shall be registered and published as per Article 65, registration owner has the right to file a civil action due to infringements of the design right specified in this article. If an infringer is informed about the application and the scope of application, the publication of application shall not be taken into account. If the court decides that infringer acts in bad faith, the existence of this infringement shall be deemed to be prior to the publication as well.

(3) The absence of the record on the product, packaging or invoice showing that the design in the scope of protection is registered shall not mean that acts indicated in this article would not be accepted as infringement of the design right.

(4) As regards unregistered designs, designs presented to the public pursuant to

Article 57, the right owner has the authority to institute the legal proceeding due to the violations of the design right.

**BOOK FOUR**  
**Patent and Utility Model**

**SECTION ONE**

**Patent Right**

**PART ONE**

**Conditions of Patentability**

**Patentable inventions and exceptions to patentability**

**ARTICLE 82-** (1) A patent shall be granted to the inventions in all fields of Technology providing that the invention is new, involves an inventive step and is susceptible to industry.

(2) Below mentioned shall not be considered as inventions. In case the application for a patent or the patent itself are involved in the subjects or activities mentioned below, this subject only or the activity itself shall stay out of patentability.

- a) Discoveries, scientific theories and mathematical methods;
- b) mental acts, business activities or game related plans, rules and methods;
- c) computer programs;
- ç) products with aesthetical creations , belles-lettres, artworks and treatise;
- d) presentation of the information.

(3) Below mentioned inventions shall not be granted a patent:

- a) inventions violating public order or public moral;
- b) biological processes relating to plant varieties or animal races; or intending to generate plant varieties or animal races with the exception of microbiological processes or products obtained in the result of such processes;
- c) all treatment modalities including the diagnosis methods which are intended to be applied to human or animal bodies and surgical methods;
- ç) discovering only one of the parts of human body including human body and a gene sequence or a partial gene sequence in the various phases of their generation and evolution;
- d) the human cloning processes, the changing processes of genetic identity of human sextinked inheritance, using human embryos for industrial or commercial purposes, changing processes of genetic identity in a way that may agonize the animals without providing any significant medical avails for human or animals and animals that are obtained in the result of such operations.

(4) Within the scope of subparagraph (a) of paragraph three, commercial use of the invention being prohibited by legislation shall not necessarily mean that this use is violating public order or public moral.

(5) The microbiological process that is specified in subparagraph (b) of paragraph 3 expresses any operation which includes microbiological materials, processed with microbiological materials or in the result of which microbiological materials are formed; plant or animal production procedures that are consisting of basically biological processes, hybridization or selection that are completely natural.

(6) The provision mentioned in subparagraph (c) of paragraph 3 shall not be applied to the products, especially the substances and compositions which are used in any methods that are mentioned in the same option.

**Novelty, inventive step, applicability to industry**

**ARTICLE 83-** (1) An invention which is not included in the state of the art shall be considered as novel.

(2) The state of the art shall cover everything reachable by the society and which is, before the application is submitted, presented anywhere in the world by introducing in written or verbally or made public by usage or any other ways.

(3) The published contents of the applications which are submitted on or after the application date and the first contents of national patent and utility model applications which are made before application date shall be considered as the state of the art. This provision also covers,

(a) the applications for a patent and utility model which are entering the national level in accordance with the conditions specified in the regulation according to Articles 22 and 39 of Patent Cooperation Treaty, within the frame of the applications for a patent which are made in accordance with Patent Cooperation Treaty which was ratified by the Council of Ministers' Decision dated 01.05.1996 and numbered 96/7772,

(b) the applications which meet the requirements specified in the paragraph 5 of Article 153 of European Convention Relating to the Formalities Required for European Patent Applications which was ratified by the Council of Ministers' Decision dated 06.07.2000 and numbered 2000/842; the applications for a patent based on an international application; and the applications for a European Patent in which Turkey was determined and the related fee was paid according to subparagraph two of Article 79 of European Patent Convention.

(4) In consideration of the state of the art, the invention which is not obvious according to the expert of the area to which the invention is related, shall be considered that it includes inventive step.

(5) The contents of the applications and documents that are taken into consideration in terms of the state of the art according to paragraph three shall not be considered in evaluation of the inventive step.

(6) If the invention is producible and usable in any industrial area including agriculture, it shall be considered as applicable to industry.

**Statements which do not affect on the invention to be granted a patent or a utility model**

**ARTICLE 84-** (1) As well as being effective on the invention to be granted a patent or a utility model, it shall not affect the invention to be granted a patent or a utility model in the cases that a statement was made within twelve months prior to the application date or within twelve months prior to the date of priority right if priority right was demanded and in the cases of the situations mentioned below:

a) the statement is made by the inventor;

b) the statement is made by an authority to which the application for a patent was made and the information released by this authority;

1) is mentioned in the inventor's other application and the mentioned application is revealed by the related authority even though it was required not to be revealed;

2) is mentioned in the application that was filed by a third party who obtained the information directly or indirectly from the inventor without the inventor's permission.

c) The statement regarding the invention is made by a third party who obtained the information directly or indirectly from the inventor.

(2) According to paragraph 1, everybody who is holder of right to demand a patent or utility model at the time in which the application is made shall be considered as the inventor.

(3) The results led by the conduction of the paragraph 1 shall not be subject to time limit and can be alleged anytime.

(4) The party who alleges that the paragraph 1 should be conducted shall be obligated to prove the fulfillment of conditions or prove that it is expected to be so.

**PART TWO**  
**Scope of a Patent Right**

**Scope of a patent right and its limits**

**ARTICLE 85-** (1) The patentee avails himself of the patent right without any exceptions of where the invention was made, its technological area and whether the products are imported or are domestic.

(2) The patentee has a right to claim the prevention of the practices mentioned below in case that they are performed without his consent:

a) producing, selling, using or importing the goods subject to a patent or keeping those at hand for such purposes and for other reasons than personal needs;

b) using a process that is subject to a patent;

c) offering others to use the process patent the use of which is known or should be known to be prohibited;

ç) selling, using or importing the goods which are directly obtained by the process subject to a patent or keeping them at hand for such purposes and for other reasons than personal needs.

(3) The practices mentioned below shall be out of the scope of the rights provided by a patent:

a) practices which do not involve industrial or commercial purposes and are confined to special purposes;

b) trial practices involving the invention subject to a patent;

c) trial practices involve the performances of the invention subject to a patent in order to register drugs including necessary tests and experiments needed for this purpose;

ç) using the drugs prepared in pharmacies without a mass production in order to prepare only one prescription and practices regarding drugs prepared this way;

d) using the invention subject to a patent in making and running ships, space vehicles, airplanes or land transport vehicles for party countries of Paris Convention or in meeting the needs of such vehicles; using the mentioned vehicles provided that they are within the borders of Republic of Turkey temporarily or accidentally.

e) provisions of Article 27 of International Civil Aviation Agreement which is approved by the Law dated 06.05.1945 and numbered 4749 and practices regarding aircrafts of a country in which the provisions of this Article are being applied.

(4) A small farmer whose definition is made in the Law on Protection of Breeder's Rights for New Plant Varieties dated 01.08.2004 and numbered 5042 has the right, in his own land which they operate, to use the reproduction material that derived from the product in the result of the production made by a patented product provided from the patentee; or sold by his permission; or obtained by another commercial way, in order to do new productions in their own land which they operate. This tenancy shall be subject to the provisions of the Law number 5042.

(5) The farmer has a right to use the patented breeding or other animal reproduction material provided from the patentee; or sold by his permission; or obtained by another commercial way for agricultural purposes. This tenancy covers the use of animals or other animal reproduction material in order to maintain their own agricultural strength. The procedure and rules regarding the use of this right shall be determined by regulations.

(6) The subject of the patent shall not be used in a way that will cause harm for the law, morals, and public order. This use shall also be bound up with current or future definite or indefinite-statutory prohibitions and restrictions.

**Preventing the indirect use of the invention**

**ARTICLE 86-** (1) The patentee has a right to prevent the factors or equipment regarding a part which makes the practice of the invention subject to a patent possible and constitutes the basis of the invention from being released third parties to parties who do not have an authority to use the invention subject to a patent. In order to implement this provision, the subject third parties must be aware that such factors or equipment are sufficient to use the invention and must be aware of using them for this purpose; or the situation must be clear enough.

(2) If the factors or equipment mentioned in the paragraph 1 are products which can be found anytime in the market, the provision of the paragraph 1 shall not be implemented in case the third parties do not induce the subject unauthorized parties to perform such practices.

(3) The performers of the practices specified in the subparagraph (a), (b), (c) and (ç) of the paragraph 3 of Article 85 shall not be considered as those who are unauthorized to use the patent according to the provision of paragraph 1.

**Rights conferred by previous use**

**ARTICLE 87-** (1) The patent applicant or the patentee shall not have a right to prevent the persons who used the invention domestically in good faith on or before the application date; or the persons against whom serious and real measures are taken for their use, from keeping using the invention subject to a patent in the same way or from beginning to use them in accordance with the measures taken. However, the subject persons keeping using the invention subject to a patent or using them in accordance with the measures taken can be allowed as much as to meet the reasonable needs of the business they own. The conferred right remaining from previous use cannot be expanded by issuing a license and this right can only be transferred together with the business.

(2) Practices regarding the products that are offered for sale by the persons mentioned in paragraph 1 shall be out of the scope of the rights provided by the patent.

**Legal monopoly**

**ARTICLE 88-** (1) When a patent is granted for an invention regarding subjects included in field of activity of state economic enterprises the complete capital of which belongs to the State; and which are established to be producing and commercializing monopolistic goods and services observing public interest; and have monopoly rights in the goods and services they provide due to the public services they perform, allowing the monopoly right holder to use the invention shall be dependent on the patentee's permission.

The monopoly right holder shall be obligated to use the inventions which can provide considerable economic benefits and a significant technical progress in the industrial area which they deal with by obtaining the right to use.

(2) The monopoly right holder, in order to obtain the right to use the invention subject to a patent, has a right to claim from the patentee to permit. The patentee can ask the monopoly right holder to take over the patent. The price which should be paid in exchange for using the invention subject to a patent or in case of the monopoly right holder taking over the patent shall be determined by the parties. The subject price shall be determined by the court in case the parties fail in coming to an agreement.

(3) On condition that the provisions of paragraph 2 are reserved, if the monopoly is established after the patent is granted, the patentee has a right to claim from the monopoly right holder to also take over the business or the facility in which the invention is being used. The subject price shall be determined by the court in case the parties fail in coming to an agreement.

(4) If the invention subject to a patent is not available to be used due to an existing legal monopoly, the annual fee for the subject patent shall not be paid.

**Scope of the protection**

**ARTICLE 89-** (1) The extent of the protection provided by the patent application or the patent itself shall be determined by claims. However, the description and the drawings shall be used in interpreting the claims.

(2) The claims shall not be interpreted based on the limits of the meaning of the words used. However, when determining the extent of the protection, the claims shall not be extended in way covering the ideas that had been thought of by the inventor but had not been demanded in the claims, and also in a way to cover the features which are expected to arise by interpretation of the description and the drawings by a skilled person in the art.

(3) The claims are interpreted in a way that the application or the patentee shall be provided with the protection they deserve; and the third parties shall be provided with a situation displaying positive assertion in a reasonable level in terms of the extent of the protection.

(4) The extent of the protection provided by the patent application shall be determined by the published claims of the application for the time passed until the patent is granted. But the situation of the patent when granted or its situation after the objection or invalidity procedures shall determine the protection provided from the application retroactively on condition that the protection scope is not extended.

(5) The factors which are equivalent to the factors mentioned in the claims by the time in which the violation was alleged to exist are considered, too, in determining the extent of the protection provided by the patent application or the patent itself. A factor, in essence, shall be considered as equivalent to the factor which is generally demanded in the claims if it is functioning the same way as the factor demanded in the claims; it is fulfilling the function requirements in the same way and it is leading to the same conclusion.

(6) During the procedures which are required to determine the extent of the claims regarding granting the patent or during the validity of the patent, the patent application or the patentee's statements shall be considered in order to determine the extent of the protection.

(7) If the patent includes samples regarding the invention, the claims shall not be interpreted as limited to such samples. The product or the method shall not be left out of the extent of the protection provided by the claims especially in cases that the additional features of the product or method do not exist among the samples mentioned in the patent; do not cover the features of such samples; or cannot reach every objective or feature specified in such samples.

## **SECTION TWO**

### **Application, Granting the Patent and Objection**

#### **PART ONE**

##### **Application and Priority Right**

###### **Required documents for patent application and confirming the application date**

**ARTICLE 90-** (1) A patent application includes;

- a) application form;
- b) description explaining the subject of the invention;
- c) the claims;
- ç) the pictures which were referred in the description or claims;
- d) the abstract;
- e) information of the payment for the application fee.

(2) Description, claims, abstract and drawings, if any, may be submitted in the language of one of the countries which are parties of Paris Convention or Agreement on

Establishing the World Trade Organization or the countries performing the reciprocity principle within the application.

(3) The patent application date shall be confirmed and the application process begins as of the date of submission of all the factors mentioned below to the Office.

a) The request of granting a patent.

b) The applicant's identity and contact information.

c) A description written in Turkish or in one of the languages mentioned in paragraph 2 or a referral to a previous application.

(4) If the invention is based on a genetic source or a traditional knowledge related to the genetic source, the explanation regarding where the source is obtained from shall take place in the patent application.

(5) The inventor shall be declared in the application. However, the inventor may ask to remain anonymous. In case the applicant is not the inventor or is only one or a few of the inventors, such persons shall be obliged to explain the way they obtained the right to file a patent application in the application documents.

(6) The inventor has a right to request from the applicant or patentee to act as the inventor and to be declared their names.

(7) Procedure and rules regarding the application shall be determined by a regulation.

#### **The Unity of Invention and Divisional Applications**

**ARTICLE 91-** (1) A patent or a utility model application includes one single invention or a group of inventions which are gathered to form a single general inventive concept. The applications which do not meet the requirements of this provision shall be divided into separate applications upon the applicant's request or the notification of the Office.

(2) Divisional application can be filed for every application upon the applicant's request regardless of the unity of the invention.

(3) The divisional application shall be filed in a way that it shall not go beyond the extent of this subject of the application in relation to the application being processed. The annual fees remaining from the past years shall be paid, too, together with the divisional application.

(4) The application date for every divisional application shall be the date of the first application. If a priority right was claimed with the first application, every divided application shall be entitled to this right.

(5) Other procedure and rules regarding divided applications shall be determined by a regulation.

(6) The divisional applications which are not filed in accordance with this article shall not be admitted for process.

#### **Explanation of the invention, description, claims and abstract**

**ARTICLE 92-** (1) The invention shall be explained by a person who is skilled in the art which is related to the subject of the invention, in a very clear and complete way that can provide the invention with practicality using the drawings that are in the patent application, description and claims or are referred in the description or claims.

(2) If the invention is related to a biological material which cannot be reached by public and cannot be defined by the person skilled in the art which is specified in the patent application sufficient enough to make the invention understandable to be applied; or if it includes the use of this material; the invention shall be considered as it is explained in conformance with paragraph 1 on condition of the material being entrusted.

(3) If the biological material that has been entrusted according to paragraph 2 is no longer reachable by the establishment by which the material is entrusted; on condition that this material is re-entrusted in accordance with Budapest Treaty on International Adoption of Entrusting Microorganisms in Terms of Patent Procedure which was ratified by the Council of

Ministers' Decision dated 08.05.1997 and numbered 97/9731; and a copy of the certificate issued by the establishment by which the material is entrusted regarding receive of the material is sent to the Office within four months as of the entrustment date by indicating the number of the patent application or its document, this reach shall be considered as uninterrupted.

(4) The basis of the claims shall be the description; the claims must be defining the subject that is demanded to be protected; clear and essence and must not go beyond the invention which defined in the description.

(5) The abstract has an aim of providing technical information. It shall not be used for any other purpose especially not for determination of the extent of the protection or implementing paragraph 3 of Article 83.

(6) The requirements regarding the biological material being entrusted shall be determined by a regulation.

#### **Priority Right and its effect**

**ARTICLE 93-** (1) Any person or his successor who have filed an application for a patent or utility model in any country including Turkey which are parties of Paris Convention or Agreement on Establishing the World Trade Organization, in order to file an application for the same invention in Turkey, shall benefit from the priority right within twelve months as of the date of the first application is filed.

(2) According to national legislation of any country which is a party of Paris Convention or Agreement on Establishing the World Trade Organization; or according to the bilateral or multi-lateral agreements made by such countries or according to this Code, it shall be approved that every application that is equivalent to national application filed in due form shall result in being entitled to the priority right.

(3) The date of a national application that is filed in due form shall be considered as application date regardless of the result of the application.

(4) Whereas the position of the previous application and the current application that consists of the same subject, both of which are made to the same country, the current application can be considered as the first application when determining the priority right on condition that the previous application is withdrawn, considered to be withdrawn or rejected on the date of the current application, but before it is submitted for public inspection and without leaving any rights behind and cannot form a basis for a priority right. In this case, the previous application shall not be used as a basis for a priority right.

