

Acquisition of Intellectual and Industrial Property Rights in Turkey



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Turkey

*Acquisition of Intellectual and
Industrial Property Rights in Turkey*

A Guide to Intellectual and Industrial Property Rights in Turkey

This guide has been prepared by PricewaterhouseCoopers to provide a summary of the Intellectual and Industrial Property Rights in Turkey.

This booklet is not intended as definitive advice, but merely as an explanatory guide, and we would strongly recommend that readers who have specific queries regarding the Intellectual and Industrial Property system in Turkey seek professional advice.

For further information, please contact the PricewaterhouseCoopers office in Turkey (see Appendix).

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I. INTRODUCTION

In 1995, Turkey has started the necessary studies for building an active and modern intellectual and intellectual property rights system and achieved significant results.

According to Turkish legislation, the term 'intellectual and industrial property rights' contains:

- Patents and utility models
- Trademarks
- Intellectual and industrial Designs
- Geographical Signs
- Topographies of integrated circuits

Intellectual and industrial property rights, which are of intangible character, provide the registration of inventions, innovations, designs, marks, symbols and other originalities under the name of their inventor, originator or initial proprietor for the purpose of ensuring distinction from the intellectual and industrial properties of other makers in the market and, accordingly, serve to protect against counterfeiting.

The steps taken by Turkey in the previous decade in the field of intellectual and industrial property rights are embodied in various laws, decree laws and regulations.

Moreover, Turkey is a signatory to various international treaties on intellectual and industrial property rights. Pursuant to Article 90 of the Turkish Constitution, international treaties duly ratified and promulgated are treated the same as internal law. Below is a table indicating the international treaties signed in the field of intellectual and industrial property rights and Turkey's status therein:

Name	Date of Signature	Number of Members as of 1.1.2000	Turkey's Status	Latest Developments and Date of Membership
Paris Convention for the Protection of Intellectual and industrial Property	1883	157	Member	Signatory the Stockholm Addendum in 1995
Convention Establishing WIPO	1967	173	Member	1976
Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods	1891	31	Member	1930
Patent Cooperation Treaty (PCT)	1970	106	Member	1.1.1996
Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	1957	60	Member	1.1.1996
Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	1973	15	Member	1.1.1996
Strasbourg Agreement Concerning the International Patent Classification (IPC)	1971	45	Member	1.10.1996
Budapest Agreement on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure	1977	48	Member	30.11.1998
Locarno Agreement Establishing an International Classification for Intellectual and industrial Designs	1968	37	Member	30.11.1998
Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	1996	43	Member	1.1.1999
Hague Agreement Concerning the International Deposit of Intellectual and industrial Designs	1925	29	Signed	Participation efforts being continued
Trademark Law Treaty (TLT)	1994	25	Signed	Participation efforts being continued
European Patent Convention	1973	19	Member	Membership gained as of 1.11.2000
Agreement Establishing World Trade Organization (including TRIPS)	1994	140	Member	31.12.1994
Bern Convention for the Protection of Literary and Artistic Works	1886	112	Member	01.01.1996

II. TARGET OF PROTECTION AND PROTECTION REQUIREMENTS

1. Patents and Utility Models

The Decree Law No. 551 for the Protection of Patents (hereinafter referred to as the “Decree Law No. 551”) aims at the protection of inventions by way of granting patents and utility model certificates for the purpose of promoting inventive activity and contributing to technical, economic and social development by implementing inventions in industry. The holder of a patent is entitled to prevent the following actions of third persons performed without his/its prior permission:

- (i) production, sale, use or importation of patented products or keeping same in possession for purposes other than personal needs, or
- (ii) use of a process (i.e. material, equipment, etc.) which is the subject matter of the patent, or
- (iii) offers made by third persons to others for the use of a patented process, the use of which is known to be or is known to have been prohibited, or
- (iv) the sale, use, importation or keeping in possession of the products obtained directly through the patented process.

Pursuant to Article 2/1 of the Decree Law No. 551, patent and utility model protection is available to natural and legal persons domiciled or possessing an intellectual and industrial or commercial establishment within the territory of the Republic of Turkey or to persons entitled to file applications under the provisions of the Paris Convention. Furthermore, individuals or legal entities other than those referred to in Article 2/1 shall enjoy protection in Turkey only if they are the nationals of the states which grant, in conformity with the reciprocity principle, legal or de facto protection to the nationals of the Republic of Turkey.

Pursuant to Article 5 of the Decree Law numbered 551, an invention may only be granted a patent if it is new, has an intellectual and industrial application and surpasses the current state of art.

The requirements of novelty and applicability in industry also apply to the acquisition of utility model certificates. However, Article 154 of the Decree concerning the inventions protected by the acquisition of utility model certificates, exempts an invention from the requirement as to surpassing the state of art.

Article 6 of the Decree Law No. 551 provides that

- (a) inventions, scientific theories, mathematical methods; and

- (b) plans, schemes and rules for performing mental acts, conducting business activity and games; and
- (c) literary and artistic works, scientific works, creations having an esthetic characteristic, computer programmes; and
- (d) Methods of data compilation, organisation, presentation and transmission of a non-technical nature,
- (e) surgical and treatment methods applicable to humans and animals, as well as diagnostic procedures applicable to humans and animals excluded from the scope of protection. Furthermore, those inventions contrary to the public order or the general rules of morality are not patentable. Additionally, plant and animal species or methods based on biological grounds introduced for breeding plants or animals may not be protected by patents.

