

# Legislative Decree No. 551, on the Protection of Patent Rights\*

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\* Turkish title: Patent Haklarının Korunması Hakkında Kanun Hükmünde Kararname, KHK/551.

Entry into force: June 27, 1995.

Source: T.C. Resmi Gazete No. 22326 of June 27, 1995.

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\*\*\* This Table of Contents is added for the convenience of the reader (Translator's note)

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The Council of Ministers, in exercise of the power conferred on it by Legislation No. 4113 of June 8, 1995, has adopted a resolution to issue provisions for the protection of patent rights on June 24, 1995.

## PART I

### INTRODUCTORY PROVISIONS

#### CHAPTER I

##### Purpose, scope and content, persons entitled to protection and definitions

###### Purpose and Content

**Article 1.** The purpose of this Legislative Decree is to protect inventions through the grant of patents or utility model certificates in order to promote inventions and the applications thereof to industry thereby contributing to technical, economic and social progress.

The present Decree establishes the principles, rules and conditions of granting patents or utility model certificates to inventions which merit industrial property titles.

###### Persons Entitled to Protection

**Article 2.** Any natural person or legal entity domiciled or conducting an industrial or commercial activity within the territory of the Turkish Republic, or entitled to file an application subject to the provisions of the Paris Convention shall benefit from the protection provided by the present Decree.

Any natural person or legal entity, not mentioned in paragraph 1 of this Article, who is a citizen of a state which, *de jure* or *de facto*, grants patents or utility model certificates to natural persons or legal entities of Turkish nationality, shall equally benefit from the above-mentioned industrial property titles in accordance with the principle of reciprocity.

###### Definitions

**Article 3.** For the purposes of the present Decree, "the Institute" shall mean the Turkish Patent Institute established by Legislative Decree No. 544.

For the purposes of the present Decree, "the Paris Convention" shall mean the Paris Convention for the Protection of Industrial Property of March 20, 1883.

### **The Precedence of International Conventions**

**Article 4.** Persons mentioned in Article 2 shall be entitled to claim the advantages of the provisions of international conventions promulgated in accordance with Turkish legislation, where they are more favourable than the provisions of the present Decree.

## **CHAPTER II**

### **Patentability requirements**

#### **Inventions Protected by Grant of Patent**

**Article 5.** Inventions which are new, which involve an inventive step and which are susceptible of industrial application shall be protected by granting patents.

#### **Unpatentable Subjects and Inventions**

**Article 6.** The following shall not be regarded as inventions within the meaning of this Decree.

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, methods and rules for performing mental acts, doing business or playing games;
- (c) literary and artistic works, scientific works, aesthetic creations and programmes for computers;
- (d) non-technical methods used in the collection, organization, presentation and communication of information;
- (e) methods of surgical or therapeutic treatment and of diagnosis applied to the human body or the bodies of animals.

The provisions of paragraph 1(e) of the present Article shall not apply to substances or compounds for use in any of these methods or for their process of production.

Patents shall not be granted for those subjects mentioned above in paragraph 1 of this Article where exclusive protection is requested.

Inventions below shall not be patentable:

- (a) inventions the subject matter of which shall be contrary to public order or morality;

(b) plant or animal varieties or essentially biological processes for the production of plants or animals.

### **Novelty**

**Article 7.** An invention shall be considered to be new if it does not form part of the state of the art.

The state of the art shall be held to comprise everything made available to the public anywhere in the world by means of a written or oral description, by use, or in any other way, before the date of the filing of the patent application.

The original texts of Turkish patent and utility model applications as filed, of which the dates of filing are prior to the date of the application of the patent and which were published on or after that date, shall be considered as comprised in the state of the art.

### **Disclosures not Affecting Patentability**

**Article 8.** Disclosure which otherwise would affect the patentability of an invention shall not be taken into consideration in granting patents if it occurred during the twelve months preceding the filing date of the application or, where priority is claimed, the priority date of the application and in the circumstances below:

(a) disclosure of the invention by the inventor;

(b) disclosure by an office and where the information

(1) was contained in another application filed by the inventor and disclosed by the said office when it should not have been disclosed,

(2) was contained in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor, or

(c) disclosure by a third party which obtained the information directly or indirectly from the inventor.

Pursuant to paragraph 1 of the present Article, any person who is entitled to be granted a patent at the date of filing the application shall be deemed to be "the inventor".

Consequences arising from the application of the provisions of paragraph 1 of this Article is not subject to time limits and may be invoked at any time.

Where the applicability of paragraph 1 is contested, the party claiming its applicability shall have the burden of proving that the conditions are met or are expected to be met.

#### **Inventive Step**

**Article 9.** An invention shall be considered as involving an inventive step when it does not result from the state of the art in a manner obvious to a person skilled in the art.

#### **Susceptibility of Industrial Application**

**Article 10.** An invention shall be regarded as susceptible of industrial application when its object can be manufactured or used in any form of industry, including agriculture.

### **PART II**

#### **RIGHT TO A PATENT**

#### **USURPATION OF THE RIGHT AND INDICATION OF THE INVENTOR**

#### **Right to a Patent**

**Article 11.** The right to a patent shall belong to the inventor or to his successors in title and it shall be transferable.

Where an invention has been made jointly by a number of persons, unless agreed otherwise, the right to obtain a patent shall belong to them jointly.

Where the same invention has been made independently by various persons at the same time, the right to a patent shall belong to the person who is the first to file an application, or whose application bears an earlier priority date.

Until otherwise proved, the first person to apply for a patent shall be assumed to be authorized to exercise the right to a patent.

#### **Usurpation**

**Article 12.** During the procedure for the grant of a patent, the person who claims to be the rightful owner of the right to a patent, in accordance with the

provisions of paragraph 1 of Article 11, may bring an action to contest the applicant's right to a patent pursuant to the provisions of Article 129. The claim that the right to the patent does not belong to the applicant shall not be made before the Institute. Where the action for ownership of right results in favour of the applicant, the owner of the right may request the fulfilment of the following conditions within three months after the judgment has become *res judicata*:

(a) continue the application procedure, substituting his application for the former patent application that is the subject matter of the legal action where usurpation is claimed;

(b) file a new patent application for the same invention, benefiting from the same priority. This application shall take effect as of the date of the first application. In such cases the application where usurpation has occurred shall be invalid;

(c) request that the application where usurpation has occurred be rejected.

The provisions of Article 45, paragraph 3 of this Decree shall apply to any new application filed under the provisions of paragraph 1 of the present Article.

Unless the plaintiff consents, the application may not be withdrawn until final judgment is given to determine the right to obtain a patent, subject to the provisions of paragraph 1, above. After the application has been published, the Court shall order the patent procedure suspended until the judgment has become *res judicata*, where the plaintiff's claim has been rejected, or for a period of three months from the date of final judgment, where the plaintiff's claim is accepted.

### Usurpation of Patent

**Article 13.** Where a patent has been granted to a person other than the rightful owner according to the provisions of paragraph 1 of Article 11, the person claiming to have true ownership may claim transfer of ownership of the patent and bring legal action, without prejudice to any other corresponding rights or claims.

Where a person has the right to part of a patent only, he may claim co-ownership of the patent and take legal action in accordance with the provisions of paragraph 1 of the present Article.

The right of action and the claims mentioned in paragraphs 1 and 2 of this Article may be exercised within a period of two years from the date of publication of the grant of the patent, but where bad faith is involved, until the termination of the period of protection of the patent.

For the purposes of notifying third parties, the filing of a judicial claim to exercise the action mentioned in this Article shall be recorded in the Patent Register, together with the final judgment or any other form of termination of the procedure initiated as a result of the said claim, at the request of the interested party.

### **Consequences of Termination of Usurpation**

**Article 14.** Where a change in ownership of a patent takes place subject to the provisions of Article 13, any license and other rights of third parties in the patent shall be cancelled when the change is recorded in the Patent Register.

Both the owner of a patent and the holder of a license obtained before the filing of a judicial claim who, prior to its registration have worked the invention or have taken effective steps for that purpose, may continue or commence working it, provided that they request the new owner entered in the Patent Register to grant a non-exclusive license.

The prescribed period within which the request may be made shall be two months in the case of the previous owner who is mentioned as the owner of the patent in the Register, or four months in the case of the licensee. The above-mentioned periods shall commence after the interested parties have been notified of the registration of the rightful owner by the Institute.

The license granted in accordance with paragraph 2 of the present Article shall be for an appropriate period and under reasonable conditions. The said period and conditions shall be fixed through the procedure laid down in the present Decree with regard to compulsory licenses.

The provisions set out in paragraphs 2 and 3 shall not apply where the owner of the patent or the licensee acted in bad faith at the time they commenced working the invention or taking steps to do so.

### **Indication of the Inventor**

**Article 15.** The name of the inventor shall be indicated in the patent. As far as the owner of the patent application or of the patent is concerned, the inventor shall have the right to be indicated as the inventor and to have his name mentioned.



PART III

EMPLOYEE INVENTIONS

CHAPTER I

**Inventions of the employees employed under a contract covered by private law**

**Concept of Employee Invention**

**Article 16.** Employee inventions within the meaning of this Decree are the inventions that may be protected by patents or utility model certificates.

Any technical improvement proposals shall not be considered as protectable by patents or utility model certificates.

Within the meaning of this Decree, an employee is a person who is employed by another person to perform a service specified by the employer to whom he is directly responsible and who has personal liability to fulfil the aforementioned service in accordance with the provisions of a contract or a similar legal obligation. Intern students or trainees are also considered as employees according to the provisions of this Decree.

**Service Inventions and Independent Inventions**

**Article 17.** In accordance with the provisions of this Decree, employee inventions are classified as service inventions and independent inventions.

Inventions made during the employment of an employee as a requirement of the employee's professional activity in an enterprise or in a public administration, based, in large measure, on the experience and expertise acquired as a result of the activities of the said enterprise or administration shall be classified as service inventions.

Inventions which remain outside the scope of the provisions of paragraph 2 above will be deemed to be independent inventions. Independent inventions shall be subject to the provisions of Articles 31 and 32.

**Service Inventions and Obligation to Notify**

**Article 18.** An employee who makes a service invention shall duly inform his employer in writing as soon as possible. In case the invention is made by more than one employee, this information may be submitted jointly to the

employer. The employer shall duly inform the employee or employees of the receipt date of the notification in writing as soon as possible.

The employee shall disclose the technical problem, solution provided and the steps taken to reach that solution in his notification. The employee shall provide the employer with the drawings of the invention, if any.

In the notification, the employee shall indicate prior experience and expertise available at his workplace and of which he has made use, any contribution by other employees and the manner thereof, and any instructions he has received as well as the extent and nature of his own contribution.

The employer shall inform the employee of any deficiencies in his notification and ask for them to be rectified within two months. If the employer fails to do this within the period prescribed, the original notification of the employee made in accordance with paragraph 2 of the present Article will be legally effective even where it does not fulfil the requirements.