(5) If the first application is filed with an authority of industrial property of a country which is not a party to the Paris Convention or Agreement on Establishing the World Trade Organization, the provisions of paragraph 1 and 4 shall be applied to this application, in case this authority confirms that the first application that is filed to Turkey generates a priority right under the effects and conditions equivalent to those specified in the Paris Convention.

(6) Natural or legal entities who present a product that includes a subject of a patent or a utility model in national or international exhibitions held in Turkey or in official exhibitions or in the ones known to be official in party countries of the Paris Convention shall benefit from a priority right regarding an application to be granted a patent or a utility model in Turkey within twelve months as of the date of presentation in the exhibition.

(7) The priority date shall have the sanction of application date in fulfilling the requirements of paragraph 2 and 3 of Article 83 and paragraph 3 of Article 109.

#### **Claiming the priority right and related provision**

**ARTICLE 94-** (1) The claim of the priority right is made, thereby paying the fee, together with the application or within two months as of the date of application; and the documents regarding this claim shall be submitted to the Office within three months as of the



date of application. Failing this, it shall be considered that the claim of the priority right is not made.

(2) More than one demand of priority right shall be made in the application regardless of the demands being originated from different countries. When applicable, more than one priority right can be demanded for every claim. In case more than one priority right is demanded, the time periods that begin as of the date of priority right starts with the preference with the earliest date.

(3) If one or more than one priority rights are demanded, the priority right shall cover only the factors that are included in the application or applications from which the priority right is originated.

(4) Even though, specific factors of the invention for which the priority right is demanded are not mentioned in the claims of the patent application from which the priority right is originated, the priority right shall also be accepted to be covering these factors on condition that the patent application from which the priority right is originated clearly specified these factors as a whole.

(5) The procedure and rules regarding the demand of the priority right shall be determined by a regulation.

## **PART TWO**

### **Granting a Patent**

#### **Analyzing the invention in terms of accordance with formal conditions**

**ARTICLE 95-** (1) The application shall not be processed in case of any of the factors specified in paragraph 3 of Article 90 being missing.

(2) In the application which is admitted to be processed, in the case that at least one of the factors which are specified in paragraph 1 of Article 90 being missing or the factors being specified in a foreign language according to paragraph 2 of Article 90, the deficiencies are corrected or the Turkish translation shall be submitted without the need to notify within two months as of the application date. Failing that shall result in considering the application to be withdrawn.

(3) The Office analyses the application which completes the requirements specified in paragraph 1 or which has met the requirements in accordance with paragraph 2 in terms of accordance with other formal conditions which are determined based on paragraph 4 and 5 and the regulation.

(4) In case of the realization of the inconsistency of the application with formal conditions, the applicant shall be asked to correct the deficiencies within two months as of the application date. In the case of failing to fill the deficiencies within this period, the application shall be refused.

(5) In case of the realization of the consistency of the application with formal conditions, a search report shall be prepared pursuant to the provision of Article 96.

#### **Search request, preparation of search report and publication**

**ARTICLE 96-** (1) The applicant requests a search on the condition of paying the fee together with the application or without the need to notify within twelve months as of the application date. Failing that shall result in considering the application to be withdrawn.

(2) In the case of the applicant requesting for a search in accordance with the provision of paragraph 5, if it is realized that the application is consistent with formal conditions or the deficiencies are corrected within required period, the search report shall be prepared, the applicant shall be notified and it shall be published on the Bulletin. The search report shall be published separately in the case that the application is published in accordance with Article 97; if not, it shall be published on the Bulletin together with the application.

(3) If it is concluded that the subject of the application is included in the extent of paragraphs 2 and 3 of Article 82; or if the description or all the claims not being clear enough prevents the report being prepared, the search report shall not be prepared. The applicant shall be asked to submit his objections regarding this issue or his changes in the application within three months as of the notification date. The application shall be refused in case of failing to submit the objections within this period; or the objection or the changes made not being accepted by the Office. In case the objection or the changes made, if any, are accepted, the search report is prepared, the applicant shall be notified and it shall be published on the Bulletin.

(4) The Council of Ministers shall be authorized to reduce by half the twelve-month time period of search demand that is mentioned in paragraph 1.

(5) Procedure and rules regarding search request and preparation of the search report shall be determined by a regulation.

#### **Publication of the application and its effects**

**ARTICLE 97-** (1) Upon expiration of eighteen-month time period as of the date of the application or priority, if any, the application of the patent or utility model shall be published on the Bulletin.

(2) The third parties, as of the date of the publication of the patent application, can present their comments regarding the patent-conformability of the invention that is the subject of the patent. However, such parties cannot be a part of the process being done by the Office at this phase.

(3) If it is decided to grant the patent before the eighteen-month time period mentioned in paragraph 1 is expired, the patent application and the patent shall be published together.

(4) The protection that is provided to the patent according to the provisions of this Code shall temporarily be entitled to the applicant as of the date of the patent application being published on the Bulletin.

(5) If a person who used the invention that is the subject of the application without the patent applicant's permission is informed of the patent application and its extent, the protection specified in paragraph 4 shall also be a matter before the publication of the application.

(6) If the invention that is the subject of the patent application is related to microorganisms, the protection shall start after the microorganism becomes reachable.

(7) In case the application is withdrawn, is considered to be withdrawn or rejected, the results which are specified in the paragraphs above shall be considered as not occurred.

(8) Procedure and rules regarding the publication of the application or presenting third parties' opinion shall be determined by a regulation.

#### **Examination request, preparation of the examination report and granting the patent**

**ARTICLE 98-** (1) The applicant shall request, paying the fee, the examination to be done within three months as of the date of the notification of the examination report.

Otherwise the application shall be considered as withdrawn.

(2) Upon the applicant's request of examination, the Office analyses the conformity of the application and the related invention with the provisions of this Code.

(3) If non-conformity of the application and the related invention with the provisions of this Code is determined, the applicant shall be notified to make changes on condition that the applicant presents his opinions and does not exceed the extent of the application; and such notifications shall be repeated as long as it is deemed appropriate. However, the notifications which shall be made in this context cannot be repeated more than three times.

(4) The applicant shall be allotted a three-month time period as of the date of the notification in order that they present his comments regarding the notifications specified in

paragraph 3; or they can make changes. The application shall be withdrawn in case; comments are not presented or changes are not made within this time period.

(5) In case that it is specified in the examination report that is prepared following the examination that the application and the related invention is in conformity with the provisions of this Code, the patent shall be decided to be granted, the applicant shall be declared to, and the patent shall be published on the Bulletin.

(6) In order to be able to grant the patent according to the examination report, in case changes are needed to be made, the changes shall be asked to be made within two months as of the date of the notification. In case that the changes made are confirmed, the patent shall be decided to be granted, the applicant shall be declared to, and the patent shall be published on the Bulletin. In case that the changes are not made or the changes made are not confirmed by the Office, the application shall be considered to be withdrawn; this decision shall be notified to the applicant; and it shall be published on the Bulletin.

(7) After the publication regarding the granted patent; upon a request and upon the payment for the preparation of certificate fee, the patentee shall be delivered the prepared document.

(8) If it is specified in the examination report that the application and the related invention is in unconformity with the provisions of this Code, the application shall be refused by the Office, the applicant shall be declared to, and it shall be published on the Bulletin.

(9) A granted patent may not be interpreted as the Office guarantees its validity and utility; and does not originate a responsibility for the Office.

(10) Procedure and rules regarding examination request, preparation of the examination report and granting the patent shall be determined by a regulation.

### **PART THREE**

#### **Objection and Objection Evaluation**

##### **Objection and Objection Evaluation**

**ARTICLE 99-** (1) Third Parties can object, paying the fee, to the subject patent within six months as of the date of the decision of granting the patent is published on the Bulletin with the allegations specified below:

a) the subject of patent does not comply with patent conformity conditions of patentability according to Articles 82 and 83;

b) the invention is not explained sufficiently according to the paragraphs 1 to 3 of Article 92;

c) the subject of patent exceeded the extent of the first version of the application; or it exceeded the extent of the previous version of the application, in case it is based on a divisional application that is filed according to Article 91 or based on an application that is filed according to subparagraph (b) of paragraph 3 of Article 110.

(2) The objection shall be considered as not made, in case the fee regarding the objection within the time period that is specified in paragraph 1; or the objection is not made in compliance with the conditions specified by the regulation.

(3) In case, no objections are made; or an objection is considered as not made, the decision regarding granting the patent shall be finalized and the final decision shall be published on the Bulletin.

(4) The Office shall notify the objection to the patentee. The patentee shall present his comment within three months as of the date of this notification or make changes on the patent.

The objection is evaluated by the Board considering the patentee's comment and the requests for changes in the patent.

(5) The Board, if has the opinion that the patent or the changed version complies with this Code, shall decide for the patent or the changed version, if any, to maintain the position;

if has the opinion that it does not comply, the Board shall make a decision of nullity for the patent; and in this case, consequences of nullity which are specified in Article 139 will appear. The decision of nullity shall be published on the Bulletin.

(6) The Board, if has the opinion that the patent or the changed version complies partially with this Code, shall decide for the patent or the changed version, to maintain the position by this part and shall invite the patentee to make required changes within two months as of the date of notification. In case the subject changes are failed to be made or the changes made are refused, the Board shall make a decision of nullity for the patent; and in this case, consequences of nullity which are specified in Article 139 shall appear. The decision of nullity shall be published on the Bulletin.

(7) The final decision made in consequence of the objection shall be published on the Bulletin. In case it is decided for the patent to continue with the amended version, the amended version of the patent shall be published on the Bulletin.

(8) Procedure and rules regarding the objection and objection evaluation shall be determined by a regulation.

#### **Objection to the decisions of the Office**

**ARTICLE 100-** (1) Without prejudice to the provisions of Article 99, the patent applicant, the patentee or related third parties shall object to the decisions of the Office within two months as of the date of the notification of the decision. The objection made within the context of this article shall be evaluated by the Board.

### **PART FOUR**

#### **Duration of Protection and Annual Fees**

##### **Duration of protection and annual fees**

**ARTICLE 101-** (1) Starting with the application date, the time period of the patent protection is twenty years; the time period of the protection of the utility model is ten years.

These time periods shall not be extended.

(2) The annual fees that are needed for the protection of the patent application or the patent are paid during the patent protection, as of the date of the application, at the end of the second year and in due time every year. The due date shall be the month and day corresponding to the application date.

(3) The annual fees can paid together with surcharges within six months following the due date, in case it cannot be paid in due time specified in paragraph 2.

(4) In case the annual fees are not be paid in due time as specified in paragraph 3, the patent right shall expire as of the due date of this fee; a notification will be made regarding expiration of the patent right; and this situation shall be published on the Bulletin. In case the compensatory fee is paid within two months as of the date of notification regarding expiration of the patent right, the patent right will be re-validated as of the date of the payment; and it shall be published on the Bulletin. The notification regarding expiration of the patent right shall be made, at the latest, until the end of one-year time period that starts as of the date of due date in which the patent right expires.

(5) The re-validation of the patent cannot interfere with third parties' acquired rights who deserve such rights in consequence of expiration of the patent right. Third parties' rights and their extent shall be determined by the court.

### **SECTION THREE**

#### **Transactions Regarding Patent Process**

##### **Patent application and patent analysis by third parties**

**ARTICLE 102-** (1) Not yet published patent applications cannot be analysed by third parties without a written permission by the applicant.

(2) Third parties who can prove that the patentee intends to use the rights provided by the application against them, can analyse the not yet published patent application without a written permission by the applicant.

(3) In case an application that is divided according to the Article 91 or a new patent application that is made according to subparagraph (b) of paragraph 3 of Article 110 are published, the previous application can be analysed by third parties before the application is published and without the applicant's permission.

(4) Procedure and rules regarding the patent application and analysis of the patent by third parties shall be determined by a regulation.

**Amendments and corrections that will be made in the patent application and the patent**

**ARTICLE 103-** (1) The patent application can be amended by the applicant on condition of not exceeding the extent of the first version of the application during the transaction by the Office.

(2) If the patent is objected to, the patent can be changed by the patentee on condition of not exceeding the extent of the protection provided by the patent until a final decision regarding the objection is made by the Office.

(3) Spelling mistakes and obvious mistakes in fact which may occur in the patent application or patent documents shall be corrected upon request.

(4) Procedure and rules regarding amendments and corrections that will be made in the patent application and the patent shall be determined by a regulation.

**Transforming patent application into utility model application and transforming utility model application into patent application**

**ARTICLE 104-** (1) The patent applicant can demand their pending application to be transformed into a utility model application. The Office, in case such a demand is made, notifies the applicant that he is required to submit the required documents within a month as of the date of the notification and request a search paying the search fee. In case of unfulfillment of necessary conditions within this time period, the transformation request will be considered as not made and the application will continue to be processed as a patent application. In case of fulfillment of necessary conditions within this time period, the provisions of paragraph 6 and 11 of Article 143 will apply to the application.

(2) The utility model applicant can request their utility model application to be transformed into a patent application until the end of the three-month time period following the date of the notification of search report at the latest. The Office, in case such a demand is made, notifies the applicant that they are required to submit the required documents within a month as of the date of the notification and request a search paying the search fee. In case of unfulfillment of necessary conditions within this time period, the transformation request will be considered as not made and the application shall continue to be processed as a utility model application. In case of fulfillment of necessary conditions within this time period, the provisions of this Code regarding granting a patent shall apply.

(3) In case the application shall be published, the decision of the Office on confirmation of transformation of the patent application into utility model application or the utility model application into patent application shall be published on the Bulletin.

(4) In case the patent application shall be transformed into a utility model application or the utility model application shall be transformed into a patent application, the same priority right shall also be recognized for the transformed application, if a priority right has been requested for the transformed application.

(5) Retransformation requests made for patent applications that have been transformed into utility model applications or for utility model applications that have been transformed into patent applications shall not be admitted to process.

(6) The procedure and rules regarding transformation of a patent application into a utility model application or a utility model application into a patent application shall be determined by a regulation.

**Withdrawing a patent application**

**ARTICLE 105-** (1) A patent application may always be withdrawn by the applicant before the date of declaration of a patent grant. Withdrawal of a published patent application shall be published on the Bulletin. After the withdrawal of a patent application is published on the Bulletin, this request shall not be backed down.

(2) The application shall not be withdrawn without the consent of third parties whose originated rights from the patent application are in the registry.

(3) In case of withdrawal, consideration as withdrawal or denial of a not yet published patent application, a new patent application may be filed for the same invention subject.

(4) If a published application is withdrawn, a reapplication cannot be filed for the same invention subject.

**Registration and its provisions**

**ARTICLE 106-** (1) The patent application and the patent shall be registered in the registry. Registry shall be public. A certificated copy of the patent shall be given on condition that it is requested and the fee is paid. The procedure and rules regarding registration, publication and grant process shall be determined by a regulation.

(2) Without prejudice to the provisions of paragraph 1 of Article 111, patent application or alienations and licences regarding patent applications and patents; and voluntary or imperative disposals that effect the patent application or patents, generate provisions against bonafide third persons as of the date of registry.

(3) The rights provided by a patent application or a patent shall not be put forward against bonafide third parties, unless they are registered in due form.

(4) The party who puts the rights provided by a patent application or a patent forward has an obligation to inform the number of the patent application or the patent to the parties against whom they put their rights forward.

(5) In case that statements which leave the impression of existence of the protection provided by a patent application or a patent on a product, its labels and packages; all kinds of announcements, advertisements or printed matters, are found, the statement maker has an obligation of specifying the number of patent application or patent.

**Continuation of the processes and re-recognition of rights**

**ARTICLE 107-** (1) The applicant, in case he does not comply with the time period regarding the processes of patent application, can request, with a paid fee, the processes to be continuing within two months as of the date of the notification of outcome of noncompliance with time period. Failing that shall lead to denial of the request. In case the request is approved, the legal consequences of noncompliance with time period shall be considered as not occurred.

(2) Even though, due diligence required by conditions is exercised by a patent applicant or the patentee during the processes of the patent application or the patent; in case noncompliance with a time period to which it is required, causes the patent application a denial, consideration as withdrawn; nullification according to Article 99; or loss of any other rights, re-recognition of rights can be requested. This request shall be made with a paid fee within two months as of time of elimination of the conditions causing noncompliance with the time period, on condition that the time period with which it was failed to comply is not exceeded more than one year. Failing that will lead to denial of the request. In case the request is approved, the legal consequences of noncompliance with time period will be considered as not occurred.

(3) In case of re-recognition of the rights, the situation shall be published on the Bulletin. During the time period starting from loss of rights until publication of the decision on re-recognition of rights; the parties who use the invention subject of the patent well-meaningly in Turkey or who take firm actions in using, can continue using the invention free of charge.