Article 6 of the Decree Law No. 551 also apply to utility models.

2. Trademarks

The new trademark system in Turkey is embodied in the Decree Law No. 556 for the Protection of Trademarks (hereinafter referred to as the “Decree Law No. 556”). Pursuant to Article 9 of the Decree Law No. 556, the holder of a trademark right is entitled to prevent the following actions of third persons:

- (i) the use of a symbol being identical to a registered trademark and relating to the product and service within the scope of such registered trademark, or
- (ii) the use of a symbol, which is likely to create confusion in the general opinion of consumers due to being identical or similar to a registered trademark and relating to identical or similar products and services within the scope of such registered trademark, or
- (iii) the use of a symbol identical or similar to a registered trademark but relating to different products and services from those within the scope of such registered trademark, which, however, is likely to exploit or harm the reputation of the registered trademark.

Pursuant to Article 3/1 of the Decree Law No. 556, trademark protection is available to individuals and legal entities domiciled or possessing an intellectual and industrial or commercial establishment within the territory of the Republic of Turkey or to persons entitled to file applications under the provisions of the Paris Convention or the Agreement Establishing World Trade Organization. Furthermore, natural or legal persons other than those referred to in Article 3/1 shall enjoy protection in Turkey only if they are the nationals of the states which grant, in conformity with the reciprocity principle, legal or de facto protection to the nationals of the Republic of Turkey. Article 5 of the Decree Law No.5 sets forth that a trademark may, so long as it is capable of distinguishing the goods and services of one undertaking from those of another, consist of any kind of symbol

eligible for being represented graphically or by similar descriptive means capable of being published and reproduced by printing, such as words (including but not limited to personal names), indications, letters, numbers and shape of goods or their packaging. Pursuant to Article 7 of the Decree No. 556, the following symbols may not be registered as trademarks, and accordingly, protected:

- (a) symbols, which do not conform with the provisions of the above mentioned Article 5;
- (b) trademarks, which are identical or confusingly similar to a trademark registered earlier or to an earlier date of application being identical or the same in terms of product or service;
- (c) trademarks which specify type, quality, number, purpose, value, geographical origin, or indicate the time when goods were manufactured or services were rendered; or designate the characteristics of goods and services;
- (d) trademarks which, exclusively and substantially, are under common use in the field of commerce, or which contain symbols or names used to distinguish the members of a specific group of craftsmen, artists or tradesmen;
- (e) symbols, which contain the shape of a product originating from its nature, or which are to be used to obtain a technical result, or which give substantial value to the product;
- (f) trademarks which are likely to mislead the public as to the quality, character, place of production or geographical origin of the good or service;
- (g) trademarks whose use is not permitted by the relevant authorities and, accordingly are to be rejected under the related article of the Paris Convention;
- (h) trademarks which consist of badges, emblems or escutcheons not covered by the related article of the Paris Convention, but are historically and culturally in the public interest;
- (i) well-known trademarks, which are under the recognition of the related article of the Paris Convention and whose use is not permitted by their proprietor;
- (j) trademarks, which consist of religious symbols;
- (k) trademarks, which are contrary to the public order and general rules of morality.

3. Intellectual and industrial Designs

Intellectual and industrial designs are regulated under the Decree Law No. 554 for the Protection of Intellectual and industrial Designs (hereinafter the “Decree Law No. 554”). The Decree No. 554 aims at the protection of various features of a product, either in total or in part, including ornaments or other elements such as lines, colour, shape, texture, sound, elasticity, material or other characteristics of a product perceived by human senses.

Article 2/1 of the Decree Law No. 554 provides that protection is available to natural and legal persons domiciled or possessing an intellectual and industrial or commercial establishment within the territory of the Republic of Turkey or to persons entitled to file applications under the provisions of the Paris or Bern Conventions or the Agreement by which the World Trade Organization was established. Furthermore, individuals or legal entities other than those referred to in Article 2/1 shall enjoy protection in Turkey only if they are the nationals of the states which grant, in conformity with the reciprocity principle, legal or de facto protection to the nationals of the Republic of Turkey.

Pursuant to Article 5 of the Decree Law No. 554, a design may be protected only if it is novel and possesses an individual character. Article 7 of the Decree Law No. 554 states that the “individual character” will be attributable to the designs which create an overall impression of significant difference on the user from the overall impression created on the same user by any other design made public and registered earlier. Designs contrary to the public order and general rules of morality may not be protected. Furthermore, designs, in which the technical functions of the product prevail and deprive the designer of choosing and developing the characteristics and elements of the design freely, are excluded from the scope of protection.