The employer shall provide the employee with any means to help him prepare the notification in accordance with the provisions of this Decree.

#### **The Right of the Employer to the Invention**

**Article 19.** The employer may claim full or partial ownership of the service invention.

The employer shall communicate his claim to the employee in writing within four months of the receipt of employee's notification.

#### **Effects and Consequences of the Claim**

**Article 20.** If the employer claims full ownership of the invention, the said rights shall belong to the employer on the date of receipt of the pertinent notification by the employee.

If the employer claims partial ownership of the invention, he may only use the invention based on that partial claim. However, if this use creates serious difficulties for the employee in exploiting his invention, the employee may ask the employer either to take over full ownership or to renounce his rights in his favour.

Where the employee works his invention in any form, before the employer has claimed any rights over it, the acts performed will be ineffective insofar as they infringe the rights of the employer.

**Service Inventions which Acquire an Independent Status**

**Article 21.** Service inventions shall become independent under the following circumstances:

(a) if the employer has released the service invention in a written document;

(b) if the employer claims partial ownership of the invention;

(c) in case the employer has not replied to the employee's notification within four months as of the receipt date in accordance with the provisions of Article 18 or within two months as of the date of the proposal according to Article 20, paragraph 2.

The conversion of the invention into an independent invention, in accordance with paragraph (b), shall not affect the right of use of the employer mentioned in Article 20, paragraph 2.

Notwithstanding Articles 31 and 32, the employee shall have the right to use his invention without any restraint after it has become an independent invention.

**Remuneration in Case of a Claim for Full Ownership**

**Article 22.** If the employer claims full ownership, the employee shall have the right to claim remuneration for his invention.

In calculating the amount of the remuneration, the profitability of the invention, the position occupied by the employee and the share of the enterprise in the realization of the invention shall be taken into account.

**Remuneration in Case of a Claim for a Partial Ownership**

**Article 23.** In case the employer makes profit from the use of the invention, over which he claims partial ownership, the employee shall have the right to claim remuneration. The remuneration will be calculated according to Article 22, paragraph 2.

Where the employer has claimed a right over the invention, he cannot refrain from paying remuneration by claiming that the invention does not have financial value. However, where a judicial decision has been obtained, as a result of a court case brought by or against the Institute, that the invention does not merit protection, the employee may not claim remuneration. The claim of the employee for remuneration may endure until the time when final judgment is reached.

### **Regulations Concerning Determination of Remuneration and Arbitration Procedure**

**Article 24.** The remuneration for employee inventions and the procedure for arbitration in case of disagreement will be determined by the Regulations, prepared by the Ministry of Labour and Social Security, after consultation with authorized professional associations of employers and employees, and issued within three months from the date on which this Decree enters into force.

### **Procedure for Calculating the Amount of the Remuneration**

**Article 25.** Following the claims of the employee for partial or full ownership, the amount of remuneration and the terms of payment shall be determined in accordance with the provisions of the Regulations mentioned in Article 24.

Where no agreement has been reached for remuneration and the terms of payment within thirty days, in accordance with the provisions of the Regulations, these shall be fixed within sixty days by arbitration.

The arbitration decision shall be binding for both parties.

If the invention was made jointly by more than one employee, the amount of remuneration and terms of payment will be fixed for each of the employees separately in the manner described above.

Where there are relevant provisions in the employment contract, those provisions which are favourable to the employee shall be applied.

### **The Obligation of the Employer to Apply for a Patent Within the Country**

**Article 26.** The employer shall have the right and obligation to apply to the Institute to obtain a patent for the invention of which he has been notified. However, in cases where the purpose of the invention would be served more effectively by placing it under the protection of a utility model certificate, the employer has to apply for such a certificate as soon as possible.

The employer shall not be obliged to apply for protection for a service invention, if

- (a) the service invention has become an independent invention;
- (b) the employee has agreed not to apply for a patent for his invention;
- (c) the protection of trade secrets prevents application for a patent.

If the employer does not apply for a patent for the invention of which he has claimed full ownership and if he persists in not applying within the period set by the employee, the employee may apply to the Institute in the name and on behalf of the employer for protection for the invention.

If the service invention has become an independent invention, then the employee shall have the right to apply for a patent for himself. In cases where the employer has applied for a patent for the service invention, before the invention became an independent invention, any rights deriving from the said application shall have to be transferred to the employee.

#### **Applying for a Patent in a Foreign Country for a Service Invention**

**Article 27.** If the employer has claimed the right to full ownership, he may apply for a patent to have the invention protected in any foreign country.

The employer, at the request of the employee, shall declare the invention as an independent invention for countries where the employer does not want to obtain a patent and provide the employee with help for the patent application. The invention shall be released within a reasonable period of time so as not to exceed the priority period recognised by international conventions.

While transferring the right to the employee to obtain foreign patents, the employer may keep a non-exclusive right to himself to use the patent in the said countries in return for a reasonable amount of remuneration and shall have the right to claim protection for his interests deriving from the rights he has reserved in the aforementioned countries.

#### **The Rights and Obligations of the Parties During the Procedure for Grant of Patent**

**Article 28.** Upon the request of the employee, the employer is obliged to provide the employee with copies of the patent application for the service invention and inform him of the developments in the proceedings during the course of examination.

The employee is obliged to provide the employer with the necessary information to help him obtain the patent.

#### **Obligations Resulting from Right to Patent or Application Thereof**

**Article 29.** If the employer decides not to proceed with his application for a patent or wishes to withdraw the application before paying the requested remuneration, he has to communicate this decision to the employee. Upon the

request of the employee, the employer shall transfer the patent right or the substantiating documents of the patent application to the employee at the cost of the latter. If the employee does not reply to the employer's notification within three months from the receipt of the notification, the employer may withdraw his claims over the rights deriving from the patent application or patent.

Consequent upon the notification mentioned in paragraph 1 above, the employer shall have the right to reserve a non-exclusive right to himself in return for a reasonable amount of remuneration.

### **Evasion of Patent Application**

**Article 30.** The employer shall have the right to keep the invention, which he deems to merit legal protection and about which he has been notified, secret by not applying for a patent if such is necessary for the benefit of the enterprise.

When calculating the remuneration for an invention as specified in paragraph 1 of the present Article, the estimated economic losses of the employee shall be taken into account.

### **Independent Inventions and Obligation to Notify the Employer**

**Article 31.** The employee shall be obliged to inform the employer, immediately, of any independent invention he has made during the period of his employment contract. In this statement the invention, and if necessary, the means and method to realize the invention must be clearly explained so as to allow the employer to decide whether the invention is to be considered as an independent invention or not.

Where the employer does not contest the independence of the invention within three months as of the date of the employee's notification, he may not claim subsequently that the invention was a service invention.

Where it is obvious that the invention of the employee cannot be utilized in the workplace, he shall not have the obligation to notify the employer.

### **Obligation to Make an Offer**

**Article 32.** Where an independent invention falls within the field of activity of an enterprise or where an enterprise is taking concrete steps to conduct business in the field related to the invention, the employee shall be obliged to offer the employer the opportunity to make use of his invention, without recognizing him the right to full ownership and under convenient conditions,

before working the invention in any other manner during the period of the service relationship. The employer may make this offer in the notification he is required to make under the provisions of Article 31, paragraph 1.

The employer shall lose his right of priority with regard to the invention, if he does not reply within three months as of the date of receipt of the offer.

Where the employer accepts the offer made by the employee within the given period but does not agree with the proposed conditions, the conditions shall be determined by the Court at the request of the parties involved.

Where significant changes occur subsequently in the basic conditions that had an influence on the determination of the remuneration and other aspects of the contract, the employer or the employee shall have the right to request the Court to adapt the contract to the new conditions.

### **Proposals for Technical Improvement**

**Article 33.** In accordance with the provisions of this Decree, where the employee informs the employer in writing of any proposals for technical improvement that cannot be protected by a patent or utility model certificate, the employer shall be obliged to pay remuneration to the said employee in return for the use of the technical improvements he has made. The provisions of Article 18, related to the obligation of notification, and of Articles 22 and 25 concerning the calculation of remuneration shall apply also to service inventions by analogy.

Other matters related to the technical improvement proposals shall be regulated by means of individual or collective agreements.

## **CHAPTER II**

### **General provisions regarding employee inventions**

#### **Obligations Imposed by the Provisions Regarding Employees**

**Article 34.** The provisions of this Decree which deal with employees shall not be subject to any amendments contrary to the interests of the employees. The parties concerned shall be free to enter into agreements, with regard to service inventions after the filing of the patent inventions, and, in cases where independent inventions or proposals for improvement are concerned, after the employer has been duly notified by the employee.

### **Requirement of Conformity with Principle of Equity**

**Article 35.** The agreements duly concluded between the employer and the employee concerning service inventions, independent inventions and technical improvement proposals, even in cases where they do not contravene the obligations imposed by the provisions regarding employees, shall not be legally effective if they are inequitable. The same applies to the remuneration as well.

Where the parties have not claimed unfairness of remuneration or contract, in writing and within six months as of the expiry date of the contract of employment, claim of inequity cannot be made.

### **The Obligation to Maintain Secrecy**

**Article 36.** The employer shall be obliged to keep the data and information concerning the invention that the employee conveys to him secret so long as necessitated by the protection of the justified interests of the employee.

The employee shall be obliged to keep the service invention secret unless the invention has become an independent invention.

In accordance with the provisions of the Decree, any person, other than the employer or employee, who possesses information concerning the invention shall not disclose the invention to others nor make use of it himself.

### **Effect of the Obligations**

**Article 37.** The general obligations, arising from the service relationship between employer and employee, shall not be affected by the provisions regarding employee inventions and technical improvement proposals, unless the release of invention produces other effects.

The obligations and rights due to employee inventions and technical improvement proposals shall not be affected by the termination of the employment contract.

### **Employees' Preemption Rights**

**Article 38.** Where the employer becomes insolvent and the trustees in bankruptcy decide to assign the invention separately from the enterprise, the employee shall have prior right to acquire the invention which he has made and over which the employer has claimed full ownership.

The remuneration to be paid to the employees in return for their inventions and technical improvement proposals shall be considered as being due to preferential creditors. The trustees in bankruptcy shall pay preferential creditors *pro rata*.



### CHAPTER III

#### **Inventions made by employees of institutions of public service**

##### **Inventions and Technical Improvement Proposals Made by Civil Servants**

**Article 39.** The provisions governing the inventions and technical improvement proposals of the employees, whose employment relationship is subject to the terms of private law, shall be applied to civil servants, employed in state institutions with a general, annexed or special budget or in state economic enterprises and subsidiary partnerships without prejudice to special arrangements previously agreed upon.