(4) In terms of the time period given for restoration fee specified in paragraph 4 of Article 101 to be paid and the time period specified in paragraph 1 of Article 93; and the time periods regarding processes determined by a regulation; continuation of the processes cannot be requested according to subsection 1.

(5) The provisions of this article shall not be applied to in terms of the time periods regarding continuation of the processes or re-recognition of rights.

(6) The procedure and rules regarding continuation of processes and re-recognition of rights shall be determined by a regulation.

#### **Incorrect processes**

**ARTICLE 108-** (1) Not including the grounds for nullity specified in Articles 138 and 144; in case of an incorrect continuation of processes of the application or the certificate, even though the patent or the utility model application or certificate does not meet the conditions specified in this Code; and in case of this situation being detected upon an objection or as a matter of course; the incorrect transaction and the following transactions shall be cancelled and the process shall restart from the phase at which the mistake was made.

### **SECTION FOUR**

#### **Right Ownership and Disseizor**

##### **Right for patent claim**

**ARTICLE 109-** (1) Patent claim right belongs to the inventor or their successor; transfer of such right shall be possible.

(2) If the invention is made together by more than one individual, the patent claim right belongs to all these unless otherwise is decided.

(3) If the one invention is made by more than one individual independent of each other, the patent claim right belongs the earlier application, on condition of the earlier dated application being published.

(4) The first applicant of a patent shall be the right owner of patent demand until proven otherwise.

##### **Processes regarding right ownership in patent applications**

**ARTICLE 110-** (1) It cannot be suggested by the Office that a patent claim right does not belong to the applicant. Until proven otherwise, it shall be considered that the applicant is the right owner of the patent claim.

(2) During the process of granting a patent, the individual alleging, according to paragraph 1 of Article 109, that they are the true right owner of patent claim shall bring an action against the applicant and shall report this action to the Office. The processes of granting a patent can be suspended by the court until the date of the finalization of the decision regarding the legal proceeding.

(3) In case that the decision that is to be made in the result of the proceeding regarding right ownership is finalized in the plaintiff's favour; the plaintiff right owner, within three months as of the date of finalization of the decision that is for the still-valid application, can;

a) demand from the Office to consider and perform the patent application as theirs;  
b) make a new application for the same invention benefitting from the priority right, if any;

c) demand from the Office to deny the application.

(4) The application made according to the subparagraph (b) of paragraph 3 begins to be processed as of the date of the first application; and in this case, the first application shall be considered as null and void.

(5) The application that is subject matter shall be considered as withdrawn, if the plaintiff right owner does not make any demands within three months as of the date of finalization of the decision.

(6) And the individual alleging that they are partially entitled putting forward that they performed the invention together with applicant, can press charges claiming joint right ownership.

(7) The provision of paragraph 3 also applies to divided application made according to Article 91.

(8) The application cannot be withdrawn without the plaintiff's consent until finalization of the decision that is to be made in the result of the legal proceeding that is brought according to paragraph 2 to determine the patent claim right.

(9) If the application is granted a patent during an ongoing legal proceeding, the proceeding if application disseize becomes a proceeding of patent disseize.

#### **Patent disseizor and consequences of termination of disseizor**

**ARTICLE 111-** (1) If the patent is granted to an individual other than true right owner, the individual with the allegation, according to provision of paragraph 1 of Article 109, to be true right owner can demand from the court to grant the patent to themselves, reserving other rights and demands provided by the patent.

(2) In case of a demand of partial right on the patent, recognition of right ownership can be demanded according to paragraph 1 and based on the principals of joint ownership.

(3) The rights specified in paragraph 1 and 2 can be performed within two years as of the date of the publication regarding the patent grant; if it is in malicious intent, can be performed until the end of the patent protection.

(4) The legal proceeding instituted according to this article and the provision made and finalized at the end of this case are registered and published on the Bulletin; and generate provisions against bona fide third persons as of the date of registry.

(5) In case of change of right ownership of the patent according to this article; the third parties' license rights regarding the patent and other recognized rights expire, with the registry of this change.

(6) Before the date of true patentee according to paragraph 5 being registered; in case the individual who is later realized not to be true patentee or the individual who made a license agreement, before the legal proceeding, with them regarding patent subject matter has already begun to use the invention; or has already begun to take preparatory actions for use; can demand from true patentee or patentees to provide him with a non-monopolized license.

(7) The prescribed time period to make a claim shall be two months for the individual who is already known, on the registry, to be true patentee and four months for the patent receiver. These time periods start from the date in which true patentee is reported as registered by the Office to the authorities.

(8) The license to be issued according to paragraph 6 shall be issued by reasonable time periods and conditions. The provisions regarding issuing the compulsory license is applied comparingly in prescribing these time periods and conditions.

(9) While the patentee or license receiver begins to use the patent; or while making serious preparation for use, the provisions of paragraph 6 and 7 shall not be applied if they are malicious.

#### **Partnership relation and indivisibility of a patent**



**ARTICLE 112-** (1) If a patent application or a patent belongs to more than one individual, the partnership of the rights is determined according to the agreement between the parties; if such an agreement does not exist, it shall be determined according to the provisions regarding joint ownership in the Law number 4721. Every right holder, independently, can perform the processes below on their behalf.

a) Can do performances freely on their share.

b) Can use the invention after announcing other right owners.

c) Can take necessary measures for protection of the patent application or the patent.

ç) In case the patent application made together or any of the rights provided by the patent obtained are violated; can bring a legal proceeding against third parties. In order to add the other right holders to the legal proceeding, the position will be reported to them by the plaintiff party within one-month as of the date of the legal proceeding is instituted.

(2) A consensus of right holders is a must in order to issue a license for third parties for use of the invention. However, in case a consensus is not able to be provided; the court can give this authority to one or a few of the right holders on an equitable basis, considering the existing conditions.

(3) Dividing a patent application or a patent to transfer or generate rights on them shall not be possible, even though right ownership of more than one individual exist on them.

## **SECTION FIVE**

### **Employees' Invention**

#### **In-service invention and independent invention**

**ARTICLE 113-** (1) An invention based on an employee's work that he is required to perform in a facility or a public agency; or an invention considerably based on the experience and work in a facility or a public agency and made within the context of work relations shall be an in-service invention.

(2) An invention other than the in-service invention specified in paragraph 1 shall be considered as independent invention.

(3) Provisions shall be applied, in terms of employees, to students and interns who work unpaid with no time limitation.

(4) The provisions in effect for worker's invention shall be applied to the invention made by workers of state institutions and organizations, without prejudice to other legal regulations and the provisions of agreements that are made between parties.

(5) The amount that is to be paid to the workers of state institutions and organizations cannot be less than a third of the earnings made from the invention. However, the amount that is to be paid in case the state institutions and organizations use the invention, for one time only, cannot be more than ten times of the salary that is paid to the worker in terms of the month in which the amount is to be paid.

(6) The provisions specified in the Law number 6550 shall be applied to the inventions generated in research infrastructures that obtained qualification under the coverage of Law on the Promotion of Research Infrastructure dated 07.03.2014 and numbered 6550. In cases of nonexistence of provision in Law number 6550, the provision of Article 121 of this Code is applied comparably.

#### **Obligation of notification for in-service invention**

**ARTICLE 114-** (1) Workers, when made an in-service invention, are obliged to report the invention in written to the employer without delay. If the invention is made by more than one worker, the notification can be made jointly. The employer notifies the date of receiving to the reporting individual or individuals in written and without delay.

(2) The worker shall be obliged to explain the technical problem, the solution and how they made the in-service invention on the report. In terms of explaining the invention in a better way, the worker also provides the employer with pictures, if any.

(3) The worker also explains the experiences and works that they relied on; other workers' contributions, if any, and the form of such contributions; the instructions they received regarding their jobs and their contribution besides mentioned contributions.

(4) The employer informs the worker in what aspects the report needs to be reorganized within two months as of the date of receiving the report. In case no requests are made, the notification specified in paragraph 2 will be considered valid.

(5) The employer shall be obliged to provide the worker with the needed help in order to make the notification as specified in this Code.

(6) The worker shall be obliged to keep the in- service invention private unless it acquires the qualification of independent invention.

**Employer's right on the invention and the amount when claiming rights**

**ARTICLE 115-** (1) The employer can demand full or partial rights on the in-service invention. The employer shall be obliged to notify this demand to the worker in written within four months as of the date of receiving the worker's notification. In case that no notification to the worker is made within notification time period, or a notification is made not to demand any rights, the in-service invention will acquire qualification of independent invention.

(2) In case that the employer demands full rights on the in-service invention, all rights on the invention shall be transferred to the employer as the worker receives the notification.

(3) In case that the employer demands partial rights on the in-service invention, the in-service invention shall acquire qualification of independent invention. However, in this case, the employer can use the invention based on the partial rights. If this use considerably complicates the worker's evaluation of his work, the worker can offer the employee to either undertake the invention in full rights or renounce their rights of use based on partial rights. If the employer does not respond to the worker's this offer within two months as of the notification date, the employer's rights of using the invention based on partial rights shall expire.

(4) The worker's commitments on the invention before the employer claims rights regarding the in-service invention, shall be deemed invalid to the extent the commitments violate the employer's rights.

(5) In case the employer does not claim full rights; the employer shall be obliged to keep the information regarding the invention private which is informed to him for as long as the worker's deserved interests continue.

(6) In case the employer claims full rights on the in-service invention, the worker can demand from the employer a reasonable amount to be paid to him. If the employer claims partial rights on the in-service invention; in case the employer uses the invention, worker's demand of a reasonable amount to be paid to him, generates.

(7) Economical evaluability of the in-service invention, the worker's job in the business, the contribution of the business to the invention shall be considered in calculating the amount of the rate.

(8) The employer cannot avoid paying the rate alleging that the invention is not worth protection after they make a claim regarding the in-service invention. However, in case that the legal proceeding that is instituted to confirm nonpatentability is approved by the court, the worker cannot demand a rate to be paid to him.

(9) The method of payment following the employer's claim of partial or full rights on the in-service invention shall be determined according to the provisions of an agreement or a similar legal deal signed by the employer and the worker.

(10) If the in-service invention is made by more than one worker, the payment and the method shall be determined according to the paragraph 9 separately for every one of them.

(11) The rate tariff regarding worker inventions and the procedure by arbitration in case of disagreement shall be determined by a regulation.

(12) The workers can make commitments on the in-service invention that is became an independent invention as they see appropriate without an obligation of complying with the provisions of Article 119.

**Patent application for an in-service invention**

**ARTICLE 116-** (1) If the employer has claimed full rights on the in-service invention that is notified to them, the employer shall be obliged to file the first application to the Office to be granted a patent. However, the employer can avoid applying if it is required by the interests of the business. Without prejudice to the provision of the paragraph 2; in case it is avoided to file an application, possible economical losses against the worker caused by a fail of obtaining a patent are considered in determining the rate which is to be paid by the employer for the invention.

(2) The employer's obligation of first application to the Office vanishes in at least one of the cases mentioned below;

- a) the in-service invention acquiring qualifications of independent invention;
- b) the worker's consent not to file a patent application for their invention;
- c) protecting the company secrets requiring not to apply;

(3) The worker has a right to apply personally if the in-service invention acquired the independent invention qualifications.

(4) If the employer does not file an application on the in-service invention on which they claimed full rights; or does not apply within the time period that is to be determined by the worker, the invention acquires the qualifications of an independent invention.

(5) If the employer has claimed full rights on the in-service invention, they can file an application for the subject invention to be protected in a foreign country.

(6) Upon the worker's request; the employer shall be obliged to give their rights on the invention for the foreign countries in which they do not wish to obtain a patent; and to provide the worker with conditions for making an application to claim a patent in such countries.

Releasing the invention shall be made in a reasonable time period in terms of keeping within time period of priority right.

(7) The employer, releasing the invention in order to make possible for the worker to obtain a patent in foreign countries, has a right to reserve a non-monopolized right of tenancy to be able to use the invention in such countries for a proper fee; and has a right to claim a protection for their interests generated from this reserved right.

**Mandatory facts of provisions regarding workers' inventions and the condition of equitability**

**ARTICLE 117-** (1) Regulations and applications by the employer against the workers in the manner of being contrary to the provisions regarding workers' inventions of this Book shall not be allowed. The parties' contract authorization regarding workers' inventions begins, for in-service inventions, after the patent application; for independent inventions, after the worker's obligation of notification to the employer.

(2) The agreements made between employers and workers regarding in-service inventions and independent inventions shall not be considered valid, if not considerably equitable; even though they are not against mandatory facts of provisions regarding workers' inventions. The same rule applies to the determined rates.

(3) Objections regarding the agreement and the determined rates being not equitable, can be made in written within at the latest of six months as of the end of the business contract.

**The parties' rights and obligations regarding a patent application**

ARTICLE 118- (1) The worker shall be obliged to provide necessary information and help in order to be able to obtain a patent. And the employer shall be obliged to provide the worker with the copies of the application made to obtain a patent and supplemental documents; and to inform the progress during the process of the application, upon the worker's request.

(2) The employer shall be obliged, before the payment of the rate which is demanded by the worker due to their in-service invention, to notify the worker of the situation if they renounce the patent application or patent rights. Upon the worker's request, the employer must transfer, at the worker's own cost, the patent rights or documents required to obtain a patent to the worker. If the worker does not respond to the notification that is made regarding this matter within three months as of the date of notification, the employer can renounce the patent application and the rights provided by the patent.

(3) The employer can reserve, for a decent fee, a non-monopolized right to benefit from the in-service invention together with the notification specified in paragraph 2.

(4) Rights and obligations generated from worker's invention shall not be effected by the work contract being expired.

**Independent invention, obligation of notification and obligation to offer**

ARTICLE 119- (1) In case a worker makes an independent invention while in a business relation; the worker shall be obliged to notify the employer of the situation without a delay. In the notification; the employer shall be provided with informational conditions in order to reach the conclusion of whether the invention is fit to be considered as a real independent invention or not; by means of providing information about the invention and the form of invention, if needed.

(2) The employer can make an objection regarding the independence of the invention with a written notification within three months as of the date of the notification made to themselves.

(3) The worker shall not be obliged to notify if it is clear that the independent invention is not deemed to be within the employer's field of activity.

(4) If the independent invention is considered within the employer's field of activity; or if the business is preparing to take considerable actions to do activities in the field which the subject invention is within; the worker, before beginning to evaluate their independent invention from different angles while continuing the work relation; shall be obliged to make an offer the employer in order to provide them with conditions to benefit from their invention under proper circumstances without releasing full rights. If the employer does not respond within three months as of the date of receiving the notification, they will lose their preferential right regarding this matter. If the employer confirms the offer they received but do not agree with prescribed conditions, then, the conditions shall be determined by the court upon the parties' request.

**Worker's right of pre-emption**

ARTICLE 120- (1) In case that the employer bankrupts and the bankruptcy administration desires to transfer this invention separately from the business; the worker has a right of pre-emption on the invention that he made and on which the employer claimed full rights.

(2) The balance generated from the worker's invention shall be of preferential balances. The bankruptcy administration apportions this type of more than one balance among the claimants at the rate of their balance receivables. The worker may claim his invention to be an independent invention in return for his balance receivables.

**Inventions made in Higher Education Institutions**

**ARTICLE 121-** (1) The provisions regarding workers' invention shall be applied to the inventions made in consequences of scientific studies and researches conducted in higher education institutions which are defined in subparagraph (c) of paragraph 1 of Article 3 of the Law numbered 2547; and in higher education institutions connected to Ministry of National Defence and Ministry of Interior, without the prejudice to the provisions of special law and the regulations within the context of this article.

(2) When an invention is made in consequences of scientific studies and researches conducted in higher education institutions; the inventor shall be obliged to notify their invention in written to the higher education institution without a delay. If a patent application is filed, a notification shall be made to the higher education institution regarding the patent application.

(3) In case the higher education institution claims rights on the invention, they shall be obliged to make a patent application. Otherwise, the invention acquires the qualifications of an independent invention.

(4) In contrast to the higher education institution's claim of rights; the inventor can make an objection alleging that the invention is an independent invention. The objection is concluded by the higher education institution also specifying the written grounds. Otherwise, the invention acquires the qualifications of an independent invention.

(5) The articles 115, 116, 118 and paragraph 4 of article 119 shall not be applied to the inventions made in higher education institution.

(6) If the higher education institution wishes to renounce the application or the patent right; or the invention acquires the qualifications of an independent invention after a patent application; the higher education institution, first, offers the inventor to take over the application or the patent right. In case the inventor considers the offer, the rights shall be transferred. In this case, the higher education institution delivers the required documents to obtain and protect a patent to the inventor. In case of the higher education institution transferring the application or patent right to the inventor; a non-monopolized tenancy can be reserved for a decent fee. In case the inventor refuses the offer, the patent application or the power of disposition on the patent will belong to the higher education institution.

(7) If the higher education institution causes any loss of application process or patent right inflicting from a fault of their own, they shall be obliged to cover the inventor's sustained loss.