4. Geographical Signs

Geographical signs are regulated under the Decree Law No. 555 for Protection of Geographical Signs (hereinafter the “Decree Law No. 555”). The Decree Law No. 555 aims at the protection of signs indicating the origin of a product which possesses a specific quality, reputation or other characteristics attributable to a place, area, region or country of origin. Pursuant to Article 15 of the Decree Law No. 555, the holder of a geographical design right will be entitled to prevent the following actions of third persons:

- (i) any direct or indirect commercial use of a registered name in respect of products similar or comparable to the products registered or any use of the name which will exploit the reputation of the registered name, or
- (ii) use of a name defining the true geographical place but conveying a false impression in the general opinion of public as to the origin of the product, or
- (iii) use of false and misleading indication or wording on the packaging or in the promotion or advertisement of the product as to its origin, nature or essential qualities, or
- (iv) the packaging of the product in a mode to mislead the public as to the origin of the product.

Pursuant to Article 2/1 of the Decree Law No. 555, geographical sign protection is available to natural and legal persons domiciled or possessing an intellectual and industrial or commercial establishment within the territory of the Republic of Turkey or

to persons entitled to file applications under the provisions of the Paris or Bern Conventions or the Agreement by which the World Trade Organization was established. Furthermore, natural or legal persons other than those referred to in Article 2/1 shall enjoy protection in Turkey only if they are the nationals of the states which grant, in conformity with the reciprocity principle, legal or de facto protection to the nationals of the Republic of Turkey.

Pursuant to Article 3 of the Decree Law No. 555, for the purposes of protection, geographical signs are divided into two groups as designation of origin and geographical indication. The name of a place, area or a region of a product's origin will be defined as "designation of origin", if

- (a) a product originates from a place, area, region or, in exceptional cases, a country, whose geographical boundaries have been defined; and
- (b) a product, the quality or characteristics of which, are essentially or exclusively due to the inherent natural or human factors of that place, area or region; and
- (c) a product, the production, processing and preparation of which take place within the defined boundaries of that place, area or region.

The name of a place, area or a region of a product's origin will be defined as "geographical indication", if

- (a) a product originates from a place, area or a region whose geographical boundaries have been defined; and
- (b) a product possesses a specific quality, reputation or other characteristics attributable to that place, area or region; and
- (c) a product, at least one of the activities of production, processing or preparation of which take place within the defined boundaries of that place, area or region.

Pursuant to Article 5 of the Decree Law No. 555,

- (a) names and symbols which do not conform with the descriptions mentioned in article 3 above; or
- (b) the names, which have become a generic/common name of the product; or
- (c) names of animal and plant species or similar names which are likely to mislead the public as to the origin of the product; or
- (d) symbols contrary to the public order and general principles of morality; or
- (e) names, which are not protected or whose term of protection has expired may not be protected.

5. Topographies of Integrated Circuits

No laws, decree laws or regulations exist on the protection of topographies of integrated

circuits in Turkey. However, serious legislative studies are being carried out, in the meantime, for the purpose of adopting an efficient and contemporary protection mechanism for topographies to be effective and enforceable in the near future.

In the meantime, topographies are protected under the general provisions of the Turkish Commercial Code with respect to unfair competition and Article 35 of TRIPS.

III. THE TURKISH PATENT INSTITUTE

1. In General

The Turkish Patent Institute (hereinafter referred to as the “T.P.I.”), a special governmental authority with administrative and financial autonomy and connected to the Ministry of Industry and Commerce, was established in 1994 in the city of Ankara, under the Decree Law No. 544 for the Establishment and Functions of the Turkish Patent Institute (hereinafter the “Decree Law No. 544”) to carry out the administration of intellectual and industrial property rights (except for topographies of integrated circuits). The T.P.I. is located at the address of Necatibey Caddesi No. 49 06440 Ankara, Turkey and its contact number is + 90 312 2325425.

2. Duties and Scope of Work

The scope of work and duties of the T.P.I, as enumerated in the Decree Law No. 544, is as follows:

- to perform and carry out registration procedures of intellectual and industrial property rights and to take any and all actions necessary for the protection of such rights under the relevant legislation; and
- to act as a mediator in license transactions and as an expert before courts; and
- to register and record license agreements and assignment transactions; and
- to monitor and follow the utilization of inventions, to evaluate and assess new technologies, to guide technology transfers and to collect archives; and
- to cooperate with institutions of a similar nature abroad and international institutions; and
- to represent Turkey before international institutions with the consent of the Ministry of Industry and Commerce; and
- to contribute, with a view to protecting the interests of the country, to the preparation of international treaties, to secure the implementation of such treaties within Turkey; and
- to ensure cooperation with institutions and establishments active in the field of technological research and development and with data banks, whether abroad or at home, to establish documentation centers and to submit such data and information to the public domain; and
- to issue various publications on intellectual and industrial property and to issue periodically the Turkish Intellectual and industrial Property Gazette; and
- to carry out the necessary activities for the guidance and information of persons and institutions at home in the field of intellectual and industrial property rights.

IV. FLOW AND OUTLINE OF PROCEDURE

1. Patents and Utility Models

1. Filing of an application with the T.P.I.
2. Examination and search by the T.P.I. as to whether or not the application is duly filed in form.
3. Examination and search by the T.P.I. as to the state of art.
4. Publication in the Patent Bulletin of both the application and the search report of the T.P.I. on the state of art.
5. Declaration by third persons of their observations against the published search report.
6. If desired by the applicant, exercise of examination by the T.P.I. as to whether or not the invention is novel, applicable to industry and surpasses the state of art.
7. Grant of patent or refusal of the application by the T.P.I. upon examination.