##### **Inventions Made by Military Personnel**

**Article 40.** The provisions mentioned above shall apply to the inventions made by military personnel.

##### **Inventions Made by Academic Personnel**

**Article 41.** Notwithstanding Articles 39 and 40, the inventions made by the academic personnel employed at faculties and schools of higher learning attached to universities shall be considered as independent inventions.

The provisions of Articles 31, 32 and 34 shall not apply to these inventions. The titles of the academic personnel shall be defined by the provisions of the Higher Education Law.

Where a higher institution of learning provides special equipment at its own cost for research, conducted by the academic personnel concerned, which has resulted in the invention, the inventor shall be obliged to notify the institution of the working of his invention and the profits if any. The institution may require a reasonable amount of remuneration within three months from the date of written notification. However this may not exceed the amount of the expenditure of the institution.

### PART IV

#### GRANTING OF PATENTS

### CHAPTER I

#### **Filing and requirements for patent applications**

##### **Patent Application and the Enclosures**

**Article 42.** In order to obtain a patent, it shall be necessary to file an

application comprising the followings documents, the form and content of which have been specified in the Regulations:

- (a) a written application;
- (b) a description of the subject matter of the invention;
- (c) the claim or claims comprising the element or elements of the invention for which protection is sought;
- (d) the drawings to which the description, the claim or claims refer;
- (e) an abstract;
- (f) a certificate attesting that the fee for the application has been duly paid.

Where, subject to Article 121, an addition to a patent is being applied for, the number of the said patent or patent application to which the addition refers shall be indicated.

For a patent application to be effective it shall be subject to the payment of the application fee laid down in the present Decree at the time of the application or within seven days thereof without prior notification. The application shall be deemed to be withdrawn where the application fee has not been paid within the said period.

All documentation filed with the Institute together with the patent application or subsequent thereto shall be in conformity with the provisions laid down in the Regulations pertinent to the present Decree.

When the application is made, the description and the claim or claims may be submitted in English, French or German. A period of one month, without any need for notification, shall be allowed for their translation into Turkish and their submission to the Institute or to an authorized office recognized thereby. For this procedure the fee prescribed in the Regulations shall be payable.

#### **Determination of the Filing Date**

**Article 43.** The date and the exact time of filing shall be that upon which the particulars below, the form and content of which are specified in the Regulations, are submitted to the Institute or the offices authorized thereby:

(a) the written application, notwithstanding that it is not in accordance with the formal requirements laid down in the present Decree and the Regulations, together with the description, the claims or claims written in Turkish or in one of the languages specified in Article 42;

(b) the drawings to which the description and the claim or claims refer.

Where during the examination of the patent application, the subject matter of the invention, for which a patent is requested, is either totally or partly changed, the date of filing shall be to be that on which an application for the change was made.

#### **Obligation to Indicate the Inventor in the Application**

**Article 44.** The inventor shall be indicated in the application. Where the applicant is not the inventor or is not the sole inventor, the applicant shall state in the application how he acquired the right to the patent from the inventor or inventors.

The patent procedure shall not commence where the inventor is not indicated or where a statement is not made as to how the right to the patent is acquired.

#### **Unity of the Invention**

**Article 45.** Patent applications may cover either a single invention or a series of inventions so related one to the other that they form a single overall inventive concept.

Applications that are not in accordance with the provisions laid down in paragraph 1 of the present Article shall be divided in accordance with the provisions prescribed in the Regulations.

Divided applications shall have the same date of filing as the original application provided that their subject matter was already contained therein. Where a right of priority has been claimed in the original application, the priority or priorities shall be granted for each of the divided applications.

#### **Clarity of description**

**Article 46.** The description shall be written in a sufficiently clear and comprehensive manner to enable a person skilled in the art to carry it out.

Where the invention refers to a microbiological process for which the microorganism is not available to interested parties, the description shall only be deemed to fulfil the requirements specified in Paragraph 1 of the present Article if the following conditions are met:

- (a) the description contains the information concerning the characteristics of the microorganism;
- (b) the applicant has deposited, no later than the date of filing, a culture of

the microorganism with an authorized institution established in accordance with the relevant international conventions.

The said institution shall be designated in the publication of the patent application in accordance with paragraph 2 of Article 55.

### **Patent Claims**

**Article 47.** The application may contain one or several claims.

The claim or claims shall define the elements of the invention for which protection is sought. Each and every claim shall be clear and concise. The claim or claims shall be based on the description. The claim or claims shall not extend beyond the scope of the invention specified by the description. The claim or claims shall be written in accordance with the provisions laid down in the Regulations.

The owner of the application shall, however, be free to prepare the claim or claims in any other form.

### **Abstract**

**Article 48.** The abstract of the invention shall be exclusively used for technical information purposes and may not be taken into account for any other purpose.

In particular, it may not be used to define the scope of the protection sought nor to delimit the state of the art. The Institute may modify the abstract where it considers it necessary in order to provide better information to third parties. Such modification shall be communicated to the owner of the application.

### **Priority Rights Based on International Conventions**

**Article 49.** Any natural person or legal entity, belonging to a member country of the Paris Convention or who is domiciled or has an active commercial establishment in a member country and has filed an application for a patent or utility model certificate in any of the aforementioned countries, shall, when filing a patent or utility model certificate application in Turkey for the same invention, enjoy the right of priority for a period of twelve months as of the date of application filed in any of the above-mentioned countries.

Where the right of priority is not exercised within the prescribed period of twelve months in accordance with paragraph 1 of the present Article, it shall lapse.

Where, by virtue of priority, an application is filed within the period prescribed in paragraph 1 of the present Article, applications filed by third parties as well as patents and utility model certificates granted in respect thereof shall be ineffective as from the date of priority.

Any natural person or legal entity, that is a national of a country entitled to benefit from the principle of reciprocity stated in paragraph 2 of Article 2, shall enjoy a right of priority in accordance with the provisions of the present Article.

Where any natural person or legal entity, that is a national of a country member of the Paris Union, has duly filed an application for a patent in a country which is not a member of the Paris Union, shall, in accordance with the provisions of the present Article, enjoy the right of priority for the said application.

The right of priority shall have effect as of the date when an application for a patent or utility model certificate is filed.

#### **Priority Rights Deriving from the Right to Display at Exhibitions**

**Article 50.** Natural persons or legal entities, described in Article 49, paragraph 1 above, who display a product which is the subject of the patent or utility model certificate at a national or international exhibition held in Turkey or at an official or officially recognized exhibition held in a country member to the Paris Convention, shall enjoy the priority right to apply for a patent or a utility model certificate within a period of twelve months from the exhibition date.

Where the product which is the subject of the patent or utility model certificate has been openly displayed at the site of the exhibition before the official opening date, the prescribed period shall start from the date of the aforementioned display; and, the provisions laid down in paragraphs 2 and 3 of Article 49 shall apply *mutatis mutandis*.

The competent authorities of the exhibitions held in Turkey, as specified in paragraph 1 of the present Article, shall issue those persons who display their products with a document providing a complete and clear representation of the said product as seen from the front, back and sides as well as from below, together with at least four photographs; the document shall indicate full details of the product, the date on which the product was displayed and the official opening date of the exhibition.

In order to enjoy priority rights concerning patents or utility model certificates for products displayed at exhibitions held in foreign countries, a

document, including the particulars cited in paragraph 3 of this Article and obtained from the competent authorities of the country where the exhibition was held, must be submitted to the Institute.

The product, for which a patent or utility model application has been filed or a patent or utility model certificate has been granted, may be displayed at an exhibition held in Turkey and returned to its country of origin after the exhibition.

Where more than one application has been filed for a product which is the subject of a patent or a utility model certificate and where products, identical or similar to the aforementioned product have been displayed at several exhibitions and at different times, the person who displays the product first, or, in cases where the product is displayed simultaneously by several persons, the person who files the first application shall have priority.

#### **The Effect of Priority Rights**

**Article 51.** Priority rights shall be effective as of the date of application where priority is claimed in accordance with the provisions of Articles 49 and 50.

#### **Claim for Priority Rights and Documentation Thereof**

**Article 52.** The owner of the application who wishes to claim priority may request it at the time of filing or within two months thereof. A claim for priority shall be deemed not to have been made where the applicant has failed to submit a declaration of priority within three months from the date of the filing of the patent application.

Multiple priorities may be claimed for an application filed in foreign countries irrespective of the latter having been filed in several countries.

Multiple priorities may be claimed for the same patent application. In such cases the periods shall be calculated from the earliest date of priority. Where one or several priorities are claimed, the right of priority shall only protect those aspects of the application that are contained in the application or applications whose priority has been claimed.

Where certain aspects of the invention, for which priority is claimed, do not appear in the claim or claims set out in the earlier application, priority for these aspects may still be granted if they are shown in a sufficiently clear and precise manner in the description.

## CHAPTER II

### Verification of the application

#### **Rejection of the Application**

**Article 53.** A date of filing shall be obtained by fulfilment of the requirements specified in Article 43 and the payment of the corresponding fee. The Institute shall reject applications that do not meet the requirements of Article 43, or for which the corresponding fee has not been paid within seven days, or where the Turkish translations of the description, the claim or claims written in one of the languages stated in Article 42 have not been submitted within one month; and, it shall inform the interested party accordingly.

#### **Verification as to Formal Requirements**

**Article 54.** When the date of filing has been confirmed, the Institute shall verify whether the application meets the formal requirements laid down in Articles 42 to 52 and those prescribed in the Regulations.

The adequacy of the description, the claim or claims and drawings shall not be the subject of verification. The Institute shall verify whether or not the subject matter of the application meets the requirements of patentability and is susceptible of industrial application in accordance with Articles 6 and 10 of the present Decree. However, where the invention, which is the subject matter of the application, clearly and obviously lacks novelty or is not susceptible of industrial action, the Institute shall, after hearing the interested party reject the application, giving justified reasons.

Where the result of the examination shows, subject to the provisions of Article 53, the application has formal defects or that its object is not patentable, the patent procedure shall be suspended and the applicant shall be allowed the period prescribed in the Regulations to rectify the defects and to put forward his objections to the Institute.

The applicant may, during the above procedure, modify his claim or claims or divide the application into several applications.

Where the Institute has not accepted the objections of the applicant raised against its decision that the object of the application is not patentable, or where it deems that the indicated defects have not been rectified in accordance with the formalities and requirements prescribed in the Regulations, it shall totally or partly reject the application and the claim or claims therein.

Where, pursuant to the provisions of the present Article, the examination by the Institute reveals that there are no existing defects with regard to formal

requirements, or where the said defects have been rectified in accordance with the provisions of the present Decree, the Institute shall inform the applicant that he should request the establishment of a report on the state of the art within the periods laid down in Article 56, if this has not already been done.

### **Publication of the Application**

**Article 55.** Eighteen months after the date of filing the application or the date of priority claimed, the application, in accordance with the provisions of the Regulations, shall be published and made available to the public. This procedure shall take place when verification has been carried out by the Institute as to the fulfilment of formal requirements in accordance with the provisions of Article 54 and the applicant has requested the report on the state of the art referred to in Article 56.