(8) Sharing form of the revenue earned from the invention between the higher education institution and the inventor shall be determined by means of at least one third of the revenue to be paid to the inventor. The higher education institution's share of the revenue will be registered in the budget of the higher education institution as the equity revenue; and will be used for covering the needs, particularly scientific researches of the higher education institution.

(9) In determining the right ownership on the inventions generated in the consequences of the studies performed within the context of a specific agreement between the instructors defined in the subparagraph (b) of paragraph 1 of Article 3 of the Law number 2547 along with interns and students; and other public institutes or private organizations; the provisions of the agreement will be based on without prejudice to the provisions of other laws.

(10) Procedure and rules regarding implementation of this article shall be determined by a regulation.

**Inventions generated in projects supported by State**

**ARTICLE 122-** (1) It shall be obligatory to notify the supporting institution the inventions generated in the projects supported by State institutions and organizations in compliance with the regulation. The party who benefitted from the project support within one

year as of the date of the notification notifies the public institution in written regarding their decision on whether they will demand a right ownership on the subject of the invention. If the beneficiary party of the project support does not claim right ownership; or they do not make their decision on right ownership in written; the supporting State institution or organization may take over the right ownership of the invention. The beneficiary party of the project support cannot make statements in the manner of effecting the invention in obtaining a patent or a utility model status until the process regarding right ownership is over.

(2) The beneficiary party of the project support, in case of claiming a right ownership on the invention, shall be obliged to file a patent application for the invention. The supporting state institution or organization shall be specified in the application.

(3) The state institution or organization has the right to demand from the beneficiary party of the project support to regularly update them regarding the use of the invention that is the subject of the patent or regarding the efforts performed to use. These commercial and financial information that are requested by the state institution or organization shall be kept private. The form of sharing the revenue earned from the use of the invention shall be determined by an agreement.

(4) In case that the beneficiary party of the project support claims right ownership on the invention; the state institution or organization obtains a license at no charge regarding the use of the invention for their own needs. Renouncing this right is possible on the condition of being specified in the agreement. In the cases mentioned below; the state institution or organization is in the possession of the right to claim to use the invention that is the subject of the patent; or to make a claim for third parties to be granted a license in reasonable conditions to use the invention.

In case that;

a) According to the provision of Article 130, the beneficiary party of the project support does not use the invention that is the subject of the patent or does not attempt to use.

b) The product that is the subject of the patent produced by the beneficiary party of the project support or the licensee is not able to cover the needs arising from the reasons of public health or national security.

c) The product that is the subject of the patent produced by the beneficiary party of the project support or the licensee is not able to cover the needs of the state institution or organization.

(5) The license practice that is within the context of paragraph 4 does not affect the practice of the provisions related to compulsory license.

(6) This article's provisions shall not be applied to the R&D or design centers which are established within the scope of the Law on the encouragement of Research, Development and Design Activities dated 28/2/2008 and numbered 5746 or the technology development areas which are established within the scope of the Law on Technology development Areas dated 26/6/2001 and numbered 4691, the works which are not carried out with the support of state institutions and organizations or the inventions which emerge from state supports that are not project based.

## **SECTION SIX**

### **Supplementary and Confidential Patent**

#### **Supplementary patent**

**ARTICLE 123-** (1) The patent applicant, in order to protect the inventions which are perfects or develops the invention that is the subject of the patent; and which are in coherence with the subject of the main patent within the context of Article 91; can make a supplemental patent application in addition to the main patent application.

(2) The supplemental patent application can be made until the publication of the decision on granting the main patent application. The application date of the supplemental patent application is the date in which the supplemental patent application is submitted to the Office according to Article 90.

(3) The search report of the supplemental patent application shall be prepared together with the search report of the main patent application or later. The main patent application shall not be considered as the state of the art in evaluation of the inventive step specified in paragraph 4 of Article 83 for the supplemental patent application.

(4) A patent cannot be granted for the supplemental patent application before the decision on granting a patent for the main patent application.

(5) The time period of the supplemental patent application begins as of the date of the supplemental patent application and is valid until the end of the time period of the main patent application.

(6) Annual fees shall not be paid for the supplemental patent application and the supplemental patent.

(7) The supplemental patent application can always be converted into an independent patent application upon the applicant's request during the application process. In case that it is detected by the Office that the supplemental patent application does not display any required connections with the main patent application; the supplemental patent application shall be converted into a main patent application within three months as of the date of the notification.

(8) In case that the main patent is annulled; or the main patentee gives up their patent right; or it is invalidated due to unpaid annual fees; the supplemental patent shall be converted into a main patent.

(9) The decision on nullity of the patent does not mandatorily lead to nullity of the supplemental patent. However, in case no application is made to convert supplemental patents into independent patents within three months as of the notification of the nullity decision that is made according to Article 99; nullity of the patent will cause supplemental patents nullity.

(10) In case that the main patent is withdrawn; considered as withdrawn; rejected; or deemed invalid due to unpaid annual fees; the supplemental patent application shall be converted into an independent patent application.

(11) If more than one supplemental patent applications are made for the main patent application, the first supplemental patent application or the supplemental patent can be converted into an independent patent or an independent patent application according to paragraph 7, 8 and 9. Other supplemental patent application will be deemed the supplemental of the converted independent patent or application.

(12) In case that the supplemental patent application or the supplemental patent is converted into an independent patent application or an independent patent; shall be subject to annual fees as of the date of conversion and its protection time period is the time period specified in paragraph 5.

(13) Except as otherwise provided and in case the supplemental patent is not contrary to the nature of the supplemental patent; the provisions of this Code regarding the patent shall also be applied to the supplemental patent.

(14) A supplemental application cannot be filed for a utility model.

#### **Confidential Patent**

**ARTICLE 124-** (1) If the Office is of the opinion that the invention that is the subject of the application matters in terms of national security; sends a copy of the application to

Ministry of National Defense in order to receive their opinion and notifies the applicant of the situation.

(2) If Ministry of National Defense makes a decision on conducting the application processes in secret; notifies the Office of their decisions within three months as of the date of the notification. In case that a decision of confidentiality is not made or the Office is not notified in specified time period; the Office starts the processes regarding the application.

(3) In case that the patent application is subject to confidentiality; the Office notifies the applicant of the situation and registers the application as a classified patent application without any other processes related to the application.

(4) The patent applicant shall not be allowed to declare the invention that is the subject of a confidential patent application to unauthorized parties.

(5) Upon the patent applicant's request; Ministry of National Defense may allow the invention that is the subject of the patent application to be used partially or completely.

(6) The patent applicant can claim compensation from the government for the time in which the patent application remained classified. If an agreement on a compensation allowance is not reached; the allowance shall be determined by the court. The compensation shall be calculated considering the significance of the invention; and the amount of the expectant revenue which the patent applicant can earn in case they are authorized to use freely.

(7) Annual fees shall not be paid to the Office for confidential patent applications during the time in which they remained classified.

(8) The Office, upon the request of Ministry of National Defense, may declassify the patent application. A declassified patent application shall be processed as a patent application as of the date it is declassified.

(9) In case an invention made in Turkey matters in terms of national security, no patent application shall be allowed to be made for subject invention in another country. If a patent application filed to the Office for an invention made in Turkey is subject to the provisions of paragraph 1 and 8; no patent application shall be allowed to be filed for subject invention in another country without a permission by Ministry of National Defense.

(10) If the inventor's domicile is in Turkey; until proven otherwise, the invention shall be considered as made in Turkey.

## **SECTION SEVEN**

### **License**

#### **PART ONE**

#### **Contractual License**

##### **Contractual License**

**ARTICLE 125-** (1) A patent application or a patent may be subject to a license contract.

(2) A license may be issued as exclusive license or non- exclusive license. Unless otherwise agreed in the contract, the license is non-exclusive. In non-exclusive license agreements; the licensor may use the invention that is the subject of the patent himself, as well as he may issue other licenses to third parties related to the same invention. When the exclusive license is the subject, licensor can not issue licenses to others; and he can not use the invention that is the subject of the patent, unless clearly reserving his rights.

(3) Unless otherwise agreed in the contract; the licensees can not transfer their license rights to third parties or can not issue sub-licenses.

(4) Unless otherwise agreed in the contract; a contractual licensee may make any disposals related to use of the invention that is the subject of the patent in the course of patent protection. The licensee shall be obliged to comply with the conditions specified in the license



contract. Otherwise, the patentee may use his rights generated from the patent against the licensee.

**Obligation to release information**

**ARTICLE 126-** (1) Unless otherwise agreed in the contract; the assignor of the patent application or the patent or the licensor shall be obliged to release necessary technical information needed for a regular use of the invention that is the subject of the patent, to the assignee and the licensee.

(2) The assignee or the licensee shall be obliged to take due precautions in order to prevent the classified information released to them being revealed.

**Obligation arising from the transfer of rights and licensing**

**ARTICLE 127-** (1) In case that; it is later understood that the transferor of the rights provided by the patent application or the patent or the licensor is not authorized to perform such transactions; such person becomes answerable to those concerned due to the situation.

(2) In the cases that, the patent application is withdrawn; or the application is rejected; or the nullity of the patent right is adjudged by the court; if the parties, in point of the right transferor and licensor, failed to prescribe in the contract a more comprehensive responsibility, the provisions of Article 139 shall apply.

(3) In case that the transferor or the licensor act maliciously; such parties shall always be responsible for their actions. If the transferor or the licensor had not informed the other side of reports or decisions in Turkish or a foreign language related to preservability of the patent application or the invention that is the subject of the patent about which commitments are made; or what they know about such matters; or had not mentioned in the contract the documents which include statements related all these; the existence of malicious intentions shall be acceptable.

(4) The time period to claim the compensation arising from the provisions of this article begins in the finalization date of the court decision on which the case of obligations is based.

**License offer**

**ARTICLE 128-** (1) The patent applicant or the patentee may announce in writing to the Office that they will issue licenses to anyone willing to use the invention that is the subject of the patent. This offer shall be published on the Bulletin.

(2) If any registered exclusive licenses exist, the patent applicant or the patentee cannot offer anyone licenses.

(3) The patent applicant or the patentee may always withdraw his license offer. The offer withdrawal shall be published on the Bulletin.

**PART TWO  
Compulsory License**

**Compulsory License**

**ARTICLE 129-** (1) Compulsory license may be given in the presence of at least one of the conditions specified below.

a) If the invention forming the subject of patent is not used according to provisions of Article 130.

b) If the dependence of patent issues mentioned in Article 131 comes into question,

c) If the public interest mentioned in Article 132 comes into question,

ç) In case that conditions specified in the protocol amending Agreement on Trade-Related Aspects of Intellectual Property Rights to which our participation was deemed appropriate by Law dated 30/04/2013 numbered 6471 are provided, if exportation of pharmaceutical products comes into question due to public health issues in other countries.

d) If the breeder fails to develop a new plant variety without infringing on a previous patent,

e) If patentee carries out activities distorting, hindering or limiting the competition while patent is used.

(2) The compulsory license to be granted in the scope of (a), (b) and (ç) subparagraphs of first paragraph shall be requested from the court and (e) subparagraph of first paragraph shall be requested from the Competition Authority. Except emergency cases and (e) subparagraph of first paragraph in compulsory license demands made in accordance with (ç) subparagraph of first paragraph, evidence shall be added to request letter that individual or entity requesting compulsory license fails to receive the contractual license within a reasonable period of time although they demand it under reasonable commercial terms from the patentee. Court shall send a copy of the compulsory license request and a copy of attached documents to patentee without delay. Patentee shall be given required time one month from the date of the notification so that he can submit his comments with evidences.

(3) The court shall notify patent holder's opinions, if any, to individual or entity requesting compulsory license and decide either the rejection of request or granting of compulsory license within one month. This time cannot be extended. If the patentee has not objected to the demand for compulsory license, the court decides for the compulsory license without delay.

(4) In the judgment given related to the compulsory license; the scope, fee and duration of the license, guarantee supplied by the licensee, start time for use and measures providing serious and effective use of patent shall be specified.

(5) When legal remedies are applied against the court decision, if the evidences submitted by patentee to stop the compulsory license application are found sufficient by court, then use of the invention shall be postponed until the finalization of the decision on the license.

(6) If the patentee cannot use the patent right without infringing on the right of breeder belonging to a previous plant variety, this situation may be subject to compulsory licensing. In this case, the provisions of Law numbered 5042 shall be applied.

(7) If a license is granted pursuant to subparagraph (d) of first paragraph, then patent owner may demand the giving of the license to himself to use the protected plant variety and if a license is granted pursuant to sixth paragraph, then holder of breeder right may demand mutually the giving of license to himself to use protected plant variety under reasonable terms.

(8) For licenses specified in subparagraph (d) of first paragraph and in the sixth paragraph, demandant may request the court to issue a compulsory license by means of proving that;

a) it applies to patentee or holder of breeder right belonging to a new plant variety to obtain a contractual license but cannot get any results,

b) compared to protected plant variety or invention protected by the patent, next invention or plant variety show a significant technical advance that largely provides economic benefits.

(9) Without prejudice to the provisions of subparagraph (ç) of first paragraph, compulsory license shall mainly be granted to supply the domestic market.

#### **Compulsory license in case of disuse**

**ARTICLE 130-** (1) Patent owner or person authorized by patent owner shall be obliged to use the invention protected by the patent. In the assessment of use, market conditions and conditions happening beyond control and will of patentee shall be taken into consideration.

(2) Within three years after grant decision related to a patent is published in the Bulletin or within four years after date of patent application, whichever expires later, as from date of expiration of that period the relevant person may request to be given a compulsory license on the grounds that invention forming the subject of patent wasn't started to be used or serious and real initiatives haven't been made for use of patent or use of patent was not at level to meet the needs of the national market on the date of license request. This shall be applied to circumstances where take a break in the use of the invention more than three years repeatedly without justifiable reason.

**Compulsory license in case of dependency of patent issues**

**ARTICLE 131-** (1) If it is not possible to use the invention forming the subject of patent without infringing of rights provided by the previous patent, the dependency shall come into question between patent issues. Therefore, owner of subsequent dated patent cannot use the invention forming the subject of previous dated patent without the permission of its owner.

(2) If there is a dependency between the patent issues, owner of subsequent dated patent can request to be given a compulsory license to use the invention forming the subject of patent provided that invention in question produces a significant technical advancement providing largely economic benefits. If owner of subsequent dated patent is given a compulsory license, also owner of previous dated patent may request to be granted a compulsory license to use the invention forming the subject of subsequent dated patent.

(3) If one of the dependent patents become void and null or in case of expiration of patent right, compulsory licensing decision also shall be eliminated.

**Compulsory license arising from the public interest**

**ARTICLE 132-** (1) If use of the invention forming the subject of patent, increase of its use, dissemination of it in general, improvement of it for a beneficial use have a great importance by the reason of public health or national security issues or if non-use of the invention forming the subject of patent or its insufficient usage in terms of either quality or quantity shall cause serious damages in terms of the economic or technological development of the country, it shall be decided by Council of Ministers upon the proposal of the relevant ministry that;

a) A compulsory license for the public interest is given,

b) There is public interest if invention is made conditionally the subject of compulsory license in the event that effective use of invention to satisfy the public interest can be realized by the patent owner.

(2) In case that a patent application or use of the invention forming the subject of patent have a great importance in terms of public health or national security, the relevant ministry shall put forward a proposal by means of taking approval of the Ministry of National Defense or the Ministry of Health.

(3) The compulsory licenses granted by the reason of public benefit may be exclusive.

The compulsory license decision granted on the grounds that it has great importance in terms of national security may be limited to use of the invention by one or more businesses.

**The legal nature of the compulsory license and trust relationship**

**ARTICLE 133-** (1) Compulsory license is not exclusive but compulsory licenses granted on the grounds of public interest may be exclusive. Compulsory license shall be granted under certain conditions by taking into account time, fee and usage area. The court considers the economic value of patent in determining the fee of patent. While fee is determined in compulsory licenses to be granted as per subparagraph (ç) of first paragraph of

Article 129, the economic value of such a use in terms of importing country shall be taken into consideration by means of considering non-commercial and humanitarian purposes.

(2) In case of a compulsory license, the licensee has no right to give sub-license and import the subject of patent. However, the subject of patent can be imported in compulsory license granted because of public interest if licensee is explicitly authorized for importation due to public interest. This import permit shall be granted for a limited need and a temporary time.

(3) If trust relationship between patent owner and licensee is violated by the patentee by the reason of compulsory license, licensee may request a discount from the license fee what patent holder may request according to the effect of violation in the assessment of the invention.

#### **The scope of compulsory license in additional patent**

**ARTICLE 134-** (1) Compulsory license includes the supplements of existing patent on the date of acceptance of the license. If new additional patents are granted after issuance of the compulsory license and they serve same usage purpose with patent forming the subject of license, licensee may also request court to include the supplements in the scope of compulsory license. If parties disagree on license fee and other conditions due to additional patents, these shall be determined by court.