The flow of procedure for utility models is identical to that for patents. However, in utility models no search report on the state of art is drawn up by the T.P.I. unless expressly requested by the applicant.

2. Trademarks, Intellectual and industrial Designs and Geographical Signs

1. Filing of an application with the T.P.I.
2. Examination by the T.P.I. of the eligibility of the application.
3. Publication of the application in the relevant Bulletin.
4. Declaration by third persons of their observations and objections against provisional registration.
5. Acceptance or refusal of the application by the T.P.I.

V. APPLICATION

1. Patents and Utility Models

Pursuant to Article 11 of the Decree Law No. 551, the applications for the acquisition of patent rights are filed with the T.P.I. by the inventor or the successor(s) of the inventor or the representatives of the foregoing persons in compliance with Article 2/1 of the Decree Law No. 551, as explained hereabove in Section II/1. In the event that an invention is created by more than a single inventor, the application procedures will be fulfilled jointly and severally by the inventors, unless as otherwise agreed.

The application is filed together with the following documents:

- i. application petition including information as to the identification of the applicant, and
- ii. description of the invention, and
- iii. claim(s) of the applicant covering the elements of the invention for which protection is sought, and
- iv. drawings of the invention referred to in the description, and
- v. abstract of the invention, and
- vi. power of attorney, if application is filed through a proxy, and
- vii. circular of signature, if the applicant is a legal entity, and
- viii. original of the receipt reflecting the payment of the application fees.

Pursuant to Articles 49 and 50 of the Decree Law No. 551, applications with pre-emptive rights will be based on a prior application filed with the relevant authority of one of the Member States to the Paris Convention or on a national or international exhibition held in the Republic of Turkey or in one of the Member States to the Paris Convention. According to Article 49 of the Decree Law No. 551, the pre-emptive right is available to individual and legal entities who/which are the nationals of countries party to the Paris Convention, or otherwise, domiciled or possessing a commercial enterprise in one of the Member States. For the purposes of protection, the priority right has to be exercised by the applicant within twelve (12) months from the date of the earlier application in one of the Member States or from the date of display of the product in a national or international exhibition. Applications with pre-emptive rights will also be filed with all the foregoing documents but accompanied by

- (i) the receipt from a bank reflecting the payment of the application fees, and
- (ii) the priority certificate obtained by the applicant from the relevant competent authority of the Member State, where the application was filed earlier, or from the relevant competent authority of the place of exhibition, where the product was displayed, indicating the opening date of the exhibition and the date from which the product was displayed, and
- (iii) the Turkish translation of the priority certificate.

The application will be deemed to be finalised on the date, hour and minute of receipt by the T.P.I. or the relevant competent authority thereof of all the foregoing documents in compliance with the Decree Law No. 551 and the Regulation for the Implementation of the Decree Law No. 551 (“date of application”). Protection will commence from the date of application.

The documents required and the procedure followed for utility model certificate applications are identical to those required for patent applications, except for the issue of an application petition by the applicant. In utility models, the applicant does not draw up a petition, but merely fills out and submits to the T.P.I. the printed application petition obtained from the T.P.I.

2. Trademarks

The applications for the protection of trademarks are filed with the T.P.I. by the owner of the trademark or the representative of the same in compliance with Article 3 of the Decree Law No. 556, as explained hereabove in Section II/2.

The application is filed together with the following documents:

- i. application petition including information as to the identification of the applicant, and
- ii. trademark samples eligible for publication and duplication, and
- iii. list of the products and services, for which the trademark will be used, and
- iv. original of the receipt reflecting the payment of the application fees, and
- v. original of the receipt reflecting the payment of the class fees, and
- vi. power of attorney, if application is filed through a proxy, and
- vii. circular of signature, if the applicant is a legal entity, and
- viii. certificate reflecting the applicant’s business activity.

Pursuant to Articles 25 and 26 of the Decree Law No. 556, applications with pre-emptive rights will be based on a prior application filed with the relevant authority of one of the Member States to the Paris Convention or on a national or international exhibition held in the Republic of Turkey or in one of the Member States of the Paris Convention. According to Article 25 of the Decree Law No. 556, the pre-emptive right is available to individual and legal entities who/which are the nationals of the States party to the Paris Convention, or otherwise, domiciled or possessing a commercial enterprise in one of the Member States. For the purposes of protection, the pre-emptive right has to be exercised by the applicant within six (6) months from the date of the earlier application in one of the Member States or from the date of display of the product in a national or international exhibition. Applications with pre-emptive rights will also be filed with all the foregoing documents but accompanied by

- (i) the receipt from a bank reflecting the payment of the application fees, and
- (ii) the priority certificate obtained by the applicant from the relevant competent authority of the Member State where the application was filed earlier, or from the relevant competent authority of the place of exhibition where the product was displayed, indicating the opening date of the exhibition and the date from which the product was displayed, and
- (iii) the Turkish translation of the priority certificate.