Applications shall be announced in conformity with the formal requirements and the specifications laid down in the Regulations, in the pertinent bulletin published periodically.

At the request of the applicant, the patent application may be published by the Institute, in accordance with the provisions of this Article before the expiration of the period of eighteen months referred to in paragraph 1 of the present Article.

### **Request for the Search on the State of the Art and Payment of the Search Fee**

**Article 56.** Within fifteen months of the date of filing, the applicant shall request the Institute to carry out a search on the state of the art and shall pay the relevant fee.

Where priority has been claimed, the period of fifteen months shall be calculated from the date of priority.

Where the period established in paragraph 1 of this Article has already expired at the time of making the notification referred to in paragraph 6 of Article 54, the applicant may request a search to be conducted on the state of the art during the month following such notification.

Where the applicant does not request the search to be made in accordance with the provisions of this Article, the application shall be deemed to have been withdrawn.

The establishment of a report on the state of the art may not be requested for an addition unless a report has been requested simultaneously for the



principal patent and a search has been carried out or requested to be made previously or simultaneously for earlier additions. Paragraphs 1 to 4 of this Article shall also apply to additions to patents.

#### **Establishment of the Report on the State of the Art, Transmission and Publication**

**Article 57.** When verification of the application provided for in Article 54 has been carried out and the applicant's request for a search into prior art has been received in accordance with Article 56, the Institute shall proceed to conduct a search.

The report on the state of the art shall mention those elements of the state of the art that shall be taken into consideration in order to assess the novelty and inventive step of the invention that is the subject matter of the application.

The search report shall be based on the claim or claims in the application and shall take into account the description and, where appropriate, the drawings submitted shall be prepared by the Institute or an internationally recognized searching authority designated thereby.

After the report on the state of the art has been established, it shall be transmitted to the applicant. The copies of the patent or patents and publications referred to in the report shall be enclosed therein.

At the expiration of the period of three months, allowed to the owner of the application as of the transmission of the search report in accordance with the provisions of Article 62, the report will be published by the Institute.

The publication of the search report and the applicant's preference as to whether the grant of patent shall be with or without prior examination shall be announced in the relevant bulletin.

Unless it has already been published, the patent application shall be published at the same time as the report on the state of the art.

#### **Failure to Establish the Report on the State of the Art Due to Lack of Clarity**

**Article 58.** Where lack of clarity in the description, or the claim or claims wholly or partly prevent the establishment of the report, the Institute shall request the applicant to rectify the defects. Where, the lack of clarity is not remedied within the period prescribed in the Regulations, the Institute shall, without prejudice to the applicant's right to appeal, inform the applicant that the search report cannot be established. Where partial lack of clarity exists, the

report shall be established by taking into account only the claim or claims that are sufficiently clear.

#### **Preference for the Granting of Patent with Prior Examination**

**Article 59.** Within three months following the transmission of the report, the applicant may inform the Institute of his preference for the procedure for granting the patent with prior examination in order that the Institute may carry out the necessary examination as to patentability requirements under the terms of Article 62. The procedure for grant of patent with prior examination shall be deemed to be preferred by the applicant where he fails to inform the Institute of his preference within the said period.

### **CHAPTER III**

#### **Procedure for granting patents without prior examination**

##### **Granting Patents Without Prior Examination**

**Article 60.** Within six months following the publication of the report on the state of the art, any third party may communicate their opinions to the Institute on the content of the report supported by the relevant documents, in accordance with the formalities prescribed in the Regulations.

When the period allowed for third parties to submit comments in writing on the search report has expired, the said comments shall be transmitted together with the substantiating documents by the Institute to the applicant.

The applicant may, within three months from the time of the communication of the comments by third parties on the search report in accordance with paragraph 2 of the present Article, make observations on the report on the state of the art, respond to the comments submitted by third parties and, if he deems it necessary, modify the claim or claims.

Independently of the content of the report on the state of the art established in accordance with the provisions of Article 57, and any comments made thereon by third parties, when the period allowed for the applicant's observations has expired, the Institute may take the decision to grant the patent without prior examination.

After payment of the prescribed fees pursuant to the decision of the Institute, the Institute shall grant the patent which shall be valid for a period of seven years from the date of filing and announce the grant of the patent in the relevant bulletin.

The documents concerning the patent granted together with the report on the state of the art and all the observations and comments made thereon by third parties shall be made available to the public. Where the claim or claims have been modified, such modifications shall be made available to the public showing their respective dates.

The validity or the utility of the subject matter of a patent granted without prior examination shall not be guaranteed by the State. A specific request shall need to be made in order to make a patent granted without prior examination the subject of an examination. This request shall be made by the patent owner or any third party no later than seven years from the date of filing. The corresponding examination fee shall be paid by the party making the request.

The right to a patent shall lapse where a request for an examination has not been made within seven years from the date of filing. At the expiration of the period of seven years, a request for examination may not be made.

Where a request for examination is made within seven years from the date of filing, the provisions laid down in Article 62 on the procedure for granting patents with prior examination shall apply. The request for examination of the patent granted without prior examination shall be announced in the relevant bulletin to enable third parties to state their objections to the grant of patent on the grounds of inconformity with patentability requirements under the terms of Article 62, paragraph 2.

#### **Announcement and Publication of the Patent Granted Without Prior Examination**

**Article 61.** The grant of patent shall be announced in the relevant bulletin. The announcement shall include the following information:

- (a) the number of the patent;
- (b) the class or classes to which the patent belongs;
- (c) a concise title describing the subject matter of the invention;
- (d) the name, nationality and domicile of the applicant;
- (e) an abstract;
- (f) the number or numbers and the respective dates of the issue or issues of the bulletin in which the patent application and the modifications made thereto, were published;
- (g) the date on which the patent was granted;
- (h) the possibility of consulting the documentation concerning the patent,

as well as the search report and the objections by third parties made thereto and, where appropriate, the responses of the applicant;

(i) a statement specifying that the patent has been granted without prior examination.

For each patent granted a pamphlet shall be published and offered to interested parties. The publication, where needed, may be duplicated and reproduced.

In addition to the indications mentioned in paragraph 1 of this Article, the pamphlet shall contain the full text of the description, together with the claim or claims, and, where appropriate, drawings, as well as the full text of the report on the state of the art and shall mention the number of the issue of the bulletin in which the grant of patent without prior examination was announced.

## CHAPTER IV

### Procedure for granting patents with prior examination

#### Granting Patents with Prior Examination

**Article 62.** The provisions laid down in Article 42 to 58 on the procedure concerning the patent application, the formal requirements and the examination of the patent application shall also apply to the procedure for granting patents with examination.

After publication of the report on the state of the art, third parties may, as provided in the Regulations and within six months, oppose the grant of the patent, citing the absence of the requirements laid down for granting patents, including lack of novelty or inventive step or the inadequacy of the description. Any petition opposing the grant of the patent shall be accompanied by the corresponding documentary evidence.

Within six months following publication on the report on the state of the art, in accordance with the provisions of Article 57, the applicant shall request the Institute to verify the sufficiency of the description, the novelty and the inventive step of the subject matter of the invention for the purpose of obtaining the patent with prior examination. This examination shall only be undertaken upon the expiration of the period of six months allowed to third parties for submitting their oppositions together with the payment of the examination fee prescribed in the Regulations. This fee shall be payable at any time during the period specified in paragraph 2 of the present Article.

Where, subject to paragraph 2 of this Article, third parties have stated their opposition, the applicant shall immediately be notified thereof together with the substantiating evidence. The owner of the application may contest opposition, put forward substantiated arguments to answer objections and modify the description, drawings and the claim or claims where he deems appropriate within three months from the expiration of the period for opposition; he may be granted a further period of three months upon request.

The Institute shall, at the expiration of the period laid down in paragraph 4 of this Article, commence the examination to ascertain whether the formal conditions of patentability have been met. The examination shall commence notwithstanding that the owner of the application has not responded to objections submitted within the prescribed periods.

When it has completed its verification the Institute shall determine whether or not formal patentability requirements have been met. The decision of the Institute shall be supported by justified reasons. The examination by the Institute shall be confined to the claim or claims made.

The report prepared by the Institute, after conclusion of the examination, specifying that the formal conditions have not been met or that the invention is not patentable, shall be communicated to the applicant together with justified reasons; and, the Institute shall allow the applicant a period of six months to rectify the defects, modify the claim or claims, and contest opposition.

The applicant may put forward substantiated arguments in response to the issues raised in the Institute's examination report and make modifications to the application where he deems it necessary.

The arguments of the applicant and any modifications to the application shall be examined by the Institute. Where the Institute decides that the applicant has not acted in response to the objections in the examination report, it shall communicate its decision to the applicant, giving justified reasons and allow him a period of three months to put forward his arguments.

At this stage of the procedure, the applicant may put forward his arguments in response to the objections raised and make modifications if he deems it necessary.

The Institute shall, after consideration of the applicant's arguments and any modifications in the application, reach a final decision. The Institute shall decide whether to grant the patent for the whole or part of the claim or claims.

Where no opposition has been received and the examination has shown that the patentability requirements have been met, the Institute shall grant the patent and notify the applicant of its decision.

Pursuant to its decision, the Institute shall grant the patent after the prescribed fees have been paid.

The validity or utility of the subject matter of the patent granted through a procedure with prior examination shall not be guaranteed by the State.

### **Announcement and Publication of the Patent Granted with Prior Examination**

**Article 63.** The grant of patent shall be published in the relevant bulletin. The following information shall be included therein:

- (a) the number of the patent;
- (b) the class or classes to which the patent belongs;
- (c) a concise title describing the subject matter of the invention;
- (d) the name of the owner of the patent together with his nationality and domicile;
- (e) an abstract;
- (f) the number or numbers and the respective dates of the issue or issues of the bulletin in which the patent application and the modifications made were published;
- (g) the date on which the patent was granted;
- (h) the possibility of consulting the documentation concerning the patent granted, as well as the relevant report on the state of the art, the document showing the result of the Institute's verification of the novelty and inventive step, the adequacy of the description, and the petitions submitted opposing grant of the patent;
- (i) a statement specifying that the patent has been granted after prior examination as to the novelty and inventive step of the invention.

For each patent granted, a pamphlet shall be published and offered to interested parties. The publication may be duplicated and reproduced as needed.

In addition to the indications mentioned in paragraph 1 of this Article, the pamphlet shall contain the full text of the description, together with the claim or claims and any drawings, as well as the full text of the report on the state of the art, and the date and number of the issue in which grant of patent was announced.

## CHAPTER V

### Formal procedure for patent applications

#### **Modification of Patent Claims**

**Article 64.** With the exception of the rectification of obvious errors such as spelling errors and submission of the wrong documents, modification of the patent claim or claims may only be made during the grant procedure where it is specifically permitted under the present Decree.