#### **The transfer of compulsory license**

**ARTICLE 135-** (1) The compulsory license shall be transferred in conjunction with the business or section of the business where license is evaluated to ensure that the transfer of a compulsory license is valid. In case the compulsory license is granted due to dependence to patent subjects, the license is transferred together with the dependant patent.

#### **The request for change in conditions and cancellation of compulsory license**

**ARTICLE 136-** (1) The licensee or patent holder, after the compulsory license is granted, may request the court to make change in the compulsory license fee or conditions based on events that occur later and justify to make change such as granting the license subject to contract under more favourable terms according to the compulsory license.

(2) In the event that the licensee seriously infringes or fails to fulfil continuously its obligations arising from compulsory license, the court may cancel the license upon the request of the patent owner, without prejudice to right to compensation of patent owner.

(3) In the event that conditions caused to granting of the compulsory license end and the possibility of repeating disappears, the court cancels the compulsory license upon request.

#### **Applicability of the contractual license terms**

**ARTICLE 137-** (1) Not contrary to provisions of Article 126-136, the provisions related to contractual license stated in Article 125 and Article 126 are applied to the compulsory license as well.

## **SECTION EIGHT**

### **Termination of Right**

#### **PART ONE**

#### **Invalidity**

#### **States of Invalidity**

**ARTICLE 138-** (1) After the Office's final decision;

- a) If subject of patent does not have patentability conditions in accordance with Article 82 and Article 83,
- b) If invention is not sufficiently explained in accordance with first, second and third paragraphs of Article 92,
- c) If subject of patent exceeds the scope of first version of the application or if subject of patent exceeds the scope of first version of first application where patent bases on a divided

application according to Article 91 or bases on an application made according to sub paragraph (b) of third paragraph of Article 110.

ç) If it is proved that the patent owner does not have right to demand patent according to the Article 109,

d) If the extent of protection is exceeded, relevant court decides to accept invalidity the patent.

(2) Prior to the publication made in accordance with the third or seventh paragraphs of Article 99, the court shall not decide with regard to invalidity request made pursuant to subparagraphs (a), (b) and (c) of first paragraph.

(3) The claim that the patent owner does not have right to demand patent according to the Article 109 may only be alleged by holder of invention or successors of holder of invention.

(4) If causes of invalidity are related to only a part of a patent, the claim or claims related to only that part shall be cancelled and the partial invalidity of the patent shall be decided. The partial invalidity for a claim shall not be decided. If the claim or claims that are not cancelled as a result of partial invalidity which have patentability conditions in accordance with Article 82 and Article 83, the patent shall remain valid for this part. If the independent claim is revoked, each dependent claim that is subject to independent claim does not separately have patentability conditions in accordance with Article 82 and Article

83, claims that are subject to independent claim in question shall also be revoked by the court.

(5) The invalidity proceeding of patent may be instituted against those who are registered in register as the owner of patent during duration of patent protection or within five years following termination of right. Notification shall be made those who are deemed as right holder on patent in register to ensure that they may participate in the action.

(6) Persons concerned, Public Prosecutors or the relevant public institutions and organizations may want the invalidity of patent. In the event that the patent owner does not have right to demand patent according to the Article 109, the invalidity of patent can be demanded by only holder of invention or successors of holder of invention.

(7) The decision regarding the invalidation of a patent shall not compulsorily conclude in the invalidity of the additional patents. If an application is not made to convert the additional patents to independent patents within three months from the notification of the invalidity decision, the invalidity of the patent shall cause the invalidity of the additional patents also.

#### **The effect of invalidation of the patent**

**ARTICLE 139-** (1) If it is decided that a patent is invalid, the results of the decision take effect retroactively and protection provided by this Act for patent or patent application shall be deemed as null and void.

(2) Without prejudice to compensation demands of sufferers caused by patent owner's gross negligence or bad intention, retroactive effect of invalidity shall not affect situations specified below.

a) Decisions given, legally finalized and implemented due to infringement on rights provided by patents prior to the decision regarding the invalidity of patent is given,

b) Contracts concluded and implemented prior to the decision regarding the invalidity of patent is given,

(3) Pursuant to contract specified subparagraph (b) of second paragraph, partly or wholly return of paid price may be requested on an equitable basis.

(4) The final decision regarding the invalidity of patent shall bind everyone. After the finalization of the invalidity decision, the court notifies this decision to the Office ex-officio.

Patent that is revoked by final judgment shall be cancelled from the register by the Office and this state shall be published in the Bulletin.

## **PART TWO**

### **Other Termination States and Its Results**

#### **Termination and its results**

**ARTICLE 140-** (1) Patent right terminates in case of realizing of one of states specified below;

- a) the expiry of the protection period;
- b) the waiver of the patent right of the patent holder;
- c) failure to pay the annual fee within the periods foreseen in Article 101.

(2) The Office publishes in the Bulletin that patent right terminates. The subject of patent the right of which terminates belongs to the public as from execution date of reason of termination.

(3) The patent owner may waive the entire patent or one or more patent claims. If a patent is waived partially, the patent remains valid due to claim or claims from which are not waived provided that claim or claims constitute the subject of separate patent and waiver isn't related to the extension of the scope of the patent.

(4) Waiver must be reported to the Office in writing. Waiver shall be effective as from the record date in registration.

(5) Patent owner cannot waive patent right unless the right and license holders registered in the registry give their permission.

(6) If right ownership on patent has been requested by third party and an interlocutory injunction taken in this regard has been registered in the registry, patent owner may not waive patent right unless third party in question gives its permission.

(7) Waiver decision regarding patent right shall be published in the Bulletin.

## **SECTION NINE**

### **Infringement on Patent Right**

#### **Actions deemed as infringement on patent utility model right**

**ARTICLE 141-** (1) The following acts shall be considered as an infringement on patent or utility model right.

a) To imitate partially or completely the product forming the subject of invention as a result of production without the consent of owner of patent or utility model.

b) To sell, distribute or release to commercial area the products forming the subject of invention with other ways or to import it for these purposes, to keep it for commercial purposes, to use it by means of making applicable or to make suggestion draw up contract related to the product through infringement action, although it is known or it is required to know that product in question is partially or completely produced through imitation.

c) To use the method forming the subject of invention without receiving the consent of patent owner or to sell the products produced directly by method forming the subject of invention, to distribute or release to commercial area them or to import them for these purposes, to keep them for commercial purposes, to use them by means of making applicable or to make suggestion to draw up contract related to these products, although it is known or it is required to know that this method is used without permission.

ç) To seize the patent or utility model right.

d) To expand the rights granted by owner of patent or utility model through contractual license or compulsory license without permission or to transfer these rights to third parties.

(2) In the event that the subject of the patent becomes a method related to obtaining of a product or material, the court may request the defendant to prove that the method related to obtaining of the same product or material is different from the method forming the subject of patent. In case that product or material obtained by method forming the subject of patent is new, the same product or material produced without permission of patent owner is deemed to have been obtained by the method forming the subject of patent. Anyone who claims otherwise shall be obliged to prove it. In such a case, the legitimate interests of the defendant shall be considered to protect the production and business secrets of the defendant.

(3) Starting from the date of publication of patent application or utility model application according to Article 97, the owner of the patent application or utility model application shall be authorized to institute a legal proceeding due to infringements carried out against invention. If person who infringes on patent rights are informed about application or the scope of application, whether application is published or not shall not be taken into consideration. If court decides that person who infringes on patent rights has malicious intent, the existence of the infringement will be accepted before the publication.

(4) Prior to the publication made in accordance with third and seventh paragraph of Article 99 and the tenth or twelfth paragraph of Article 143, the court shall not decide about the validity of the claims alleged.

## **SECTION TEN**

### **Utility Model**

#### **Inventions that can be protected by utility model and exemptions thereof**

**ARTICLE 142-** (1) Inventions which are new under first paragraph of Article 83 and inventions which can be applied to industry in the scope of sixth paragraph of Article 83 shall be protected by means of giving utility model.

(2) In making the innovation evaluation of the utility model, technical specifications that don't contribute to the subject of invention shall not be considered.

(3) In addition to the second and third paragraphs of Article 82;

a) Inventions related to chemical and biological substances or chemical and biological methods or products obtained by these methods,

b) Inventions related to pharmaceutical-related substances or pharmaceutical-related methods or products obtained by these methods,

c) Biotechnological inventions,

ç) Inventions relating to the products obtained by methods or these methods shall not be protected by the utility model.

#### **Type examination, demand research, appeal and granting of utility model**

**ARTICLE 143-** (1) In the event that any of the elements specified in the third paragraph of Article 90 is lacking, utility model application shall not be put in process.

(2) If at least one of the elements specified in the first paragraph of Article 90 is lacking in application that was put in process or if elements are given in a foreign language pursuant to the second paragraph of the same article, these deficiencies are corrected within two months as from the date of the application without the need for notification or Turkish translation shall be supplied. Otherwise, the application shall be deemed to have been withdrawn.

(3) Office carries out formal examination for the application in terms of compliance with the fifth paragraph of Article 90 which has complete elements specified in the first paragraph of Article 90 or it examines the application whose elements are completed in accordance with the second paragraph

(4) If it is understood that the application is not appropriate in terms of formal requirements, the applicant shall be required to correct the deficiency within two months as from the date of notification. In the event that deficiency is not eliminated within that time, the application shall be rejected.

(5) The applicant demands to make search with the application or by paying the application fee and in accordance with the provisions specified in the regulation within two months as from the notification of consistency of the application regarding formal examination or the correction of the deficiencies in due time without the need for any notification. Otherwise, the application shall be deemed to have been withdrawn.

(6) If the applicant demands to make search in accordance with the fifth paragraph or first paragraph of Article 104, a search report is issued; this report shall be sent to applicant and published in the Bulletin.

(7) If it is reached the conclusion that the subject of application enters into the scope of the third paragraph of Article 142 or if preparation of search report is being prevented since description or all claims aren't sufficiently clear, search report isn't prepared and applicant is required to submit the objections about this issue or the changes in the application within three months from the date of notification. If any appeal is not made within this time or in the event that changes made are not accepted by the Office, the application is rejected. If any appeal and changes made are accepted by the Office, a search report shall be issued; this report shall be sent to applicant and published in the Bulletin.

(8) The applicant can appeal to the contents of the search report by adding the relevant documents within three months as from the publication of the search report and also third parties can present their opinions.

(9) If the applicant does not appeal or third parties don't present their opinions, only search reports shall be considered and in case of appeal or presenting opinions, search report, appeals and opinions shall be considered.

(10) If the Office decides to grant utility model as a result of its assessment, this decision shall be notified to applicant, also decision and utility model shall be published in the Bulletin. In cases where the performance of changes is required to grant utility model as a result of assessment made, it shall be required to fulfill the changes within two months from the date of notification. In case of acceptance of amendments made, decision is given to grant utility model and this situation is notified to applicant and this decision and utility model shall be published in the Bulletin. In the event that the amendments aren't made or amendments made aren't accepted by the Office, application shall be deemed to have been withdrawn, this decision is notified to applicant and published in the Bulletin. In case that utility model is requested after the publication related to granting of it and document preparation fee is paid, issued document shall be given to the owner of utility model.

(11) After giving the utility model, appeal procedure specified in the Article 99 cannot be operated, but only invalidation decision shall be requested from the court.

(12) If the Office decides as a result of its assessment that the application and invention related to the application don't comply with provisions of this Act, this application shall be rejected and the decision shall be notified to the applicant and published in the Bulletin. This decision can be appealed according to Article 100.

(13) Granting of the utility model cannot be interpreted as a guarantee given by the Office about validity and the usefulness of utility model and it does not cause to the responsibility for the Office.

(14) Principle and procedures for the implementation of this article shall be determined by a regulation.

#### **The invalidation of the utility model**



**ARTICLE 144-** (1) Decision shall be given by the competent court to accept the invalidation of the utility model in the following cases.

a) If the subject of utility model does not meet the conditions specified in Article 142.

b) If the invention isn't sufficiently explained in accordance with the first paragraph of article 92.

c) If subject of utility model exceeds the scope of first version of the application or if utility model exceeds the scope of first version of first application where utility model bases on a divided application according to Article 91 or bases on an application made according to sub paragraph (b) of third paragraph of Article 110.

ç) If it is proved that the owner of utility model does not have right to demand utility model according to the Article 109.

(2) Those that have interests, Public Prosecutors or the relevant public institutions and organizations may demand the court to accept the invalidity of utility model. In the event that the owner of utility model does not have right to demand utility model according to the article 109, the invalidity of utility model can be demanded by only holder of invention or successors of holder of invention.

(3) The invalidity proceeding of utility model may be instituted against those who are registered in register as the owner of utility model during duration of utility model protection or within five years following termination of right. Notification shall be to made those who are deemed as right holder on utility model in register to ensure that they may participate in the action.

(4) The claim that the owner of utility model does not have right to demand utility model according to the article 109 may only be alleged by holder of invention or successors of holder of invention.

(5) If causes of invalidity are related to only a part of the utility model, the claim or claims related to only that portion shall be cancelled and the partial invalidity of the utility model shall be decided. The partial invalidity for a claim cannot be decided.

(6) If the claim or claims of utility model which aren't cancelled comply with the provisions of article 142 as a result of partial invalidity, the utility model remains valid for this claim or claims.

**The applicability of the provisions related to patents and double protection**

**ARTICLE 145-** (1) In the event that there is no a clear provision related to the utility model and any provision do not contradict with the nature of the utility model, the provisions foreseen in this Code for patents shall also be applied to utility models.

(2) The same person or his successor shall not be granted more than one patent or utility model or any two of these documents independently of each other about the same invention and in the same scope of protection.

**BOOK FIVE**

**Common and Other Provisions**

**SECTION ONE**

**Common Provisions**

**Period and notifications**

**ARTICLE 146-** (1) Period to be observed in all actions to be made related to industrial property rights before the Office including the appeals shall be two months from the notification date unless specified otherwise in this Code or the relevant regulation. In case of failure to obey these periods, the demand shall be deemed not to have been made.

**Joint representative**

**ARTICLE 147-** (1) If industrial property right belongs to more than one person, in case a trademark or patent representative has not been assigned, all operations before the Office, except for the demand for withdrawal and waiver, shall be carried out by the right owner who is assigned as joint representative by right holders. In case a joint representative has not been assigned by right holders, first right holder mentioned in application form shall be deemed as joint representative.

(2) In case the domicile of the joint representative is not within the territories of the Republic of Turkey, all operations shall be carried out by a trademark or patent attorney.

(3) Provisions relating to the collective trademarks are reserved.

#### **Legal actions**

**ARTICLE 148-** (1) The industrial property right may be transferred, inherited, become the subject of license; put in pledge; shown as collateral, seized or become the subject of other legal actions. The right over geographical sign and traditional product name may not be subject to license, transfer, inheritance, confiscation and similar legal actions and may not be used as collateral.

(2) The legal actions specified in the first paragraph may be carried out independent of the business.

(3) In case there is more than one owner of industrial property right, other stakeholders shall have pre-emption right when any of the owners sell its share partly or wholly to a third party. The sale shall be reported to other stakeholders by the buyer or seller. Pre-emption right shall be void when a period of three-month elapses after the date of the notification to right owner of sale and in any case when a period of two-year elapses after sale. If the parties cannot agree, pre-emption right shall be exercised by litigating against the buyer. The owner of pre-emption right shall be obliged to pay the selling price in cash to the place to be determined by the court within the period specified by the court prior to decision of transferring the share to the owner. The pre-emption right may not be used in forced sales.

(4) Legal actions shall be subject to written form. Transfer contracts shall be valid only if they have been approved by notary.

(5) Legal actions are registered and published in the Bulletin upon the request of one of the parties, payment of the fees and the fulfillment of the other conditions specified in the regulation. Without prejudice to the provisions of Article 115, rights arising from legal actions not registered in the registry may not be claimed against third parties acting in goodwill.

(6) Trademark may be transferred for all or part of the goods or services for which it is registered.

(7) The transfer of the certification mark or collective trademark or licensing a collective trademark shall be valid when registered in the registry.

(8) The provisions of this Article shall also be applied to industrial property right applications.

#### **Claims that can be made by right owner whose industrial property right is infringed**

**ARTICLE 149-** (1) Right owner whose industrial property right is infringed can claim the following from the court:

a) To determine the existence of infringement.

b) To prevent the possible infringement.

c) To stop the infringing actions.

ç) To remedy infringement and compensate material and moral damages.

d) To seize the products causing infringement or requiring penalty, as well as instruments, such as devices and machine exclusively used in their production, without preventing the production of products other than infringing products.

e) To be granted property right on products, devices and machines seized in accordance with subparagraph (d).

f) To take measures to prevent the continuity of infringement, in particular at the expense of the infringer to change the shapes of products and instruments such as device and machine seized according to subparagraph (d), to erase the trademarks on them or to destroy them if it is inevitable for preventing the infringement of industrial property rights.

g) If there is any justified reason or interest, announcement of the final judgment at the expense of the opposite party fully or in summary through the daily newspapers or other means or notification to relevant parties.