The application will be deemed to be made on the date, hour and minute of receipt by the T.P.I. or the relevant competent authority thereof of all the foregoing documents in compliance with the requirements prescribed under the Decree Law No. 556 and the Regulation for the Implementation of the Decree Law No. 556 (“date of application”). Protection will commence from the date of application.

3. Intellectual and industrial Designs

Pursuant to Article 13 of the Decree Law No. 554, the applications for the protection of intellectual and industrial designs are filed with the T.P.I. by the designer or the successor(s) of the designer or the representatives of the foregoing persons in conformity with Article 2 of the Decree Law No. 554, as explained hereabove in Section II/3. In the event that a design is created by more than a single designer, the application procedures will be fulfilled jointly and severally by the designers, unless otherwise agreed.

The application is filed together with the following documents:

- i. application petition including information as to the identification of the applicant, and
- ii. description of the design, and
- iii. drawings or paintings or graphics or photographs of the design referred to in the description, and
- iv. original of the receipt evidencing payment of the application fees, and
- v. power of attorney, if the application is filed through a proxy, and
- vi. circular of signature, if the applicant is a legal entity.

Pursuant to Articles 29 and 30 of the Decree Law No. 554, applications with pre-emptive rights will be based on a prior application filed with the relevant authority of one of the Member States to the Paris Convention or on a national or international exhibition held in the Republic of Turkey or in one of the Member States of the Paris Convention. According to Article 29 of the Decree Law No. 554, the pre-emptive right is available to individuals and legal entities who/which are the nationals of the States party to the Paris Convention, or otherwise, domiciled or possessing a commercial enterprise in one of the Member States. For the purposes of protection, the pre-emptive right has to be exercised by the applicant within six (6) months from the date of the earlier application in one of

the Member States or from the date of display of the product in a national or international exhibition. Applications with priority will also be filed with all the foregoing documents but accompanied by

- (i) the receipt from a bank reflecting the payment of the application fees, and
- (ii) the priority certificate obtained by the applicant from the relevant competent authority of the Member State, where the application was filed earlier, or from the relevant competent authority of the place of exhibition, where the product was displayed, indicating the opening date of the exhibition and the date from which the product was displayed, and
- (iii) the Turkish translation of the priority certificate.

Pursuant to Article 28 of the Decree Law No. 554, application of several designs may be combined in a single application. However, in this case, the products in which the designs will be incorporated or to which the designs will be applied must belong to the same subclass or to the same set or composition of items under the Locarno Agreement Establishing an International Classification for Intellectual and industrial Designs.

The application will be deemed to be finalised on the date, hour and minute of receipt by the T.P.I. or the relevant competent authority thereof of all the foregoing documents in compliance with the Decree Law No. 554 and the Regulation for the Implementation of the Decree Law No. 554 (“date of application”). Protection will commence from the date of application.

4. Geographical Signs

Pursuant to Article 7 of the Decree Law No. 555, the applications for the protection of geographical signs are filed with the T.P.I. by the producers of a product, or consumer associations, or public institutions related with the product or with the geographical region, or the representatives of the foregoing persons in conformity with Article 2 of the Decree Law No. 555, as explained hereabove in Section II/4.

An application for the registration of a geographical sign will be filed with the following:

- i. application petition including information as to the identification of the applicant, and
- ii. the name of the product and the designation of origin or the geographical indication to be registered, and
- iii. the description of the product, and
- iv. the definition of the geographical area, and
- v. production techniques of the product, and
- vi. evidence that the product is in compliance with the definitions of “designation of origin” or “geographical indication”, and
- vii. information detailing the inspection structure, and

- viii. information detailing the labeling, marking and means of using the designation of origin or geographical indication, and
- ix. original of the receipt reflecting the payment of the fees, and
- x. circular of signature, if the applicant is a legal entity, and
- xi. power of attorney, if the application is made through a proxy.

Unlike the other intellectual and industrial property rights (i.e. patents, trademarks and intellectual and industrial designs), applications for the registration of geographical signs become made after publication of the application in the Official Gazette.

VI. EXAMINATION

1. Patents and Utility Models

If the documents to be submitted by the applicant for the purposes of application are produced in full to the T.P.I. by the applicant, the application will become fix and the T.P.I. will notify the applicant as to the registration of the application with the patent registry. Thereupon, the T.P.I. will make a preliminary examination on the documents produced by the applicant as to whether or not the requirements in respect of duplicability, paper size, margins, page numbers, line numbers and writing of the documents, and the drawings, formulas, tables, and terminology and symbols contained therein are duly met by the applicant. In case of any deficiencies in the formal requirements, the T.P.I. will notify the applicant for the remedy of the deficiencies within three (3) months. If the applicant fails in such remedy, the application will be refused by the T.P.I.

The application will, within eighteen (18) months from the date of application or the priority date, be published in the Patent Bulletin.