The applicant shall not be obliged to obtain the consent of those possessing rights in the application recorded in the Patent Register in order to modify his claim or claims in accordance with the preceding paragraph.

Modification of the claim or claims shall not imply widening of the scope of the application.

#### **Transformation of a Patent Application into a Utility Model Application**

**Article 65.** The applicant may, subject to the subparagraphs below, request that the subject matter of the invention be protected by the grant of a utility model certificate:

(a) in the case of procedure without prior examination, the request may be made until the expiration of the period allowed, in accordance with Article 60, paragraph 1, for submitting comments on the search report;

(b) in the case of procedure with prior examination, the request may be made until the expiration of the period allowed, in accordance with Article 62, paragraph 4, for responding to oppositions and objections resulting from the examination carried out by the Institute.

As a result of the request for the transformation of the original patent application into a utility model application, where priority has been claimed for the original patent application, the said priority shall continue to apply as of the date of the original patent application.

Following the examination carried out, in accordance with the provisions of Article 54, the Institute may propose to the applicant that he transform his patent application into an application for a utility model certificate. The applicant may accept or reject this proposal. The applicant shall be deemed to have rejected the proposal if he does not specifically request a change in the form of his application. In such cases, the procedure shall continue as for the granting of patent.

Where the applicant transforms his application for a patent into that of a utility model certificate, the Institute shall inform the applicant that his application shall be subject to utility model procedure and of the documents he should submit within the period prescribed in the Regulations.

Where the necessary documentation has not been submitted within the permitted period, the request for transformation shall be deemed not to have been made and the application shall be treated as a patent application.

After the announcement of the patent application, the Institute's decision allowing a change in the form of the application shall be published in the relevant bulletin.

#### **Withdrawal of Application**

**Article 66.** The applicant may withdraw his patent application at any time before the patent is granted.

Where the Patent Register shows that third parties have rights in the application, the latter may only be withdrawn with the consent of the owners of those rights.

#### **Conditions for Examination of the Patent Application Files**

**Article 67.** Files concerning patent applications not yet published may only be consulted by third parties with the written consent of the applicant.

Any person who proves that a patent applicant has tried to make use in his regard of the rights derived from the application may consult the documentation before publication and without the applicant's consent.

Where a divided application, within the meaning of Article 45, or a new patent application filed in accordance with Article 12, or an application following a change in the form of protection under the terms of Article 65 is published, any person may consult the documentation regarding the original application before its publication and without the applicant's consent.

Following publication of the patent application, the documentation concerning the patent application or the relevant patent, may be consulted subject to the restrictions prescribed in the Regulations.

Documentation concerning applications that have been rejected or withdrawn before publication may not be consulted by third parties.



### **Renewal of the Application Withdrawn**

**Article 68.** Where a patent application, published in accordance with the provisions of Article 55, is withdrawn, a new patent application may not be filed for the same invention.

Where a patent application, not yet published within the meaning of Article 55, is withdrawn, the original applicant may file a new application for the same invention. However, the protection shall commence as of the date of the most recent application.

### **Obligation to Indicate the Number of the Patent Application or of the Patent**

**Article 69.** Any person who, in respect of a third party, invokes rights derived from a patent application or a patent already granted, shall inform the latter of the relevant number.

Any person who uses on a product, labels or packaging, or in any form of announcement, advertisement or printed matter, any mention giving the impression that protection under a patent application or a patent already granted exists, shall indicate the relevant number.

## **CHAPTER VI**

### **Objections to formal procedural omissions in the granting of the patent after it has been granted**

#### **Objections to Procedural Omissions**

**Article 70.** A third party may appeal to the Institute on the grounds of formal omissions during the procedure specified in Articles 42 to 63 with the exception of the provisions of Article 45 on the question of unity of invention. To lodge such an appeal a third party shall not be required to have previously submitted comments on the search report or to have stated opposition during the grant procedure with examination.

In cases where a patent is granted without examination, an appeal may not be made against the grant of patent alleging lack of novelty or failure to surpass the state of the art.

#### **Effects of Objections to Procedural Omissions**

**Article 71.** Where a formal requirement has not been fulfilled, with the

exception of the requirement of the unity of invention, or where there has been a serious formal omission during the grant procedure in the course of examination by the Institute, the decision of the Institute, allowing the appeal, shall lead to the annulment of the administrative action and retroactivity of the procedure to the point at which the omissions were made and the resumption of the procedure.

## PART V

### PROVISIONS CONCERNING RIGHTS DERIVING FROM PATENTS

#### **Term of a Patent**

**Article 72.** The term of a patent granted with examination shall be a non-extendible period of twenty years from the date of filing the application.

The term of a patent granted without examination shall be a period of seven years. Where a request is made for examination within the period of seven years, and a final decision is taken for granting the patent as a result of the examination, the term of the patent shall be a period of twenty years from the date of filing the application.

#### **Scope of Rights Deriving from a Patent**

**Article 73.** The owner of the right to a patent shall exercise this right irrespective of the provenance of the invention, and its technological range and without making any distinctions as to whether the products are imported or produced at home.

The owner of the patent shall have the right to prevent any third party from undertaking the following acts without his consent:

(a) manufacturing, offering for sale, using or importing the product that is the subject matter of a patent or possessing the product for one of the above-mentioned purposes for any reason whatsoever with the exception of personal use;

(b) making use of a process that is the subject matter of a patent;

(c) offering the use of a process patent when the third party is aware, or the circumstances make it obvious, that use of the process patent is prohibited;

(d) offering for sale, or using the product directly obtained by the process that is the subject matter of the patent, or importing or possessing the said product for any of the above-mentioned purposes except for personal use.

### **The Use by Third Parties of Elements Related to the Subject Matter of the Patent**

**Article 74.** The owner of a patent shall be entitled to prevent a third party from handing over to unauthorized persons elements or means related to an essential part of the invention to be used for putting the invention which is the subject matter of the patent into effect. This provision shall apply when the third party knows, or the circumstances make it obvious, that such elements or means are capable of putting the invention into effect and are to be used for that purpose.

The provisions set out in paragraph 1 of the present Article shall not apply when the elements or means referred to are products commonly to be found on the market, unless the third party incites the persons concerned to commit the prohibited acts.

Persons committing the acts specified in subparagraphs (a), (b), and (c) of Article 75 shall not be considered to be persons authorized to work the invention within the meaning of paragraph 1 of the present Article.

### **Limits to the Scope of Rights Deriving from a Patent**

**Article 75.** The following acts shall remain outside the scope of the rights deriving from a patent:

(a) acts carried out solely for private reasons and not for industrial or commercial purposes;

(b) acts carried out for experimental purposes related to the subject matter of the patented invention;

(c) the extemporaneous preparation of medicines in pharmacies carried out singly in making up a prescription and acts related to the medicines thus prepared;

(d) use of the subject matter of the patented invention in the construction, or operation of vessels, spacecraft or aircraft of member countries of the Paris Union, or in supplying accessories thereof when the said vehicles temporarily or accidentally enter Turkish territory;

(e) acts provided for in Article 27 of the Convention on International Civil Aviation of December 7, 1944, when such acts relate to the aircraft of a State to which the provisions of the present Article apply.

### **The Limit to Rights Deriving from a Patent**

**Article 76.** Acts committed with regard to a patented product that has been

put on the market in Turkey by the owner of the patent or with his consent, shall remain outside the scope of the rights conferred by a patent.

#### **The Right to Prior Working of the Invention**

**Article 77.** The owner of a patented invention shall not have the right to prevent a person or persons who, in good faith, within the period between the date of filing the application and the priority date, had worked the invention within Turkey or had taken serious and concrete measures to work the said invention, from continuing working it in the same manner or commencing working it in accordance with the measures taken. However, a third party may only continue to work the subject matter of the patent or to work it in accordance with the measures taken, in such a way so as to meet the reasonable needs of their enterprises. This right to work the invention shall be transferable with the enterprise.

The rights conferred by the patent, within the meaning of Article 76, to the owner of the patent shall not extend to acts related to a product put on the market by persons mentioned in paragraph 1 of the present Article.

#### **Effect of Patents with an Earlier Date of Priority**

**Article 78.** The owner of a patent may not invoke his patent in his defense in actions against him by other patent owners for infringement of patents that have an earlier date of priority.

#### **Dependency of the Subject Matters of Patents**

**Article 79.** The fact that a patented invention can be worked by using an invention protected by an earlier patent shall not in any way be an obstacle to the validity of the patent. In such cases, the owner of the earlier patent may not work the later patent during its period of validity without the consent of its owner, nor may the owner of the later patent work the earlier patent during its period of validity, without the consent of its owner. The owner of the later patent may, however, work the earlier patent where he has the consent of the owner of the earlier patent or has obtained a compulsory license for that patent.

#### **Limits to Working of the Patented Invention**

**Article 80.** A patented invention may not be worked in any form contrary to law, morality, public order or public health, and its working shall be subject to the prohibitions and restrictions, whether temporary and permanent, established or to be established by legal provisions.

### **Legal Monopoly**

**Article 81.** Where a patent is granted for an invention, the subject matter of which comes under a legal monopoly, the monopolist may only use the invention with the consent of the patent owner. The monopolist shall be obliged to use those inventions that involve notable technical progress for his industry, obtaining the corresponding right of working.

The monopolist shall have the right to request the permission of the patent owner to be authorized to work the patented invention. Where the monopolist makes such a request, the patent owner may require that the monopolist acquire the patent. The amount of remuneration to be paid by the monopolist for the right to work the patented invention or for acquisition of the patent shall be fixed by agreement between the parties. In the absence of agreement, the amount shall be fixed by the Court.

Without prejudice to the provisions laid down in paragraph 2 of this Article, where a monopoly has been established after a patent has been granted, the patent owner shall have the right to require the monopolist to acquire the enterprise or the equipment with which he has worked the patented invention. In the absence of agreement between the parties on the amount payable, the latter shall be fixed by the Court.

Where a patented invention cannot be worked because of the existence of a legal monopoly, annual fees shall not be paid for the said patent.

### **Effects of Publication of a Patent Application**

**Article 82.** The protection conferred on the patent owner, in accordance with the provisions of the present Decree, shall also apply to the owner of the application from the date of the application, provided the said application is valid.

The above-mentioned protection shall also apply prior to the date of the publication of the application, where the person, who works the invention which is the subject matter of the application, without the consent of the owner of the application, is informed of the filing of the application and its contents.

Where the subject matter of the patent application consists of a process concerning a microorganism, protection shall commence when the microorganism has been made available to interested parties.

Patent applications shall have none of the effects provided for in paragraphs 1 to 3 of the present Article when they have been or are considered to have been withdrawn or when they have been rejected as a result of a final decision.