(2) In case of acceptance of the claim specified in subparagraph (e) of first paragraph, the value of devices and machines shall be deducted from amount of compensation. If this value exceeds the amount of agreed compensation, exceeding portion shall be paid to opposite party by right owner.

(3) In case of acceptance of the claim specified in subparagraph (g) of first paragraph, the form and scope of announcement shall be determined in the ruling. The right for announcement shall be void unless demanded within three months after final ruling.

(4) Compensation of moral damage may not be claimed for geographical sign and traditional product names.

#### **Compensation**

**ARTICLE 150-** (1) Those who commit acts deemed as infringement on industrial property right shall be obliged to compensate the damage of right owner.

(2) Where the industrial property right is infringed, additional compensation may be claimed if reputation of industrial property right suffers damage because the products or services forming the subject of the right are used or produced in an inferior manner; or such products produced in this way are made available or launched to the market in an improper manner.

(3) The right owner, before instituting a legal proceeding for compensation related to infringement of industrial property right, in order to determine the evidences or if a legal proceeding for compensation has been instituted, in order to determine the amount of damages, may ask the court to order the person responsible for compensation to submit to the court the documentation related to the use of industrial property right.

#### **Loss of revenue**

**ARTICLE 151-** (1) Damage suffered by the right owner includes actual loss and loss of revenue.

(2) Loss of revenue, depending on the choice of the right owner who suffered damages, shall be calculated according to one of the following evaluation methods:

a) The potential revenue to be gained by right owner if the competition by the person infringing the industrial property right had not existed.

b) The net revenue obtained by the person infringing the industrial property right.

c) License fee to be paid by the person who infringed the industrial property right, if this person used this right through a license agreement in accordance with the law.

(3) In calculation of loss of revenue; factors such as economic importance of industrial property right in particular or the number, time and type of licenses related to industrial property right during infringement action and the nature and size of violation shall be taken into consideration.

(4) In calculation of loss of revenue; in the event that one of the evaluation methods specified in the subparagraph (a) or (b) of the second paragraph is selected and if court reaches the conclusion that industrial property right has been the determinant factor in

creating the demand to that product, then the court shall decide that an equitable share be added in the calculation of revenue.

(5) In case of infringement of patent rights; if the court reaches the conclusion that the patent owner did not fulfil the obligations to use the patent as foreseen by this Code, loss of revenue shall be calculated according to the subparagraph (c) of the second paragraph.

(6) The provisions of this Article shall not be applied in case of infringement of geographical sign or traditional product name.

#### **Exhaustion of Rights**

**ARTICLE 152-** (1) After the products forming the subject of protection of industrial property right are put on the market by right owner or by third parties with his consent, actions related to these products shall remain outside the scope of the right.

(2) Proprietor of trademark shall have the right to prevent the use for commercial purposes by means of changing or deteriorating by third parties of the products under the first paragraph.

#### **Persons who may not be sued**

**ARTICLE 153-** (1) Owner of industrial property right may not institute civil proceedings indicated in this Code or file a complaint for a criminal proceeding against persons who retain or use for their personal needs the products put on the market by the infringer.

(2) Owner of industrial property right may not institute civil proceedings indicated in this Code or institute a complaint for a criminal proceeding against persons who use for commercial purposes the products put on the market, due to right owner's failure of confiscation, by the person who pays compensation of damages to the right owner.

#### **Legal proceeding on non-infringement and conditions**

**ARTICLE 154-** (1) Anyone who has interest may demand the right owner to provide its opinions about whether or not commercial or industrial activities being carried out or to be carried out or serious and actual attempts carried out for these purposes in Turkey would cause an infringement of his industrial property right. In the event that no opinion is given within one month after notification of this demand or if the opinion given is not accepted by the interested party, the interested party may institute a legal proceeding against the right owner for a decision on noninfringement. The submission of opinion shall not be a prerequisite for the legal proceeding to be instituted. This proceeding may not be filed by a person against whom an infringement proceeding has been instituted.

(2) Legal proceeding instituted in accordance with the first paragraph is notified to all right owners registered in the registry.

(3) Legal proceeding instituted in accordance with the first paragraph may be opened together with the invalidity proceedings.

(4) The court shall not decide on the validity of the allegations before the publication in accordance with the third or seventh paragraph of Article 99 and the tenth or twelfth paragraph of Article 143.

#### **Effect of earlier rights**

**ARTICLE 155-** (1) Trademark, patent or design right owner shall not put forward his industrial property right as a defense in an infringement proceeding that has been instituted by right owners who have an earlier priority or application date than his own right.

#### **Commissioned and competent court**

**ARTICLE 156-** (1) The courts commissioned for legal proceedings foreseen in this Code shall be civil courts of intellectual and industrial property rights and criminal courts of intellectual and industrial property rights. These courts, upon acquiring positive opinion of the High Council of Judges and Prosecutors, shall be established in places

considered to be necessary by the Ministry of Justice at the level of court of first instance and with a single judge. The area of authority of these courts shall be identified in line with the provisions of the Law dated 26/9/2004 and numbered 5235 on Establishment, Duties and Authorities of the

Judicial Courts of First Instance and Regional Judiciary Courthouses. In places where there is no civil court of intellectual and industrial property rights, the local civil court of first instance; where there is no criminal court of intellectual and industrial property rights, the local criminal court of first instance shall undertake the legal proceedings and works that are within the scope of these courts.

(2) In legal proceedings to be instituted against all decisions taken by the Office according to the provisions of this Code and in proceedings to be instituted against the Office by third parties adversely affected by a decision of the Office, commissioned and competent court shall be the Ankara Civil Court of Intellectual and Industrial Property Rights.

(3) In legal proceedings to be instituted against third parties by the owner of industrial property right, competent court shall be the court where plaintiff is domiciled or where the action violating the law has taken place or where the impacts of this action are observed.

(4) In case the plaintiff does not have domicile in Turkey, competent court shall be the court where, at the instituting date of the legal proceeding, the business place of the attorney registered in registry is located, and if the record of the attorney has been deleted, competent court is the court where the headquarters of the Office is located.

(5) In legal proceedings to be instituted against the owner of industrial property right by third parties, competent court is the court where the defendant is domiciled. In case the owner of the industrial property right application or the industrial property right does not have domicile in Turkey, the provisions of the fourth paragraph shall be applied.

#### **Prescription**

**ARTICLE 157-** (1) In claims concerning private law arising from industrial property right or traditional product name, prescription provisions of Turkish Code of Obligations dated 11/01/2011 and numbered 6098 shall apply.

#### **Legal proceeding by licensee and conditions**

**ARTICLE 158-** (1) Unless otherwise agreed in the contract, person who has an exclusive license, in case of infringement of industrial property right by a third party, may institute legal proceeding on his own, which may be filed by the right owner in line with this Code.

(2) Person who has non-exclusive license, if right to institute a legal proceeding due to infringement of industrial property right is not expressly limited in the contract, with a notification, shall request the right owner to institute the required legal proceeding. In case the right holder does not accept this request or does not file the requested legal proceeding within three months, licensee may institute the legal proceeding in its own name and to the extent of his own interests. Licensee who institutes a legal proceeding according this paragraph shall notify the legal proceeding to right owner.

(3) The licensee, in the presence of serious damage risk and before the expiration of the relevant period, may request the court to order an interlocutory injunction. In cases where court orders an interlocutory injunction, licensee shall be authorized to institute a legal proceeding. In such case, terms specified in the second paragraph shall be completed while trial continues.

#### **Request for interlocutory injunction and the scope of interlocutory injunction**

**ARTICLE 159-** (1) Persons who have the right to institute a legal proceeding under this Code, on the condition that they prove that the action forming the subject of the legal proceeding violates the industrial property right within the country or serious and effective

undertakings are performed to that end, may request the court to order an interlocutory injunction to ensure the effectiveness of judgment to be delivered.

(2) Interlocutory injunctions should especially cover the following measures:

a) To prevent and stop the actions, which constitute infringement of plaintiff's industrial property right.

b) To seize and store at their location anywhere within territories of Republic of Turkey including areas such as customs and free port or zone, the products infringing the industrial property right that were produced through infringing the industrial property right or imported; without preventing the production of products other than infringing products, instruments exclusively used in the production of infringing goods or instruments used in performing a patented method.

c) To submit a security in terms of compensation for any damage.

(3) In the matters for which there are no provisions in this Code regarding interlocutory injunctions, the provisions of Code of Civil Procedure dated 12/01/2011 and numbered 6100 shall apply.

#### **Authorized representatives and notification**

**ARTICLE 160-** (1) Natural or legal entities and the registered trademark or patent attorneys authorized by those persons may perform an operation before the Office.

(2) Legal entities shall be represented by a natural person or persons assigned by their authorized organs.

(3) The persons whose domiciles are situated abroad shall only be represented by trademark or patent attorneys. Any operations conducted by such legal entity without being represented by an attorney shall be deemed void.

(4) When a trademark or patent attorney is assigned; all operations shall be performed by the attorney. The notification made to the attorney shall be deemed as made to the principal.

(5) When deemed necessary, the Office may request the submission of the original or certified copy of the power of attorney evidencing the authority of the attorney.

(6) The notifications to be made in the implementation of this Code shall be delivered in electronic environment by placing at the electronic mailbox allocated for the natural person or legal entity by the Office without being bound to the procedures related to electronic notification regulated in Article 7/a of the Notification Law no. 7201 of 11/2/1959, provided that the approval of the addressee is taken. The notifications made in this manner shall be deemed as delivered on the first date the addressee logs into the mailbox after the document to be notified is placed at the inbox and in any case, by the end of the tenth day following the placement of the document at the inbox.

(7) The notifications to be made in the scope of the implementation of this Code shall be made through the related Bulletin without being bound to the provisions of Article 29 of the Law no. 7201 related to the form of notification by publication. The notifications made in this manner shall be deemed as delivered seven days after the publication date of the Bulletin.

(8) The Office is authorized to establish any kind of technical infrastructure related to applications and notification in electronic environment, or use the already established ones, stipulate the applications and notifications be made electronically and determine other procedure and rules related to the items to be notified electronically and the electronic applications and notifications.

#### **Fees, payment term and consequences**

**ARTICLE 161-** (1) In case of failure to submit the Office within the prescribed period the information that the obligatory fees have been deposited for the processes related to the

grant or registration of industrial property right, it shall be deemed that the industrial property right application has been withdrawn.

(2) In case of failure to submit the Office within the prescribed period the information that the obligatory fees related to an industrial property right registered at the registry are deposited for the processes other than the ones covered under the first sub-clause, it shall be deemed that the relevant request was not made.

(3) Except for the Articles 15, 18, 20, 23 and 69, should the obligatory fees for the processes related to applications or industrial property rights are deposited deficiently, the deficit amount of fee shall be notified to the requesting party by the Office. In case of failure to submit the Office in due time the information that the deficient fee has been deposited within one month of the notification date, the provisions of the first and second paragraphs shall be applied.

(4) Unless stated otherwise, the deposited fees shall not be returned and the deposited fees shall be recorded as revenue by the Office.

#### **Enforcement of decisions**

**ARTICLE 162-** (1) Where invalidity or annulment of Board resolutions are claimed, decisions in legal proceedings may not be executed until the final verdict. This provision shall also apply for verdict annexes.

#### **Fast destruction procedure**

**ARTICLE 163-** (1) If the infringing goods, seized or placed under protection due to the crimes mentioned under this Code cannot be preserved at the custodial office due to quantity, size or character; after taking sufficient samples from the goods, which are suitable for collection of samples, in line with the instructions of the public prosecutor, the remaining goods shall be sent to the financial organization of the locality. The official record including all information such as quantity, type, and size related to the goods seized together with samples shall be delivered to the office of the prosecutor.

(2) In case there is a risk that the infringing goods delivered to the financial organization of the locality, after taking sample as per the first paragraph, would be damaged or fundamentally lose value or the preservation thereof provides a significant burden; after the expert examination is completed, based on the request of the public prosecutor at the investigation phase the judge or at the prosecution stage the court shall decide on the destruction of those goods before the verdict. The destruction shall be performed at the presence of a committee comprised of three persons established by the financial organization under the chairmanship of the public prosecutor and a report shall be prepared.

#### **The provisions that apply to traditional product names**

**ARTICLE 164-** (1) The provisions of Articles 146, 147, 149, 150, 152, 153, 154, 156, 159 and 161 shall apply also to traditional product names.

#### **Regulation**

**ARTICLE 165-** (1) The regulations related to the implementation of this Code shall be entered into force by the Office.

## **SECTION TWO**

### **Other Provisions**

**ARTICLE 166-** Paragraphs (a), (e), (i) and (k) of the first sub-clause of Article 3 of the Law no. 5000 of 6/11/2003 on the Establishment and Functions of the Turkish Patent Institute have been amended as follows:

“a) Performs, as per the relevant legislation, processes related to the registration of patents, utility models, trademarks, geographical signs, traditional product names, designs and

integrated circuit topography, and the undertakes procedures for the protection of these rights,”

“e) Conducts relations and cooperates with the European Union, international organizations and foreign countries in the field of industrial property,”

“i) Makes publications related to industrial property rights,”

“k) Conducts studies for organizing trainings to persons and organizations domestically and abroad in the field of industrial property, supports training activities and academic studies related to the subjects covered under its field of duty,”

**ARTICLE 167-** Article 7 of the Law no. 5000 has been amended as follows:

“ARTICLE 7- The Advisory Board of the Office is comprised of one each member from the Ministry of Justice, Ministry of European Union, Ministry of Science, Industry and Technology, Ministry of Labour and Social Security, Ministry of Environment and Urbanization, Ministry of Foreign Affairs, Ministry of Economy, Ministry of Food, Agriculture and Livestock, 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 Water Magement, Ministry of Health, Ministry of Transport, Maritime Affairs and Communications, Undersecretariat of Treasury, Turkish Scientific and Technologic Research Authority, Turkish Atomic Energy Authority, Presidency of Development and Support of Small and Medium Size Enterprises, Turkish Exporters Assembly, Turkish Union of Chambers of Stock Exchanges, Turkish Union of Chambers of Engineers and Architects, Turkish Doctors Union, Turkish Veterinary Doctors Union, Turkish Pharmacists Union, Turkish Tradesmen and Artisans Confederation and one member from each of the worker and employer syndicate confederations with highest number of members; plus five members to be determined among universities by the Council of Higher Education. The Management Board may invite experts to the meetings of the Advisory Board when necessary.

The period of membership at the Advisory Board shall be two years. The members whose period has expired may be re-elected.

The working procedure and rules of the Advisory Board shall be determined with a regulation.

The Advisory Board shall convene at least once a year. The meetings shall be chaired by the Minister of Science, Industry and Technology or a person to be commissioned by the Minister.”

**ARTICLE 168-** Article 10 of the Law no. 5000 has been amended together with its title as follows:

“Intellectual Property Academy and Industrial Property Rights Training Centre

**ARTICLE 10-** In order to conduct training, consultancy and research activities related to intellectual property rights, the Intellectual Property Academy; in order to conduct training activities related to industrial property rights, within the Office structure, the Industrial Property Rights Training Centre, have been established.

Under the Academy, training activities related to copyrights shall be conducted by

Ministry of Culture and Tourism Copyrights Training Center, training activities related to industrial property rights shall be conducted by Turkish Patent and Trademark Office Industrial Property Rights Training Center. Expenses of the centers shall be covered by Ministry of Culture and Tourism or the Office depending on the relation.

A Steering Board shall be gathered to perform planning and consultancy related to the training and research activities to be conducted at the Intellectual Property Academy.



This Board shall be comprised of the following eight members: a representative from the Office, a representative from the related unit of the Ministry of Culture and Tourism, two university academics where one is an expert on industrial property rights and the other is an expert on copyrights, one patent or trademark attorney, a sector representative working in the field of copyrights, a member identified by the Court of Cassation among members of relevant chamber subject to the member's consent, and a judge working at intellectual and industrial property rights civil or criminal courts determined by the related department of the High Council of Judges and Prosecutors. The Steering Board meetings shall be made under the co-chairmanship of the Office representative and the representative of the Ministry of Culture and Tourism. The members other than judges are commissioned by the Ministry of Culture and Tourism or the Office as applicable. The members whose period has expired may be re-commissioned.

The working procedure and rules of the Intellectual Property Academy and the training centers, secretariat services, the fees taken for the given services, the issues regarding training activities and other matters shall be determined with a regulation to be administered jointly by the Ministry of Culture and Tourism and the Office.”

