

Intellectual Property - Turkey

New Patent Law on the Way

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In Turkey, industrial rights arising out of trademarks, patents, utility models, industrial designs and geographical indications have been protected under decree-laws since 1995. Decree-laws are pieces of legislation published by the government under specific authority granted by Parliament and enter into force once they are approved by Parliament. However, after 15 years the need for new legislation has become more urgent for several reasons:

- Various new issues need to be regulated by law due to developments in science;
- Some provisions need to be removed to improve the system's efficiency;
- There is a need to achieve conformity with international treaties, particularly the European Patent Convention; and
- A sound legal basis is required to penalize industrial rights infringements as the criminal provisions of the decree-laws have been cancelled by the Constitutional Court for being non-compliant with the principle of legality.

In light of this, a new law on patent and utility models is being prepared and is due to be enacted by the end of 2009. The Turkish Patent Institute has been assigned to carry out the preparation process in association with the Ministry of Justice. Once the draft law has been finalized by the authorities, it will be delivered to the government to be submitted to Parliament as a proposition.

Most of the provisions of the current Patent Decree-law are in line with EU legislation. However, the government takes the harmonization process seriously and has instructed the authorities to prepare the the draft law so that it fully complies with EU law. For example, comprehensive provisions are envisaged regarding biotechnological inventions.

One significant amendment to the legislation will be the removal of the process of granting patents without examination. Practice has brought to light various disadvantages in this system and it has finally been decided that such a patent system is unnecessary, as the utility model provisions already provide protection through a rapid grant process with low costs.

Although the final text of the draft law has not yet been published, the earlier versions show that it will also provide for a post-grant opposition process. Currently, once a patent is granted, it may be opposed only on the basis of formal defects. The draft law will allow third parties to file oppositions following the grant based on the scope of protection. Furthermore, third parties will be able to request searches when opposing utility models. By doing this, it is expected that many disputes will be resolved at the Turkish Patent Institute stage before being taken to the courts.

The work to amend the patent legislation has led to debate in various sectors. In particular, in the pharmaceutical sector both originator and generic companies are trying to influence the legislative process to protect their own interests. For example, the interested parties do not agree on how preliminary injunctions should be set down. Originator companies expect that, like all the other relevant provisions, preliminary injunctions should be established in such a way as to provide for the efficient prevention of infringements, while generic companies try to loosen the restrictions as much as possible in order to obtain an advantage for their generic product launch preparation processes. If the current version of the draft law is approved, it will be possible to seize infringers' property and block their bank accounts as a guarantee of compensation.

The relevant parties are eagerly awaiting the new patent law in order to bring legal

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certainty to the patent system, in terms of both administrative processes before the Turkish Patent Institute and litigation procedures before the courts.

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