### Scope of Protection Deriving from a Patent Application or Patent and Interpretation of the Claim or Claims

**Article 83.** The scope of the protection conferred by a patent application or patent shall be determined by the content of the claim or claims. The description and drawings shall be used to interpret the claims.

The claim or claims shall be interpreted in a manner so as to provide the protection to which the owner of the patent application or the patent is entitled, expressed in terms which are adequately clear with respect to third parties.

Where there is a patent application for pharmaceuticals for human consumption, veterinary medicines or agricultural chemicals, the information and the test results, that have not been made available to the public by the owners and the realization and gathering of which have involved serious efforts and considerable expense, shall be kept secret by the office demanding such information in order that the licenses for the sale and manufacturing of the aforementioned pharmaceuticals may be certified. The relevant office demanding the information and test results shall take the necessary measures to prevent unauthorized use thereof.

The scope of the claim or claims shall not be interpreted by the wording alone. However, when determining the scope of the protection conferred by the patent application or patent, the claim or claims shall not be deemed to cover elements, revealed as a result of the interpretation of the description and drawings by a person skilled in the art, where these are not mentioned in the claim or claims though they may have been originally intended by the inventor.

When determining the scope of the protection conferred by a patent application or a patent, elements equivalent to those indicated in the claim or claims, made at the date of the alleged infringement shall also be taken into consideration.

Elements shall be deemed to be substantially equivalent to that included in the claim or claims if, at the time of the alleged infringement, they substantially serve the same function in the same manner and achieve the same result as the elements in the claim or claims.

In determining the extent of protection, consideration shall be given to any statements specifying the scope of the protection requested by the owner of the patent application or patent during the patent procedure or while the patent is effective.

Where the patent comprises samples of the function or result of an invention, or samples of an arrangement of the invention, the claim or claims shall not be interpreted as being confined to the above-mentioned samples. In particular, where the additional features of the product or process do not

appear in the samples illustrating the subject of the patent, nor cover the features found in the aforementioned samples, nor achieve all the objectives and effects of the samples, the product or process shall not be excluded from the protection covered by the claim or claims.

### **Rights Concerning Process Patents**

**Article 84.** Where a product, which is the object of a process patent, is imported into Turkey, the owner of the said patent shall, in respect of the product introduced, have the same rights as those granted under the present Decree for products manufactured in Turkey.

Where the subject matter of a patent concerns a process for the manufacture of new products or substances, it shall be presumed that any product or substance with the same characteristics has been obtained by using the patented process. The party who alleges the contrary shall bear the burden of proof.

During proceedings to prove the contrary, as provided for in paragraph 2 of the present Article, the legitimate interests of the defendant shall be taken into account so as to protect his manufacturing or trade secrets.

## **PART VI**

### **PATENT APPLICATIONS AND LEGAL TRANSACTIONS RELATED TO PATENTS**

#### **CHAPTER I**

#### **Joint ownership**

##### **Joint Ownership**

**Article 85.** Where a patent application or patent belongs to more than one person in undivided parts, the resultant co-ownership shall be governed by agreement among the parties or, in its absence, by the provisions on co-ownership in the Turkish Civil Code.

Anyone of the parties acting severally in the exercise of their rights may perform the following acts:

(a) dispose freely of the part belonging to him. Where the part has been assigned to a third party, the Institute shall notify the other parties within two

months so that they may exercise their rights for prior purchase. The right to prior purchase shall be exercised within one month from the date of having been notified;

(b) work the invention following notification to the other joint owners;

(c) take necessary measures required to maintain the patent application or patent;

(d) bring civil or criminal action against third parties who in any way injure the rights conferred by the joint patent application or patent. The party taking legal action shall be obliged to notify the other parties within one month therefrom so that they may also take part.

A license to a third party to work the invention shall be granted by the parties jointly. However, the Court may, for reasons of equity, given the particular circumstances, authorize only one of the parties.

## CHAPTER II

### Patent applications and expropriation

#### Expropriation

**Article 86.** A patent application or patent may be transferred to a third party or may be transferred to a third party under a will; and, the right to work the invention may be the subject matter of a license. The patent application or patent may be used as security. The right to use as security shall be governed by the relevant provisions of the Civil Code.

When performed *inter vivos* the acts mentioned above shall be in writing.

#### Indivisibility of Patent

**Article 87.** For the purposes of transfer or expropriation, patent application or patents shall be indivisible, even where they belong jointly to several persons.

#### Contractual Licenses

**Article 88.** The right to work a patent or file a patent application may be the subject of contractual licenses valid for the whole or part of the national territory. Licenses may be granted as exclusive or non-exclusive licenses.

Where the licensee violates the terms and conditions of the contract as set out in paragraph 1 of the present Article, the rights conferred by the patent



application or patent may be exercised by the owner of the patent against the licensee by means of legal action.

Unless otherwise provided for in the contract, a license shall not be exclusive. The licensor may grant other licenses for the same inventions to third parties as well as working the patented invention himself.

Where an exclusive license is concerned, the licensor may not grant licenses to others, and he may only work the invention if he has specifically reserved this right in the contract.

Unless otherwise provided for in the contract, holders of contractual licenses may not transfer their rights deriving from the license to third parties nor grant sub-licenses.

Unless otherwise provided for in the contract, holders of contractual licenses shall have the right to carry out all the acts comprised in working the patented invention, on the whole of the national territory and for the whole term of the patent.

#### **Obligation to Supply Information**

**Article 89.** Unless otherwise provided for in the contract, any person who transfers a patent application or a patent or who grants a corresponding license shall be obliged to make available to the transferee or licensee the technical data that is necessary to work the patented invention satisfactorily.

The transferee or licensee shall be obliged to take the necessary measures to prevent the disclosure of secret data which he has been entrusted with.

#### **Transfer of Right and the Responsibilities Arising from Grant of License**

**Article 90.** The transferor or licensor who transfers the rights deriving from a patent application or a patent, with or without remuneration, shall be accountable to the appropriate authorities if, subsequently, it is discovered that the said person is not authorized to perform the transaction.

Where a patent application is withdrawn or refused, or a patent is invalidated by the Court, the provisions of Article 131 of the present Decree shall apply, unless the parties have provided in the contract for the increased liability of the transferor or the licensor.

The transferor or licensor shall be liable when he has acted in bad faith. Bad faith shall be deemed to exist where the other party has not been informed of the Turkish or foreign reports or decisions available or known to the transferor

or licensor, concerning the patentability of the invention that is the subject matter of the application or patent, and where the transferor or licensor has not made specific mention of the documents comprising the above information.

The time limit for applying for compensation by virtue of the provisions of the present Article, shall commence from the date of the final judgment on which the liability action is based. The appropriate provisions of the Turkish Code of Obligations shall apply for determining limitation periods.

### **Joint and Several Liability**

**Article 91.** Any person who transfers a patent application or a patent or who grants a corresponding license shall be liable jointly and severally with the transferee or licensee for compensation due as a result of damage caused to third persons by defects of the invention that is the subject matter of the application or patent.

Unless otherwise provided for in the contract, the transferor or licensor who has assumed the liability, subject to the provisions of paragraph 1 of the present Article, may claim reimbursement from the transferee or licensee. The right of recourse shall be available where the transferor or licensor has not acted in bad faith and where, given the circumstances of the case, and for reasons of equity, the transferee or licensee has to bear all or part of the compensation.

### **Recording in the Patent Register and Procedural Provisions**

**Article 92.** Patent applications and patents shall be recorded in the Patent Register in accordance with the provisions laid down in the Regulations.

With the exception of the provisions of Article 13, paragraph 1 on usurpation of patent, any transfer, license or other act, whether voluntary or compulsory, affecting patent applications or patents shall have effect against third parties of good faith only when it has been recorded in the Patent Register.

Rights deriving from patent applications or patents may not be invoked against third parties unless they are duly recorded in the Patent Register.

Products may not mention a patent unless the rights deriving from patent applications or patents have been recorded in the Patent Register. The Institute shall ensure that the procedures, that are specified in the Patent Register and mentioned in public documents, are applied in a manner that is legal, valid and effective.

### **Unfair Competition**

**Article 93.** Where a patent owner has infringed the general provisions concerning unfair competition in the course of working the patented invention, he may be compelled by the Court to make a license offer.

## **CHAPTER III**

### **Offer of license**

#### **Offer of License by Owner of the Patent**

**Article 94.** Subject to the provisions of Article 96, where the owner of the patent is not working the invention which is the subject matter of the patent, he may, by an application in writing to the Institute, declare that he is willing to authorize the use of the patented invention by any interested party.

Where there is a change in ownership of patent as a result of the exercise of the legal action provided for in Article 12 of the present Decree, the previous offer of license shall be considered to have been withdrawn when the new owner is entered in the Patent Register.

The Institute shall enter offers of licenses in the Patent Register and publicize them. Offers of licenses shall be made available to the inspection of the public. The Institute shall take appropriate steps to enable such an inspection to be made.

The owner of the patent may, at any time, withdraw the license, provided a request for a license has not been made to the patent owner. Withdrawal of the offer shall take effect as of the notification of the Institute.

The owner of the patent may not offer licenses to others if the license has been entered in the Patent Register as an exclusive license.

Following the offer of licenses, any person entitled to work the invention as a licensee shall be deemed to be a non-exclusive licensee and, the license obtained in conformity with the provisions of this Article shall be deemed to be a contractual license.

When a license offer has been made, no application to enter an exclusive license in the Patent Register shall be permitted unless the offer of license has been withdrawn, or is deemed to have been withdrawn.

#### **Acceptance of the Offer of License**

**Article 95.** Any person, wishing to take advantage of the offer of license and thereby obtain a license, shall notify the Institute accordingly in triplicate,

indicating the use he intends to make of the invention. The Institute shall send to the owner of the patent a copy of the notification. It shall send another copy back to the applicant. Both copies shall bear the stamp of the Institute and the same date of dispatch.

In the absence of agreement between the parties over the remuneration for the license, the Court, at the request of one of the parties and after having heard both parties, shall fix the amount for the remuneration to be paid for the license.

The Court may modify the amount of the remuneration, if the amount, which was previously considered to be reasonable by the parties concerned, has later become insufficient. Requests for modification of the remuneration may only be made after a period of at least one year has elapsed since it was previously fixed.

At the expiration of every three months the licensee shall be liable to inform the patent owner of the use he has made of the invention and to pay the corresponding remuneration. Where the licensee does not fulfil those obligations, the owner of the patent may request the licensee to fulfil his obligations within one month. Where the Court determines that the licensee has not fulfilled his obligations within that period either, the license shall be annulled.

## CHAPTER IV

### Obligation to work

#### Obligation to Work

**Article 96.** The owner of a patent shall be obliged to work the patented invention either himself or through a person authorized by him.

Working shall take place within a period of three years from the date on which grant of patent was published in the relevant bulletin.

Market conditions shall be taken into consideration when evaluating the working.