**ARTICLE 169-** Paragraphs (c) and (d) of the first paragraph of Article 11 of the Law no. 5000 has been amended as follows and the following paragraphs have been added:

- “c) Department of Designs,
- d) Department of European Union and Foreign Affairs
- e) Department of Innovation and Promotion
- f) Department of Geographical Signs
- g) Department of Re-examination and Evaluation”

**ARTICLE 170-** Article 14 of the Law no. 5000 has been amended together with its title as follows:

“Department of Designs

**ARTICLE 14-** Department of Designs shall;

- a) Perform the recording, filing, search, examination, assessment and registration processes of the design registration applications as per the relevant legislation provisions,
- b) Perform the procedures on licensing, transfer and various changes of designs and design applications as per the relevant legislation provisions,
- c) Perform the procedures on announcement, classification and registry of designs,
- d) Undertake the secretariat of the Turkish Design Advisory Council,
- e) Perform other works as assigned by the Presidency.”

**ARTICLE 171-** Article 15 of the Law no. 5000 has been amended together with its title as follows:

“Department of European Union and Foreign Affairs

**ARTICLE 15-** Department of European Union and Foreign Affairs shall;

- a) Make preparations for negotiations, attends meetings, ensures coordination among the Office units related to the topics covered by the duty field of the Office concerning the European Union,
- b) Conduct relations with foreign countries and international organizations in the topics covered by the duty field of the Office, ensure coordination, assist in the preparation of bilateral and multilateral cooperation agreements, regional cooperation agreements and protocols,
- c) Monitor and examine the legislation of foreign countries and international agreements related to the topics covered by the duty field of the Office, conduct the activities that need to be performed to fulfil the liabilities,

d) Perform other works as assigned by the Presidency.”

**ARTICLE 172-** The following Articles 15/A, 15/B and 15/C have been added to the Law no. 5000 to follow Article 15:

“Department of Innovation and Promotion

**ARTICLE 15/A-** Department of Innovation and Promotion shall;

a) In order to create value for the country economy through industrial property rights, conduct activities such as determining the assets of natural persons and legal entities that are or can become subject of industrial property, determine the means of utilizing these assets, monitor related sectors, perform survey activities and other similar activities,

b) Conduct activities related to the value and economic impacts of industrial property assets,

c) Identify new technologies and conducts commercialization activities such as mediation for technology transfer operations,

d) Collect and classify all the data obtained as a result of innovation support activities and presents them to public use,

e) Provide consultancy service in the areas covered under innovation support activities,

f) Prepare and publish materials in any media, documentaries, conceptual and promotion films containing the subjects of industrial property rights, legislation, application guidelines and brochures related to the duties of the Office,

g) Determine, plan and implement targets and strategies related to the promotion of industrial property rights,

h) Organize any kind of training activities, seminars, conferences, symposiums and similar activities related to industrial property rights, conduct the preparations for participating to fairs,

i) Conduct the necessary cooperation studies to ensure that the information document units of the Office perform their activities,

j) Perform other works as assigned by the Presidency.

Department of Geographical Signs

**ARTICLE 15/B-** Department of Geographical Signs shall;

a) Conduct the recording, search, examination, assessment and registration processes related to geographical signs and traditional product names,

b) Perform the announcement and registry processes of geographical signs and traditional product names,

c) Perform other works as assigned by the Presidency.

Department of Re-examination and Evaluation

**ARTICLE 15/C-** Department of Re-examination and Evaluation shall conduct directly under the President the processes of examining and evaluating the appeals against the final decisions given by the relevant department on the proceedings about the industrial property rights and traditional product names, which would be made within two months of notification of the said decision by persons being party to those proceedings and whose interests would be affected.

The decisions on the subject requested to be examined and evaluated shall be taken by a Board comprised under the chairmanship of the Head of Department with the participation of at least two expert members specialized in the field to be examined and evaluated and who had no connection to the decision of the Office being appealed.

The decisions of the Department of Re-examination and Evaluation shall be final. A legal proceeding can be instituted against these decisions at Ankara Intellectual and Industrial Rights Civil Court within two months of the notification date of the decision.

Until finalized, the verdict related to the annulment of the decisions of the Board of Re- examination and Evaluation may not be executed. This provision shall also apply for verdict annexes. The period of prescription for the mentioned verdicts commence with the date of the final decision.”

**ARTICLE 173-** Paragraphs (b) and (c) of the first paragraph of Article 16 of the Law no. 5000 have been amended as follows:

“b) Department of Support Services  
c) Department of Information Technology”

**ARTICLE 174-** Article 18 of the Law no. 5000 has been amended together with its title as follows:

“Department of Support Services

**ARTICLE 18-** Department of Support Services shall;

- a) Perform renting and purchasing activities in the framework of the provisions of the Public Financial Management and Control Law no. 5018 of 10/12/2003, perform or procure cleaning, security, lighting, heating, repair, transport and similar services,
- b) Arrange and execute central registry and archive activities,
- c) Conduct the processes related to the movable and immovable properties of the Office as per the relevant legislation,
- d) Plan and execute civil defence and mobilization services of the Office,
- e) Execute library services,
- f) Perform other works as assigned by the Presidency.”

**ARTICLE 175-** Article 19 of the Law no. 5000 has been amended together with its title as follows:

“Department of Information Technology

**ARTICLE 19-** Department of Information Technology shall;

- a) Monitor information technologies and determine the automation strategies of the Office, take the precautions necessitated by information security, generate solutions conforming to public information technology standards,
- b) Conduct the information technology services of the Office,
- c) Perform technical studies related to the web pages, electronic signature and electronic document applications of the Office,
- d) Collect information related to the services of the Office and creates databases,
- e) Conduct works related to the establishment, maintenance, supply, development and updating of the existing information technology infrastructure of the Office; ensure communication security,
- f) Ensure data transfer among the Office and the documentation centres and the national and international organizations that the Office cooperates with, establishes and develop the technical coordination required for electronic communication,
- g) Collect information gathered from domestic and foreign sources related to industrial property in electronic media, evaluate and submit such information to the use of the related units,
- h) Perform other works as assigned by the Presidency.”

**ARTICLE 176-** The following paragraph has been added to the first paragraph of Article 20 of the Law no. 5000:

“c) Department of Strategy Development”

**ARTICLE 177-** Article 22 of the Law no. 5000 has been amended as follows:

“ARTICLE 22- Legal Counsel shall;

a) Perform the tasks assigned to legal units as per the provisions of the Decree Law no. 659 of 26/9/2011 related to the Execution of Legal Services at Public Administrations covered by the General Budget and Private Budget Administrations,

b) Perform other works as assigned by the Presidency.”

**ARTICLE 178-** The following Article 22/A has been added to the Law no. 5000 to come subsequent to Article 22:

“Department of Strategy Development

ARTICLE 22/A- Department of Strategy Development shall;

a) Perform the tasks assigned to strategy development and financial services unit as per the Law no. 5018, Article 15 of the Law no. 5436 of 22/12/2005 and other legislation,

b) Perform other works as assigned by the Presidency.”

**ARTICLE 179-** The first paragraph of Article 23 of the Law no. 5000 has been amended as follows and the expression of “and obtaining positive opinion” at the third and fourth paragraphs and paragraph (b) of the sixth sub-clause has been annulled.

“The members of the Office’s Management Board shall be appointed among persons that have graduated from a domestic or abroad higher education institution of at least four years duration, with sufficient occupational knowledge and ten years of experience. The representatives of the Ministry of Justice and Ministry of Finance shall have at least ten years of employment in the relevant Ministry and have adequate occupational knowledge and experience; and one of the members to be determined by the Minister of Science,

Industry and Technology shall be a representative of the Turkish Union of Chambers and Stock Exchanges with at least ten years of experience in the public and/or private sector.

These members should also bear the conditions at paragraph (a) of Article 48 of the Civil

Servants Law no. 657 of 14/7/1965.”

**ARTICLE 180-** Article 26 of the Law no. 5000 has been amended as follows:

“ARTICLE 26- In line with the needs of the Office, domestic and foreign experts may be employed under a contract for a provisional term domestically or from abroad based on the approval of the Management Board. The net amount of wage to be paid to these experts shall be determined by the Management Board such that this wage does not exceed the monthly average net salary paid to a first degree Industrial Property Expert. The procedure and rules related to their employment shall be determined with a regulation to be enforced with the decision of the Council of Ministers based on the suggestion of the Office and the proposal of the Minister of Science, Industry and Technology.

For the works and services necessitating a specific expertise, based on a resolution of the Management Board, a work contract shall be made.

The Office may utilize the services of domestic and foreign organizations in the execution of the processes related to industrial property rights. The fees for such services shall be collected by the Office together with the fees of the services to be given by the

Office and payments to the relevant organizations shall be made by the Office.

The payments to the Chairman and members of the Management Board shall be processed according to the wage payment for the duties of the chairman and members of the management boards of public economic enterprises.”

**ARTICLE 181-** Article 30 of the Law no. 5000 has been amended as follows:

“ARTICLE 30- As regards the industrial property rights and traditional product names, the natural persons or legal entities with the authority to provide consultancy and perform on behalf of the applicants operations before the Office shall be the patent attorneys for patent, utility model and integrated circuit topography topics; the trademark attorneys for

trademarks, geographical signs and traditional product names; and both patent attorneys and trademark attorneys for designs.

The natural persons shall satisfy the following conditions to become a patent attorney or trademark attorney:

- a) Being a citizen of the Republic of Turkey.
- b) Having capacity to act.
- c) Having graduated from a higher education institution providing at least four years of undergraduate education or higher education institutions abroad whose equivalency to the former have been recognized by relevant authorities.
- d) Not having being sentenced for an intentional crime against the security of the State with imprisonment of five years or more or even if pardoned and even if the periods stated at Article 53 of the Turkish Criminal Code no. 5237 of 26/9/2004 have expired, crimes against Constitutional order and the functioning thereof, embezzlement, extortion, bribery, theft, swindling, fraud, abuse of trust, fraudulent bankruptcy, collusive tendering, scheming in acquisition, laundering of assets from crimes or smuggling.
- e) Having domicile in Turkey.
- f) Having successfully passed patent attorney or trademark attorney examinations.

It is obligatory that the legal entity patent attorney or trademark attorney be founded as a limited liability or incorporated company as per the laws of the Republic of Turkey; the operation subject covers the activity of patent attorney or trademark attorney, and is represented by natural person patent attorney or trademark attorney. Even if the natural person attorney is the partner or employee of multiple legal entity attorneys, he may use the attorney authority to represent only one legal entity attorney. The persons that use their attorney authority in this manner may not act as a natural person attorney. The natural person attorney, without prejudice to his own personal criminal liability, shall be jointly and severally responsible against the proxy giver together with the represented legal entity attorney.

The patent attorney and trademark attorney examinations are held once every two years by the resolution of the Management Board. Only the ones satisfying the conditions at paragraphs (a), (b), (c) and (d) of the second paragraph shall be admitted to the examination.

It is obligatory for the ones successful in the patent attorney or trademark attorney examinations to be registered in the Patent Attorneys Registry to act as a patent attorney and at Trademark Attorneys Registry to act as a trademark attorney. The period and amount of the occupational liability insurance that needs to be made at initial registration and registration renewals shall be determined by the Management Board.

The procedure and rules related to the examination and registry processes for patent attorneys and trademark attorneys, and other matters related to patent attorneys and trademark attorneys shall be determined with a regulation.

The examination related to patent attorney and trademark attorney, certificate issuance, registration to registry and registration renewal fees shall be determined by the Office. Regarding power of attorney, the provisions of Turkish Code of Obligations no.

6098 of 11/1/2011 related to power of attorney shall apply for the cases that are not covered by this Law.”

**ARTICLE 182-** The following Article 30/A has been added to the Law no. 5000 to come subsequent to Article 30:

“Disciplinary penalties, the actions necessitating a penalty and disciplinary board

**ARTICLE 30/A-** The disciplinary penalties stipulated in this Law shall be enforced for the ones that conduct attitudes and behaviour violating the patent attorney and trademark attorney occupation codes prepared and published at the official web site of the Office upon obtaining the opinion of the Turkish Union of Chambers and Stock Exchanges and the

organization related to attorneys with the highest number of members; and for the ones failing to perform the duties necessitated by being an attorney.

The disciplinary penalties to be enforced on the patent attorneys and trademark attorneys, and the actions and situations for which a disciplinary penalty shall be enforced are as follows:

a) Warning: Notification in writing that the person should act more attentively in the execution of attorneyship and his occupational attitudes and behaviours. Warning penalty shall be enforced for the attorneys that conduct attitudes and behaviour violating occupational codes.

b) Reprimand: Notification in writing that the person is flawed in the execution of attorneyship and his occupational attitudes and behaviours. Reprimand penalty shall be enforced for the ones that have received a warning penalty and acted in a manner necessitating the same penalty within two years or that fail to fulfil the obligations necessitated by being an attorney or performing attorneyship to the parties with conflicting interest in any operation executed before the Office.

c) Temporary retention from attorneyship activity: This shall be the prohibition of attorneyship activity for duration not less than three months and not more than one year.

Penalty of temporary retention from attorneyship activity shall be enforced for the ones who have received a reprimand penalty and acted in a manner necessitating the same penalty within five years, or utilized his attorney powers and rights against the power of attorney or utilized the title, internet domain name or other promotion means of the Office to cause confusion.

d) Banning of attorneyship: This is the prohibition of attorney activity for an indefinite period. Banning of attorneyship shall be enforced for the ones who have received a penalty of temporary retention from attorney activity.

The authority to give disciplinary penalty for ones committing actions listed in the second paragraph shall lapse in case the investigation is not launched within three months after having been informed of commitment of such actions, and in any case the disciplinary penalty is not enforced within two years of commitment of actions requiring penalty.

It is obligatory to give the penalties listed under second paragraph within 30 days of conclusion of the investigation.

Disciplinary penalties may not be given without acquiring the defensive statement of the attorney. The attorney shall be deemed to withdraw his right of defense in case the defensive statement is not submitted within the duration to be prescribed by the investigator not less than seven days or at a specified date.

Disciplinary penalties shall take effect on the date it is decided and shall be enforced immediately.

It may be applied to administrative justice against the decision for giving or not giving a disciplinary penalty. The ones that have been banned from patent attorneyship or trademark attorneyship as a result of a finalized disciplinary decision may not become a patent attorney or trademark attorney again.

The Disciplinary Board of Patent and Trademark Attorneys is comprised of seven persons as follows: one member from the Ministry, three members from the Office, and three members among patent attorneys or trademark attorneys who have not been penalized with any of the penalties mentioned under the second paragraph based on a decision of the Disciplinary Board. Substitute members at the same quantity and quality shall be determined. All members shall be appointed by the Minister of Science, Industry and Technology. Before the President of the Office suggests members to the Ministry to be selected among patent

attorneys or trademark attorneys, he shall obtain the opinion of two chambers of commerce with the highest number of members and two attorneyship associations with the highest number of members.

The tenure period of the members of the Disciplinary Board is three years. If a legal proceeding has been instituted against any member with a crime mentioned under paragraph

(d) of the second paragraph of Article 30, this member may not attend the meetings until the end of that legal proceeding and the substitute member shall come to the meetings instead. The members that would not be able to attend to a meeting due to a valid excuse shall communicate his excuse before the meeting date. The membership of a member that fails to attend to two consecutive meetings without an excuse or who loses its eligibility of being selected shall be dropped and the substitute member shall come instead.

Other procedure and rules related to the Disciplinary Board and determination of commitments requiring disciplinary penalty shall be regulated with a regulation.”

**ARTICLE 183-** The following supplementary Article has been inserted to the Law no. 5000:

“Staff

SUPPLEMENTARY ARTICLE 1- The staff at annex no. (1) list have been created and supplemented to the relevant section of the appendix bills of the Decree Law no. 190 of 13/12/1983 on General Staff and Procedures, whereas the staff at annex no. (2) list have been cancelled and omitted from the related section of the appendix bills of the Statutory Decree no. 190.”

The section related to Turkish Patent Institute under list (I) annexed to Decree Law no. 190 has been amended as Turkish Patent and Trademark Office, the title in the said annex as vacant and occupied Trademark Examiner and Patent Examiner positions amended as Industrial Property Examiner, Assistant Trademark Examiner and Assistance Patent Examiner amended as Assistant Industrial Property Examiner.”

**ARTICLE 184-** The following provisional Article has been inserted to the Law no. 5000:

“PROVISIONAL ARTICLE 3- The duties of the ones occupying positions of the President, Vice President and head of department under annex no. (2) list shall cease on the effective date of this Law and the ones occupying President, Vice President are assigned to the positions listed under Annex (1) as President of Turkish Patent and Trademark Office and Vice President of Turkish Patent and Trademark Office while others are deemed to be assigned to the counselor position formed with annex no. (3) list of this Law. When the counselor positions formed with annex no. (3) list of this Law are vacated for any reason, they are deemed to be cancelled without any action.