If the application is not deficient in any way or amended by the applicant, it will become ready for search by the T.P.I. In the search step, the applicant is obligated to request from the T.P.I. within fifteen (15) months from the application date or the priority date, a search concerning the state of art and pay the fees therefore, or otherwise, the application will be deemed to have been withdrawn. In the event, however, that the said fifteen months have expired in the course of the formal examination by the T.P.I. of the documents, the applicant will be entitled to request the performance of search by the T.P.I. within one (1) month from notification by the T.P.I. as to the eligibility of the application in form. The search report is drawn up by the T.P.I. or by the relevant search authority to be designated by the T.P.I. from amongst the internationally recognized search authorities and covers information as to the state of art and evaluates, simultaneously, the novelty of the invention. The search report is, subsequently, served on the applicant and published in the Patent Bulletin within three (3) months from the date of such service. Third persons may submit to the T.P.I. their observations on the published search report within six (6) months from the date of publication, accompanied by the evidences supporting their opinions. The T.P.I. conveys such observations to the applicant. The applicant is entitled to respond to the observations of third persons within three (3) months from the date he/it is notified of the event and, if it is deemed necessary, may amend within the same period his/its claim(s).

Under the Decree Law No. 551 there are two systems for the granting of patents:

- i. **granting of patent with examination:** Subsequent to the publication of the search report on the state of art, the applicant requests from the T.P.I. within six (6) months

after publication, the conduct of an examination. For the commencement of examination, the period of six (6) months prescribed in the Decree Law No. 551 for the objections to be raised by third persons must have expired. The T.P.I., thereafter, examines whether or not the invention is novel, surpasses the state of art and is applicable to industry. Only those inventions meeting the above mentioned criteria are patentable. If the applicant fails to request from the T.P.I. the grant of patent through the examination system, the provisions in respect of grant of patent with the non-examination system will apply. The protection procured by the examination system expires upon the lapsing of twenty (20) years.

- ii. **granting of patent with non-examination:** Subsequent to the publication of the search report on the state of art and the lapsing of the three (3) months for response by the applicant to the observations of third parties against the search report, the T.P.I., in line with the request of the applicant, grants the patent without conducting any examination. The granting of the patent is, thereafter, published by the T.P.I. in the Patent Bulletin. The protection procured by the patent with non-examination system expires upon the lapsing of seven (7) years. Upon the grant of patent, any and all documents with respect to the patent, the search report on the state of art, the observations of third persons and the response of the applicant thereto, are disclosed to public domain.

If the applicant claims pre-emptive right, the T.P.I. will hold a further examination as to whether or not the applicant is entitled to the right of pre-emptive. In this respect the T.P.I. will search whether or not the application including a pre-emptive right claim conforms with the requirements prescribed under Articles 49 and 50 of the Decree Law No. 551, as specified hereabove in Section V/1. Should the application lack the requirements under Articles 49 and 50, the application will be refused by the T.P.I.

As for utility models, the T.P.I. examines the compliance of the application with all the formal requirements. In the event of any deficiencies, the T.P.I. notifies the applicant regarding remedy of the deficiencies within three (3) months from the issue of notice by the T.P.I. Unless otherwise specially requested by the applicant, no search report on the state of art is issued for utility models nor exist the examination and non-examination systems, as available to patents. The utility model certificates procure protection for a period of ten (10) years.

2. Trademarks

Upon application, the T.P.I. conducts an examination as to whether or not (i) the application conforms to the formal requirements, and (ii) the applicant is entitled to seek protection, and (iii) grounds exist for outright rejection, and (iv) if claimed by the applicant, a pre-emptive right exists.

Initially, the T.P.I. conducts a preliminary examination on the conformity of the documents produced by the applicant with the formal requirements prescribed under the Decree Law No. 556 and the Regulation for the Implementation of the Decree Law No. 556, as explained hereabove in Section V/2. If the documents to be submitted by the applicant for the purposes of application are fully produced to the T.P.I. by the applicant, the application will be finalised and the T.P.I. will notify the applicant as to the registration of the application with the trademark registry. If, however, the application is deficient in the formal requirements, the T.P.I. will notify the applicant to remedy the deficiencies within three (3) months.

Notwithstanding the foregoing, if the deficiencies relate to the identification of the applicant or, the list of products and services for which the trademark will be used, or the trademark samples, or the receipt reflecting the payment of the fees, the T.P.I. will reject the application immediately. The remedy of the foregoing deficiencies will be deemed as a new application and the application date will be calculated accordingly.

In the event that the application is not filed by a person entitled to make an application under Article 3 of the Decree Law No. 556, as explained hereabove in Section II/2, the application will be rejected by the T.P.I.

If the application to conform to the formal requirements and is filed by the persons entitled to seek protection under the Decree Law No. 556, the T.P.I. will conduct another examination as to whether or not the symbols requested to be registered as trademark fall within the scope of grounds for outright rejection drawn up in Article 7 of the Decree Law No. 556, as explained hereabove in Section II/2. Unless the symbols conform with the requirements under Article 7, the application will be rejected by the T.P.I.

If the applicant claims pre-emptive right, the T.P.I. will hold a further examination as to whether or not the applicant is entitled to the right of pre-emptive. In this respect, the T.P.I. will search whether or not the application including a pre-emptive claim conforms with the requirements prescribed under Articles 25 and 26 of the Decree Law No. 556, as detailed hereabove in Section V/2. In the event that the application lacks the conformity requirements under Articles 25 and 26, the application will be refused by the T.P.I.