#### Proof of Working

**Article 97.** The owner of the patent or the person authorized by him shall prove its working before the Institute by means of an official certificate. The official certificate of working shall be issued by the authority specified in the Regulations and corresponding to the prescribed criteria and general rules laid down in the Regulations.

The certificate of working shall be based on inspection of the manufacturing process in the industrial establishment where the invention is being worked. The said certificate shall attest that the object of the patented invention is being marketed and worked. The certificate shall be issued within three months following the date on which it was requested by the relevant body. The certificate shall contain information substantiating the fact that the patented invention is being effectively worked.

The certificate of working shall be entered in the Patent Register.

### **Approval of Working**

**Article 98.** Where working has been proved by means of the relevant certificate, unless the Court rules to the contrary, it shall be presumed that the patented invention is being worked in the form required by Article 97 of the present Decree.

## **PART VII**

### **COMPULSORY LICENSES**

#### **CHAPTER I**

#### **General requirements for the granting of compulsory licenses**

##### **Requirements for the Granting of Compulsory Licenses**

**Article 99.** Where a particular patent is not the subject of the offer of licenses, and where one of the following situations exists, a compulsory license may be granted:

- (a) failure of working the patented inventions within the meaning of Article 96;
- (b) dependency of the subject matters of patents as laid down in Article 79;
- (c) existence of reasons of public interest under the terms of Article 103.

##### **Request for the Grant of a Compulsory License**

**Article 100.** Following expiration of the period laid down in Article 96 for working the invention protected by the patent, any person may request the granting of a compulsory license for the patent from the competent Court

provided that, at the time of the request, unless there are legitimate excuses, working has been suspended for more than three years.

Legitimate excuses for not working the patented invention shall be deemed to be objective difficulties of a technical, economic or legal nature. The above-mentioned difficulties are independent of the will and circumstances of the owner of the patent.

#### **Compulsory Licenses Where Dependency of Patents Exists**

**Article 101.** Where it is not possible to work the patented inventions without infringing the rights deriving from an earlier patent, the owner of the subsequent patent may request from the Court the granting of a compulsory license for an earlier patent by proving that his invention serves different industrial objectives and represents considerable technical progress in comparison with the earlier patent.

Where inventions used for the same industrial purpose, pursuant to Article 79, are protected by patents that are dependent one upon another and where a compulsory license has been granted for one of the dependent patents, the owner of the earlier patent, may also apply to the Court for the grant of a license for the later patent.

Where the subject matter of a patent is a process to obtain a chemical or pharmaceutical substance protected by a patent and, provided that the patent for the process represents considerable technical progress in comparison with the earlier patent, both the owner of the patent for the process and the owner of the patent for the product has the right to apply to the Court for a compulsory license for working the patented invention of the other party.

The content of a compulsory license, granted for reasons of dependency of patents, shall be sufficient to allow working of the patented invention concerned. In the case of the invalidation or forfeiture of any of the dependent patents, the grant of compulsory license shall no longer have effect.

#### **Compulsory Licenses for Reasons of Exportation**

**Article 102.** Exportation of the invention which is the subject matter of the patent shall not be considered as justification for compulsory licenses.

#### **Compulsory Licenses for Reasons of Public Interest**

**Article 103.** For reasons of public interest, the Council of Ministers may make a patent application or an invention which is the subject matter of the patent subject to the grant of compulsory licenses.

Reasons of public interest shall be deemed to exist when the initiation, increase or generalization of working of the invention, or improvement of the conditions in which it is worked, are of paramount importance for public health or national defense.

Reasons of public interest shall also be deemed to exist when failure to work or the insufficient quality or quantity of working leads to a serious prejudice for Turkey's economic or technological development.

A decree issued by the Council of Ministers on the granting of compulsory licenses shall be drawn out at the proposal of the relevant Ministry. In cases where the importance of working the patented invention concerns national defense or public health, the proposal shall be formulated jointly with the competent Ministry and the Ministry of Defense or the Ministry of Health, respectively.

A decree making a patent subject to the granting of compulsory licenses because of its importance for national defense may restrict the working of the invention to one or several enterprises.

Where public interest can be met without the need to generalize working of the invention or entrusting its working to a person other than the owner of the patent, the decree may conditionally make the patent subject to the granting of compulsory licenses. In this event, in accordance with the decree issued by the Council of Ministers, the Court may allow the owner of a patent a period not exceeding one year to initiate, improve or increase working of the invention to the extent necessary to meet the public interest. Having heard the owner of the patent, the Court may allow the period it deems appropriate or immediately make the patented invention subject to the granting of licenses. Following expiration of the period which has been fixed, the Court shall decide whether the public interest has been met. Where the Court decides that the working of the patented invention does not serve the public interest, it shall make the patent subject to the granting of compulsory licenses.

#### **Request for Mediation**

**Article 104.** Before applying for a compulsory license, the interested party may request the mediation of the Institute in order to obtain a contractual license for the same patent.

The request for mediation of the Institute shall be subject to the payment of the fee prescribed in the Regulations and shall contain the following:

(a) information concerning the applicant;

(b) information concerning the patent to which the request refers and the owner of the patent;

- (c) the circumstances that justify the granting of compulsory licenses;
- (d) the scope of the license sought and the reasons substantiating that claim;
- (e) information permitting a decision on whether or not the applicant can effect real and effective working of the patented invention and can offer the guarantees reasonably required by the owner of the patent for granting a license.

The request for the mediation of the Institute shall be accompanied by the following documents:

- (a) documents supporting the claims made therein;
- (b) a document confirming the guarantee that the costs of the procedure as fixed by the Regulations shall be paid by the applicant;
- (c) copies of the application and the accompanying documents.

#### **Mediation of the Institute**

**Article 105.** Following submission of the request for mediation within a period of one month, the Institute shall decide whether to agree to mediate.

The Institute shall agree to mediate when the request and the accompanying documents, as well as the investigations carried out by the Institute show that there are circumstances that necessitate the granting of compulsory licenses for the patent, that the applicant is solvent and that he has at his disposal the necessary means for the working of the patented invention.

The Institute shall notify its decision to the applicant and to the owner of the patent, and, at the same time, shall transmit a copy of the request for mediation to the latter.

#### **The Institute as Mediator**

**Article 106.** Where the Institute agrees to mediate, it shall immediately notify the interested parties accordingly and invite them to commence negotiations on the granting of a contractual license, with the Institute participating as mediator. The negotiations shall last a maximum of two months.

At the expiration of a period of two months after notification to the interested parties of its agreement to mediate, if no agreement has been reached on the granting of a contractual license, the Institute shall declare its mediation and investigation terminated and shall inform the interested parties accordingly.



Notwithstanding the expiration of the period of two months, it may be extended at the joint request of the parties concerned provided that the Institute deems that such an extension may effectively serve to achieve the granting of license.

Before the Institute reaches its final decision, the documentation on mediation may only be consulted by the parties, who may have copies made of all the documents at their own expenses. The parties concerned and the Institute's staff shall respect the secrecy of the contents of the documents.

### **Consequences of Mediation of the Institute**

**Article 107.** Where, as a result of the negotiations carried out with the mediation of the Institute, the parties have agreed to a license for the working of the invention which is the subject matter of the patent, the licensee shall be allowed the necessary period to start working the invention.

The period allowed may not exceed one year; and, the following conditions shall be met for the completion of mediation:

(a) the license agreed upon by the parties is exclusive and its exclusivity is not contrary to the objective that could be pursued by making the patent subject to the granting of compulsory licenses;

(b) the applicant requesting mediation provides documentary proof that he has at his disposal the means necessary to work the invention and that the period requested for commencement of working is indispensable by reason of the particular nature of the invention;

(c) the applicant provides a guarantee, the amount of which is specified in the Regulations, to meet any liabilities incurred if working of the invention does not commence within the prescribed period;

(d) the corresponding fee prescribed in the Regulations has been paid.

Having examined the documentation submitted by the interested parties, provided that the conditions laid down in the preceding paragraph have been met and it is considered that the parties seriously wish to commence working the patented invention without delay, the Institute shall complete the mediation procedure and shall enter in the Patent Register the license granted as a result of the mediation.

The applicant shall be obliged to provide information to the Institute on the existing circumstances and the preparations made to commence working the inventions. The Institute shall be empowered to conduct inspections that it deems necessary.

The party who is granted a license as a result of the mediation may, within the period allowed for the working of the invention, request from the Court suspension of the procedure for the granting of compulsory licenses for the said patent.

The Court may annul the decision for the suspension of the procedure for the granting of compulsory licenses, if it is proved that a serious error was committed in arriving at its decision or that the interested parties are not undertaking serious and continuous activity to commence working within the prescribed period.

Where the licensee does not commence working the invention within the prescribed period, the Institute may impose an amount to be paid by the licensee to the licensor. The said amount shall be calculated on the basis of the sum to be paid by the licensee to the owner of the patent as remuneration during the period of the validity of the contract equivalent to the period of suspension.

#### **Request for Compulsory Licenses**

**Article 108.** Following a period of three months from the expiration of the period referred to in Article 106, or from the refusal of the Institute to accept the proposed mediation, or where the parties have not been able to reach agreement on the contractual license during the course of the mediation, the said parties may apply to the Court for the granting of a compulsory license.

The party who requests a compulsory license may, on the basis of previous mediation and documents provided for this purpose, claim that the conditions for the granting of a compulsory license have been met.

Furthermore, the applicant shall specify the means by which he intends to achieve effective working of the invention and the guarantees he can offer if the license is granted.

Requests for compulsory licenses shall be accompanied by the following documents:

(a) documents supporting the request for a compulsory license, which do not appear in the previous mediation documents;

(b) documents attesting the provision of a guarantee, the amount of which shall be prescribed in the Regulations, to be used to meet the procedural costs incurred during the granting of compulsory licenses;

(c) a document showing that the fee prescribed in the Regulations has been paid;

(d) copies of the request and the documents submitted.

#### **Commencement of the Compulsory License Procedure**

**Article 109.** Where the conditions mentioned in Article 108 have been met, the Court shall commence the procedure for compulsory licenses. A copy of the request together with the accompanying documents shall be transmitted to the owner of the patent. The owner of the patent may contest it within a period not exceeding one month from the receipt of the documents.

Where a request for compulsory license is made upon the Institute's refusal to mediate, the period during which the owner of the patent may contest it shall not be less than two months.

Contestation by the owner of the patent shall take into account the documentation regarding the previous mediation of the Institute and shall be accompanied by evidence substantiating the claims made therein and which do not appear in the said documentation. Copies of the supporting evidence shall be transmitted by the Court to the owner of the patent.

#### **Decision for Granting a Compulsory License**

**Article 110.** The Court shall transmit the patent owner's contestation to the party requesting a compulsory license and, within one month, shall take a decision to grant or refuse a compulsory license. This period may not be extended. Where the owner of the patent does not contest the request, the Court shall immediately grant the license.