In case the total net amount (which shall be taken as a fixed value) of the contract wage of the last month related to the former staff position of the personnel deemed as assigned to counselor staff as per this Article as of the date he has been assigned to the new staff position, fee, indemnity, salary, supplementary indicator, bonus (net amount corresponding to one month), any raises and indemnities, office indemnity, representation indemnity, job indemnity, additional wage, additional payment, incentive payment and any payments made with similar titles (excluding overtime fee and additional course fee based on actual work as per the relevant legislation) exceeds the total net amount of the contract wage of the new staff position, fee, indemnity, salary, supplementary indicator, bonus (net amount corresponding to one month), any raises and indemnities, office indemnity, representation indemnity, job indemnity, additional wage, additional payment, incentive payment and any payments made with similar titles (excluding overtime fee and additional course fee based on actual work as per the relevant legislation), the difference in between shall be paid as a

separate indemnity without being subjected to any tax or deduction until this difference is closed. This indemnity payment shall be ceased for the ones whose staff title has been changed based on that person's request and the ones assigned to other institutions with their own request.

The personnel working as patent examiner and trademark examiner at the Office on the effective date of this Law shall be deemed as assigned to the industrial property examiner position; and the personnel working as assistant patent examiner and assistant trademark examiner shall be deemed as assigned to the assistant industrial property examiner position, with their present staff degrees, without the need to take any action."

**ARTICLE 185-** "Industrial design" expression at the first paragraph of Article 21 of the Law no. 278 of 17/7/1963 on the Foundation of Turkish Scientific and Technologic Research Authority has been amended as "design".

**ARTICLE 186-** Under the paragraph "2. Patent and utility models." sub-clause of paragraph (e) at "I- Production licenses" section of the tariff no. (8) under the Act of Fees no. 492 of 2/7/1964, the sentence "by the Institute" has been amended as "by the Office", the title

"3. Industrial designs" has been amended as "3. Design"; "Industrial design" expression at

(m) sub-paragraph of this paragraph has been amended as "design"; "Trademark application fee (for the first three classes" expression at (a) sub-paragraph of "4. Trademarks" paragraph of the same section has been amended as "Trademark application fee (for each class)";

"Trademark registration certification issuance fee" at sub-paragraph (e) has been amended as

"Trademark registration fee"; "Collateral process registration fee" at sub-paragraph (i) has been amended as "Pledge process registration fee"; "International application fee" at sub-paragraph (l) has been amended as "Fee for notification of international application"; the title of paragraph "5. Geographical indications:" has been amended as "5. Geographical signs and traditional product names:"; "Geographical indication registration certificate and registry fee" at sub-paragraph (b) of this paragraph has been amended as "Geographical sign and traditional product name registration and registry fee"; "geographical indication" expression at sub-paragraph (c) has been amended as "geographical signs and traditional product name", and sub-paragraph (b) of "4. Trademarks" paragraph has been revoked.

**ARTICLE 187-** At the Civil Servants Law no. 657 of 14/7/1965;

a) "Assistant Trademark Examiners, Assistant Patent Examiners" expression at paragraph (11) of sub-clause (A) under the section titled "Common Provisions" at Article 36 has been amended as "Assistant Industrial Property Examiners" and the expression of "as Trademark Examiner, as Patent Examiner" has been amended as "as Industrial Property Examiner".

b) "Trademark Examiners" and "Patent Examiners" expressions at paragraph (ğ) of "A- Special Service Indemnity" section of "II- Indemnities" part of Article 152 have been revoked and "Industrial Property Examiners" expression has been inserted in the same paragraph to come subsequent to "Defense Industry Experts".

c) The expression "Law on the Establishment and Functions of the Turkish Patent Institute" under the sub-clause eleven of the paragraph (a) of provisional Article 41 has been amended as "Law on the Establishment and Functions of the Turkish Patent and Trademark Office."

d) Under the paragraph (d) of "I- General Administrative Services Class" section of



Annex no. (I) Annex Indicator List, the expression “President of Turkish Patent Institute” has been amended as “President of Turkish Patent and Trademark Office”, under paragraph (g)

“Trademark Examiners, Patent Examiners” has been amended as “Industrial Property Examiners” and under the Annex no (II) Annex Indicator List “2. Judicial organs, Dependant and Linked Institutions and Higher Education Institutions” section “Vice President of Turkish

Patent Institute” has been amended as “Vice President of Turkish Patent and Trademark Office”.

**ARTICLE 188-** a) The title of the Law no. 5000 of 6/11/2003 on the Establishment and Functions of the Turkish Patent Institute has been amended as “Law on Establishment and Functions of the Turkish Patent and Trademark Office”, under first paragraph of Article

1 of the same Law the expressions “Turkish Patent Institute” amended as “Turkish Patent and Trademark Office”, “TPE” amended as “TÜRKPATENT”, under paragraph two of same Article “TPE” amended as “TÜRKPATENT”, under sup-paragraph (a) of the first paragraph of Article 2 of the Law “a) Institute: Turkish Patent Institute” amended as “a)

Office: Turkish Patent and Trademark Office”, under sub-paragraph (b) “b) Management

Board: Management Board of Turkish Patent Institute” amended as “b) Management Board of Turkish Patent and Trademark Office”, under sub-paragraph (c) “c) Advisory Board:

Advisory Board of Turkish Patent Institute” amended as “c) Advisory Board: Advisory

Board of Turkish Patent and Trademark Office”, under sub-paragraph (d) “d) Presidency:

Presidency of Turkish Patent Institute” amended as “d) Presidency: Presidency of Turkish

Patent and Trademark Office”, under first paragraph of Article 3 of the Law the expression

“Institute” amended as “Office”, under first paragraph of Article 4 of the Law the expression “Institute” amended as “Office”, under second paragraph the expression

“Institute” amended as “Office”, under fourth paragraph the expression “Institute” amended as “Office”, under first paragraph of Article 6 of the Law the expression “to the Institute” amended as “to the Office”, under sub-paragraph (a) of second paragraph the expression

“Institute’s” amended as “Office’s”, under sub-paragraph (b) of second paragraph the expression “Institute” amended as “Office”, under sub-paragraph (c) of second paragraph the expression “Institute’s” amended as “Office’s”, under sub-paragraph (f) of second paragraph the expression “Institute’s” amended as “Office’s”, under sub-paragraph (j) of second paragraph the expression “Institute’s” amended as “Office’s”, under sub-paragraph

(l) of second paragraph the expression “Institute’s” amended as “Office’s”, under the first paragraph of Article 8 of the Law the expression “Institute’s” amended as “Office’s”, “to the Institute” amended as “to the Office”, under the first paragraph of Article 9 of the Law the expression “Institute’s” amended as “Office’s”, “Institute” amended as “Office”, under the second paragraph the expression “Institute” amended as “Office”, under the fourth paragraph the expression “Institute” amended as “Office”, “Institute’s” amended as

“Office’s”, “at the Institute” amended as “at the Office”, under the first paragraph of the

Article 11 of the law the expression “Institute’s” amended as “Office’s”, under the first paragraph of the Article 16 of the law the expression “Institute’s” amended as “Office’s”, under the sub-paragraph (a) of the first paragraph of Article 17 of the Law the expression

“Institute” amended as “Office”, under the first paragraph of the Article 20 of the Law the expression “Institute’s” amended as “Office’s”, under the fifth and sixth Articles of the

Article 23 of the Law the expression “Institute” amended as “Office”, under the first paragraph of the Article 24 of the Law the expression “Institute” amended as “Office”, under the first paragraph of the Article 25 of the Law the expression “Institute’s” amended as “Office’s”, “to the Institute” amended as “to the Office”, under the second, third, fourth and fifth paragraphs the expression “Institute’s” amended as “Office’s”, under fifth paragraph “Institute” amended as “Office”, under the first paragraph of the Article 28 of the law the expression “Institute” amended as “Office”, the expression “Institute’s” amended as

“Office’s”, under the first paragraph of the Article 29 of the Law the expression

“Institute’s” amended as “Office’s”, under the first paragraph of the Article 2 of the Law the expression “Institute” amended as “Office”.

b) Under the Public Financial Management and Control Law no. 5018 of 10/12/2003, the list no (II) on Special Budget Administrations section B) on Other Agencies with Special Budget, the sub-paragraph stating “Turkish Patent Institute” has been amended as “Turkish Patent and Trademark Office”.

c) Under the sub-paragraph (c) of the first paragraph of the Article 2 of the Law No. 5147 of April 22, 2004 on the Protection of Integrated Circuits Topographies, the expression “a) Institute: Turkish Patent Institute” amended as “a) Turkish Patent and Trademark Office”, under the sub-paragraph (h) the expression “Institute’s” amended as

“Office’s”, under the third paragraph of the Article 6 of the Law the expression “to the Institute” amended as “to the Office”, under the first paragraph of the Article 13 of the Law the expression “is the Institute” amended as “is the Office”, under the first paragraph of the

Article 15 of the Law the expression “Institute” amended as “Office”, under the second and third paragraphs the expression “to the Institute” amended as “to the Office, under the first and second paragraphs of the Article 16 of the Law the expression “Institute” amended as

“Office”, under the first paragraph of the Article 18 of the Law the expression “Institute” amended as “Office”, under the fourth paragraph of the Article 15 of the Law the expression

“to the Institute” amended as “to the Office”, “Institute” amended as “Office”, under the second paragraph of the Article 21 of the Law the expression “Institute” amended as

“Office”, under the second paragraph of the Article 22 of the Law the expression “to the

Institute” amended as “to the Office”, under the title and first paragraph of the Article 23 of the Law the expression “Institute” amended as “Office”, under the fourth paragraph of the Article 26 of the Law the expression “Institute” amended as “Office”, under the title and first paragraph of the Article 30 of the Law the expression “Institute” amended as “Office”,

“to the Institute” amended as “to the Office”, under the second paragraph of the Article 31 of the Law the expression “of the Institute” amended as “of the Office”, under the second paragraph of the Article 37 of the Law the expression “to the Institute” amended as “to the

Office”, the expression “Institute’s” amended as “Office’s”, under the third paragraph the expression “Institute’s” amended as “Office’s”, under the fifth paragraph the expression “by the Institute” amended as “by the Office”, under the sixth paragraph the expression

“Institute” amended as “Office”, under the first paragraph of the Article 38 of the Law the expression “Institute’s” amended as “Office’s”, under the first paragraph of the Article 41 of the Law the expression “Institute” amended as “Office”.

**ARTICLE 189-** The first paragraph of the Article 76 of the Law No. 5846 of 5/12/1951 on Intellectual and Artistic Works.

“Concerning the legal proceeding and procedures stemming from the legal relations regulated by this Law and criminal proceedings stemming from this Law, the authorized court shall be the courts indicated in the Article 156 of the Industrial Property Code.”

#### **References**

**ARTICLE 190-** (1) References made in other legislation to Turkish Patent Institute shall be deemed to be made to Turkish Patent and Trademark Office, Trademark Examiner and Patent Examiner shall be deemed to be referred to as Industrial Property Examiner,

Assistant Patent Examiner and Assistant Patent Examiner shall be deemed to be referred to as Assistant Industrial Property Examiner.

#### **Annulled legislation**

**ARTICLE 191-** (1) The sub-paragraph (d) of the first paragraph of article 4 and subparagraph (e) of the first paragraph of Article 13 of the Law no. 5000 of 6/11/2003 on the Establishment and Functions of the Turkish Patent Institute shall be annulled.

(2) Article 39 of the Law No. 5147 of April 22, 2004 on the Protection of Integrated Circuits Topographies shall be annulled.

(3) The Decree-Law No. 551 of June 24, 1995 on the Protection of Patent Rights, Decree-Law No. 554 of June 24, 1995 on the Protection of Industrial Designs, Decree-Law

No. 555 of June 24, 1995 on the Protection of Geographical Indications, Decree-Law No. 556 of June 24, 1995 on the Protection of Trademarks and Decree-Law No. 566 of September 22,

1995 amending The Decree-Law No. 551 of June 24, 1995 on the Protection of Patent Rights shall be annulled.

#### **Implementation of the provisions of Decree Laws No. 551, 554, 555 and 556**

**PROVISIONAL ARTICLE 1-** (1) National and international trademark and design and geographical sign applications filed at the Institute before the date of publication of this

Code shall be concluded in accordance with the provisions of the legislation in force at the time of filing the application. However, geographical sign applications filed at the Institute before the publication date of this Code but not having been announced yet, shall be published in the Bulletin without prejudice to the provisions of the annulled Decree Law No. 555 concerning period of opposition.

(2) National patent and utility model applications filed before the date of publication of this Code shall be concluded in accordance with the provisions of the legislation in force at the time of filing the application. In concluding the patent of addition applications filed after the date of entry into force of this provision, while converting the patent of addition application or patent of addition into an independent patent application or a patent, the provisions of the legislation in force at the date of filing of the main patent application shall apply. While converting a patent granted without examination into a patent with examination, changing a patent application into a utility model application or a utility model application into a patent application, invalidating patent and utility models, the provisions of the legislation in force at the date of application shall apply. Patent applications and utility model

applications filed via international or regional agreements, which entered into national phase before the date of entry into force of this provision, shall be concluded in line with the legislation provisions in force at the date of entry into national phase.

(3) The provisional Article 4 of the annulled Decree Law No. 551 shall continue to apply to the patents that are within the scope of the same Article.

(4) For patents and utility models granted in line with the previous legislation provisions, the provisions of this Code shall apply except for the Articles 99, 138, 144, fifth paragraph of the Article 113 and eighth paragraph of the Article 121.

**Implementation of the existing regulations**

**PROVISIONAL ARTICLE 2-** (1) Until the regulations foreseen in this Code enter into force, the provisions that do not violate this Code shall continue to apply.

**Destruction of Infringing Goods**

**PROVISIONAL ARTICLE 3-** (1) Due to the crimes committed before 1/1/2009, persons who were sentenced by the enforcement of annulled Decree Laws No. 551, 554, 555 or 556 for the confiscation of infringing goods and final verdict not having been enforced yet; without consideration of the goods being preserved by the custodial office or the plaintiff or having been trusted to a third party for preservation under the Law No. 5271 of 4/12/2004 on

Penal Procedure, the public prosecutor's Office located within the region of the court that gave the verdict shall issue a notification explaining the consequences. Such persons shall be notified of their right to request within one month for the returning of such goods by applying to the court. In case no request for returning is made by the owners within this duration or if the goods are not collected within one month of the court's decision for returning, the court that gave the decision shall decide on the destruction of the goods upon request of the public prosecutor's Office. The decision on destruction shall be sent to the public prosecutor's Office for immediate enforcement.

(2) For the persons, who had been sentenced with the criminal provisions of the annulled Decree Laws No. 551, 554, 555 or 556 with a final verdict for returning of the goods and who have not collected their goods before the date of entry into force of this Article, although there is a decision by the court for returning such goods, without consideration of the goods being preserved by the custodial office or the plaintiff or having been trusted to another person for preservation according to Article 132 of the Law on Penal Procedure, the public prosecutor's Office located within the region of the court that gave the verdict shall ex-officio issue a notification explaining the consequences and are asked to collect the goods within one month. In case the goods are not collected within this duration, the court that gave the decision shall decide on the destruction of the goods upon request of the public prosecutor's Office. The decision on destruction shall be sent to the public prosecutor's Office for immediate enforcement.

(3) The procedures of destruction under this Article shall be performed under the chairmanship of the public prosecutor by a committee comprised of the custody officer and two court clerks and a report shall be prepared. It shall be decided by the judiciary commissions to identify which court clerks will take place in the committee. No payment shall be made to the owner of the goods that are destroyed. Destruction costs shall be covered by the Treasury on the condition that they are collected from the owner of the goods as judiciary fees.

**Authority of cancellation exercised by courts**

**PROVISIONAL ARTICLE 4-** (1) Until the Article 26 enters into force, the authority of cancellation, shall be exercised by the courts in line with the procedure and rules in the said Article.

(2) The cancellation proceedings ongoing at the courts on the date of entry into force of Article 26 shall be concluded by the courts.

(3) The decisions given by courts in line with the provisions of this Article shall be ex-officio sent to the Office upon finalization.

**Renewal requests**

**PROVISIONAL ARTICLE 5-** (1) Until the entry into force of the second paragraph of Article 23 and the fourth paragraph of Article 69, the relevant provisions of the annulled Decree Law No. 554 and 556 shall apply concerning renewal requests.

**Ongoing legal proceedings**

**PROVISIONAL ARTICLE 6-** (1) The specialized courts established in line with the; 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, that are annulled with this Code shall be deemed as the courts established with the first paragraph of Article 152 of this Code and the ongoing legal proceedings at these courts shall continue.

**Entry into force**

**ARTICLE 192-** (1) This Code's;

- a) Article 26 shall enter into force after seven years from the date of publication,
- b) The provisions regarding the period of making renewal requests regulated with the second paragraph of Article 23 and fourth paragraph of Article 69 and the provisions related to the obligation of using emblem regulated with Article 46 shall enter into force after one year from the date of publication,
- c) Other provisions shall enter into force on the date of publication.

**Enforcement**

**ARTICLE 193-** (1) The Council of Ministers shall enforce the provisions of the Code.