If the application is in full conformity with the foregoing requirements, it will be published in the Trademark Bulletin.

3. Intellectual and industrial Designs

Upon the filing of an application by the applicant, the T.P.I. will conduct an examination as to whether or not all the documents required under the Decree Law No. 554 and the Regulation for the Implementation of the Decree Law No. 554 are produced by the applicant to the T.P.I.

If any deficiencies exist in the application petition, drawings or paintings or graphics of the design or the original of the receipt reflecting the payment of the fees, the T.P.I. will notify the applicant for remedy thereof within one (1) month from the date of such notice. The date of application will then be deemed to be the date when these deficiencies are remedied by the applicant. Other deficiencies, however, which are excluded from the scope of the above-mentioned deficiencies, will have to be remedied by the applicant within three (3) months from the notice of the T.P.I. In this case, the date of application will be deemed to be the date when the application was originally filed. Unless the deficiencies are remedied by the applicant within the required periods, the T.P.I. will refuse the application.

If the application conforms with the formal requirements, the T.P.I. will conduct a secondary examination as to whether or not the product, for which the application is filed, falls within the scope of the definition of a design under the Decree Law No. 554. In the event that the product requested to be registered as an intellectual and industrial design may not be deemed as a design in the meaning of the Decree Law No. 554, the T.P.I. will reject the application.

If the applicant claims pre-emptive right, the T.P.I. will hold a further examination as to whether or not the applicant is entitled to the right of pre-emptive. In this respect the T.P.I. will search whether or not the application consisting of a pre-emptive right claim conforms with the requirements prescribed under Articles 29 and 30 of the Decree Law No. 554, as specified hereabove in Section V/3. Should the application lack the conformity requirements under Articles 29 and 30, it will be rejected by the T.P.I.

If the application is in full conformity with the foregoing requirements, it will be published in the Design Bulletin. However, pursuant to Article 35 of the Decree Law No. 554, in cases where the design is not marketed immediately, the applicant may request from the T.P.I. at the time of application, the deferment of publication in the Bulletin. In such case, the publication of the application will be postponed for a maximum period of thirty (30) months, from the date of application.

4. Geographical Signs

Pursuant to Article 9 of the Decree Law No. 555, examination by the T.P.I. in respect of a geographical sign application will be as to whether or not (i) all the documents required for application are produced by the applicant to the T.P.I., and (ii) the application conforms with the definitions of “designation of origin” and “geographical indication” prescribed under Article 3 of the Decree Law No. 555, as explained hereabove in Section II/4, and (iii) the product falls within the scope of Article 5 of the Decree Law No. 555, as explained hereabove in Section II/4, and (iv) the application is filed by the persons entitled to make an application under Article 7 of the Decree Law No. 555, as explained hereabove in Section V/4.

Article 10 of the Decree Law No. 555 and Article 6 of the Regulation for Implementation of the Decree Law No. 555 state that in the event of deficiencies in the foregoing requirements, the T.P.I. will notify the applicant as to the remedy of the deficiencies within three (3) months. Unless the deficiencies are remedied by the applicant within such period, the application will be rejected by the T.P.I.

Pursuant to Article 9 of the Decree Law No. 555, the T.P.I. may have the application examined by one or more public institutions or universities or independent private institutions which have expertise on the subject matter. The applications which are confirmed by the foregoing to conform with the aforementioned requirements will then be published by the T.P.I. in the Official Gazette and two of the top circulation national newspapers and in a local newspaper.

Subsequent to publication, the application will be registered with the geographical sign registry. However, such registration is provisional and will become finalised retroactively if and when no objection is raised by third persons against the application within six (6) months from publication in the Official Gazette.

VII. OBJECTION AND RE-EXAMINATION

1. Patents and Utility Models

In the examination system, after the publication of the search report on the state of art in the Patent Bulletin, third persons may raise objections to the T.P.I. in writing within six (6) months from the publication on the grounds that (i) the invention lacks novelty, or (ii) the invention does not surpass the state of art, or (iii) the description of the invention is not sufficient. The objections of third persons are communicated to the applicant by the T.P.I. The applicant then submits his/its counterclaims against the objections of third persons to the T.P.I. within three (3) months from the expiry of the period provided for the objections to be raised by third persons. Subsequent to the lapsing of the three months for submission by the applicant of his/its counterclaims, the T.P.I. commences an examination as to whether or not the patentability requirements are met by the applicant. Upon completion of the examination, the T.P.I. draws up a report evaluating the sufficiency of the application in substance. If the application lacks the patentability requirements as per the report of the T.P.I., the applicant either raises counterclaims against the report or remedies the deficiencies in accordance therewith within a period of six (6) months. With the lapsing of the six months, the T.P.I., upon examination of the counterclaims or remedies of the applicant, gives its final decision as to the acceptance, either totally or partially, or rejection of the patent registration.

In the non-examination system, upon grant of patent, any and all documents relating to the patent, the search report on the state of art, the observations of third persons on the search report and the response of the applicant to the observations of third parties are opened to public domain. The persons to the domain of whom/which the relevant documents were submitted may then file a request to the T.P.I. for the examination of the patent, at any time, within seven (7) years after the date of application. The owner of patent is also entitled to file such a request within the said period. In this case, the necessary examinations will be conducted by the T.P.I. in accordance with the provisions applied to the grant of patent with examination system. If the decision of the T.P.I., upon completion of the examination, is in favour of the applicant, the applicant will be granted a patent in accordance with the examination system and, accordingly, the validity of the patent will automatically be for a period of twenty (20) years.

As for utility models, third persons claiming that the utility model lacks novelty, or that the application documents do not contain an adequate description thereof, file an objection with the T.P.I. within three (3) months from the publication of the application. The applicant will then have a period of three (3) months for remedy of the deficiencies or submission of his/its counterclaims against the objections of third persons from notice by the T.P.I. to the applicant of the event. Upon examination of the counterclaims of the applicant or the remedy by same of the deficiencies, the T.P.I. will decide on the acceptance or refusal of the registration.

The decisions of the T.P.I. upon re-examination as to the acceptance or refusal of the registration may be appealed to the competent courts.

2. Trademarks

Pursuant to Article 34 of the Decree Law No. 556, upon publication of the application in the Trademark Bulletin, third persons such as, but not limited to, business organizations or experts, the names of which are indicated in the courts' lists, the Board of Advertising defined in the Law Concerning the Protection of Consumers, advertisement companies and bureaus, consumer organizations and any other relevant third persons, may submit to the T.P.I. their claims in writing as to the inconsistency of the application with the requirements prescribed under Article 7 of the Decree Law No. 556, as explained hereabove in Section II/2. The T.P.I. evaluates and finalizes the claims of the third persons.

Pursuant to Article 35 of the Decree Law No. 556, upon publication of the application in the Trademark Bulletin, third persons, who/which are likely to incur damages due to the registration of a trademark and therefore, have a legitimate interest, may file objections with the T.P.I., in writing, within three (3) months from the publication of the application on the grounds that (i) the trademark is ineligible for registration under Article 7 of the Decree Law No. 556, or (ii) a right of a person other than the applicant exists upon the trademark, or (iii) the applicant is in bad faith.

The objections of the third persons will be communicated to the applicant by the T.P.I. and vice versa. The Decree Law No. 556 sets forth no other procedures for examination of an objection.

The T.P.I. will then decide whether or not the trademark registration will be accepted or refused. The decisions of the T.P.I. upon re-examination may be appealed to the competent courts.

The protection secured by a registered trademark expires with the lapsing of ten (10) years. Those trademark registrations whose term of protection has expired upon the lapsing of ten (10) years may be renewed by their owner for subsequent ten-year-terms.

3. Intellectual and industrial Designs

Pursuant to Article 37 of the Decree Law No. 554, real persons, legal entities or the relevant business organizations may file objections with the T.P.I., in writing, within six (6) months from the publication of the application in the Design Bulletin on the grounds of invalidity of the registered design.

The T.P.I. will communicate the objection of the third person to the applicant. The applicant will thereafter be entitled to submit to the T.P.I. his/its counterclaims against the

objection of the third person.

The T.P.I. will then commence conducting an examination on the validity of the registered design. Article 38 of the Decree Law No. 554 sets forth that, during the re-examination procedures, the decisions of the T.P.I. as to the procedural deficiencies and to the remedy thereof by the applicant will have the effect of nullifying the procedures carried out by the applicant up to then or of the renewal of all the procedures by the applicant from the stage, at which the deficiencies started to occur.

Upon the completion of re-examination, the T.P.I. will decide as to whether the registration of the design will be accepted or refused. The decision of the T.P.I. may be appealed to the competent court.

The term of protection secured by a registered design expires with the lapsing of five (5) years. However, the registration of a design whose term of protection has expired may be renewed periodically for other five-year-terms upon each expiry, for a maximum duration of (25) years.

4. Geographical Signs

Pursuant to Article 11 of the Decree Law No. 555, any third person with a legitimate interest may object to the T.P.I. in writing within six (6) months from the publication of the application in the Official Gazette on the grounds that (i) the products fall out of the scope of the definitions of the terms “geographical indication” and “designation of origin”, and (ii) the product is not eligible to be registered as a geographical sign, and (iii) the persons filing the application are not entitled to application, and (iv) the application is not filed together with the required documents.

The T.P.I. will communicate the objections of third persons to the applicant and subsequently have both the application and the objection examined by one or more public institutions or universities or independent private institutions which have expertise on the subject matter.

The T.P.I., upon the examination carried out by the foregoing, will either accept or refuse the objection. The decisions of the T.P.I. as to the acceptance or refusal of the objections in line with the examination and evaluation of the aforementioned institutions may be appealed to the competent court.

If the decision of the T.P.I. is in favour of the applicant or no objections are raised by third parties within the required period, the geographical sign will become effective from the date of publication and will be entered in the geographical sign register.

The protection secured by a registered geographical sign is for an undefined term due to the anonymous character of geographical signs.

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