The decision granting the compulsory license shall comprise the following particulars:

The scope of the license, the term, the remuneration, the guarantees to be provided by the licensee, the time at which working shall commence and measures to ensure serious and effective working of the patent.

Where an appeal is lodged against the decision of the Court, the working of the invention shall be deferred until the judgment becomes final, if the evidence submitted by the patent owner for the suspension of the execution is considered as sufficient by the Court. The contentious appeal shall not delay the execution of the decision which is final.

#### **Legal Costs for Compulsory Licenses**

**Article 111.** The decision for granting the compulsory license shall specify the costs to be paid by each party. Common costs shall be divided in half.

Payment of all the costs may be imposed on one of the parties where he has acted negligently or in bad faith.

#### **Suspension of the Procedure for Granting of Compulsory Licenses**

**Article 112.** Following the filing of an application for a compulsory license, the Court may take the necessary steps in order to reach a decision on granting a license. At the duly substantiated joint request of the applicant for a license and the owner of the patent, the Court may, at any time, on one occasion only, suspend the procedure for a period not exceeding three months. Following expiration of this period, the Court shall notify the parties and the procedure shall be resumed.

#### **Notification of Patent Agents Acting for Persons Domiciled Abroad**

**Article 113.** Where the owner of a patent is not usually resident in Turkey, the communications and notifications, provided for in the present Part, shall be sent to his representative who is the patent agent.

## **CHAPTER II**

### **Compulsory license system**

#### **Legal Nature of Compulsory Licenses**

**Article 114.** Compulsory licenses shall not be exclusive. Compulsory licenses may, however, be granted exclusively for reasons of public interest as specified in Article 103. Albeit, exclusivity shall not be contrary to the objective pursued by making the patent subject to the grant of compulsory license and shall be indispensable to ensure that working of the patented invention is profitable. The licensee granted a compulsory license shall not be authorized to import the subject matter of the patent. However, the licensee may be authorized to import the subject matter of the patent where he has been granted the license for reasons of public interest and, in conformity with those reasons, he has been specifically authorized to import. The said authorization to import shall be limited to the requisite need and shall only be granted for a limited period.

A compulsory license shall give rise to a reasonable financial remuneration for the owner of the patent, which shall be fixed taking into account, in particular, the invention's economic importance.

### **Violation of the Principle of Good Faith**

**Article 115.** Where the owner of a patent has violated the principle of good faith between the owner of the patent and the licensee, which has arisen as a result of the compulsory license, the latter may request a reduction in the remuneration fixed for the license in proportion to the importance of the unfulfilled obligation for working the invention.

### **Scope of Compulsory Licenses for Additions to Patents**

**Article 116.** A compulsory license shall include additions to the relevant patent at the time of granting the license. Following the grant of a compulsory license, where new additions are made to the patent and where their subject matter has the same industrial application as the patented invention that is the subject of the license, the licensee may request the Court to include the new additions in the license. Where the interested parties do not reach agreement on the remuneration and the other conditions for the license extended by reason of the new additions notwithstanding the mediation of the Institute, the Court shall determine them.

### **Transfer of Compulsory Licenses**

**Article 117.** The transfer of a compulsory license shall only be valid where the license is transferred together with the enterprise or the part of the enterprise that works the patented invention. The transfer shall be entered in the Register by the Institute. In the case of compulsory licenses for dependent patents, the license shall be transferred with the dependent patent.

The owner of a compulsory license may not grant sub-licenses. Any act made to this effect shall be invalid.

### **Request for Modification of Conditions**

**Article 118.** Both the licensee or the owner of the patent may request the Court to modify the remuneration or other conditions of the compulsory license when new facts occur that justify such changes. Such requests may be made, in particular, where, after granting of the compulsory license, the owner of the patent grants contractual licenses under conditions that are more favourable.

Where the licensee fails seriously or repeatedly to fulfil any of his obligations under the compulsory license, the Court may, at the request of the owner of the patent, without prejudice to the latter's right to compensation, annul the license.

### **Applicability of Provisions Governing Contractual Licenses**

**Article 119.** To the extent that they are not contrary to the provisions in Articles 114 to 118, the provisions governing contractual licenses in Article 88 shall apply to compulsory licenses.

## **CHAPTER III**

### **Promotion of applications for compulsory licenses**

#### **Measures to Promote Applications for Compulsory Licenses**

**Article 120.** The Institute shall take measures to promote license applications for patents subject to the granting of compulsory licenses. For this purpose, the Institute shall publish periodically such patents.

Where the importance of working patented inventions so warrants, the Council of Ministers, shall take the necessary financial, economic and other incentives to encourage enterprises to apply for licenses for specific patents subject to the granting of compulsory licenses for reasons of public interest.

## **PART VIII**

### **ADDITIONS TO PATENTS AND SECRET PATENTS**

#### **CHAPTER I**

##### **Additions to patents**

#### **Applications for Additions to Patents**

**Article 121.** The owner of a patent application or patent may apply for additions to the patent for the protection of inventions that improve or further develop the invention that is the subject matter of the patent, provided that the additions are in compliance with the provisions of paragraph 1 of Article 45.

Requests may also be made for additions to a patent application, although such additions may not be granted if the patent is refused.

The inventive step as mentioned in Article 9 shall not be sought for additions to patents.

### **Priority Dates of Additions to Patents**

**Article 122.** Additions shall have the date of priority corresponding to their respective applications. Their term shall be that of the principal patent and they shall not be subject to the payment of annual fees.

Unless provided to the contrary in this Decree, additional patents shall be deemed to be an integral part of the principal patent.

### **Transformation of Additions to Patents to Principal Patents**

**Article 123.** At the request of the owner of the application, an application for an addition may be transformed into an independent patent application at any time during the application procedure. Alternatively, a request for the above may be made within three months following the date on which the Institute has communicated the inadmissibility of the application for an addition because its subject matter is not sufficiently related to the invention protected by the principal patent.

Additions already granted may be transformed into separate patents at the request of their owner provided that he renounces the principal patent.

Following an application to transform one of the additions into a patent, subsequent additions may remain as additions to the patent applied for, provided that there is still the necessary unity of the subject matter.

Principal patents resulting from the transformation of additional patents shall be subject to the payment of the relevant annual fees and their term shall be that of the principal patent.

### **Applicability of Provisions Governing Patents to Additions**

**Article 124.** Unless otherwise specified and for all purposes that are compatible with the nature of the additions, the provisions laid down in the present Decree concerning patents shall also apply to additions.

## **CHAPTER II**

### **Secret patents**

#### **Term for Keeping a Patent Secret and Conditions thereof**

**Article 125.** The content of a patent application shall be kept secret during two months following its date of filing, unless the Institute decides for its prior disclosure.

The Institute may extend the secrecy period mentioned, to five months from the date of filing of the application when it considers that the invention which is the subject matter of the application may be in the interest of national defense. The Institute shall inform, in writing, the applicant of the extension and shall immediately communicate the same to the Ministry of Defense together with a copy of the application filed.

For the purposes mentioned in the first and second paragraphs of this Article, the coordination between the Institute and the Ministry of Defense shall be established so as to determine which of the inventions might be of interest for national defense. Observing the necessary secrecy, the Ministry of Defense shall be entitled to make a prior examination of all applications filed.

Where the national defense interests so require, the Ministry of Defense shall notify the Institute so that before the expiration of the period of five months mentioned above, the latter may demand that the patent procedure be kept secret and inform the applicant accordingly.

Where the patent application or patent is subject to secrecy, the applicant or owner of the patent shall refrain from any act that might enable the content of the invention to become known to unauthorized persons.

At the request of the owner of the patent application or of the patent, the Ministry of Defense may authorize acts leading to the total or partial working of the subject matter of the patent application or patent, specifying the conditions under which such acts may be carried out.

### **Secret Patent Register, Extension of the Secrecy Period and Removal of Secrecy**

**Article 126.** Patents that are granted following the procedure of secrecy shall be entered in a secret Patent Register and shall remain secret for one year from the date of being granted. The secrecy period may be extended annually. In such cases, the owner of the patent shall be informed accordingly.

Annual renewal of the secrecy period shall not apply in time of war until one year after the cessation of hostilities.

Following a favourable report by the Ministry of Defense, the Institute may at any time remove the obligation of secrecy imposed on a patent application or patent.

### **Annual Fees and Compensation for Secret Patents**

**Article 127.** Secret patents shall not be subject to the payment of annual fees.



The owner of a patent may claim compensation from the State for the time during which the patent remains secret. The compensation may be claimed for each succeeding year at the end of that year during which the patent remains secret. Where no agreement can be reached as to the amount of compensation to be paid, it shall be fixed by the Court. Compensation shall be calculated taking into account the importance of the invention and the profits the owner of the patent could have expected to obtain from its free working.

Where the invention that is the subject matter of the patent is disclosed through the negligence of its owner, the latter shall lose the right to compensation.

#### **Authorization to File Applications for Secret Patents in a Foreign Country**

**Article 128.** For the purposes of the provisions laid down in Article 125, in the case of inventions made in Turkey, patents may not be applied for the said invention in any foreign country until two months have elapsed after the patent has been applied for at the Institute and without the latter's authorization. Authorization for filing an application in a foreign country may not be given unless the Ministry of Defense gives special authorization.

Where the inventor is usually resident in Turkey, unless there is proof to the contrary, the invention shall be deemed to have been made in Turkey.

### **PART IX**

#### **INVALIDATION AND FORFEITURE OF PATENTS**

##### **CHAPTER I**

##### **Invalidation of patents**

##### **Invalidating Circumstances**

**Article 129.** A patent shall be declared invalid by the competent Court in the following circumstances:

(a) when it is proved that, in respect of the subject matter of the patent, the conditions of patentability laid down in Articles 5 to 10 of this Decree have not been met;

(b) when it is proved that the invention is not described in a sufficiently clear and comprehensive manner to allow a person skilled in the art to carry it out;

(c) when it is proved that the subject matter goes beyond the scope of the patent application as filed or, where for the purposes of Article 45 the patent has been granted as result of a divided application or of an application based on the provisions of Article 12, when the subject matter of the patent goes beyond the content of the original application as filed;

(d) when it is proved that the owner of the patent had no right to request the patent in conformity with the provisions of Article 11.

A claim, that the owner of the patent had no right to request a patent in conformity with the provisions of Article 11 may only be made by the inventor or his successors in title. In this event, the provisions laid down in Article 12 of this Decree shall be applicable.

Where the causes of invalidation only affect part of the patent, partial invalidation shall be declared through annulment of the claim or claims affecting that part only. Partial invalidation of a claim may not be declared.

Where invalidation is partial, the patent shall continue in force for the claim or claims that have not been annulled, subject to the provisions of Articles 5 to 7 of this Decree.

### **Request for Invalidity**

**Article 130.** Any person who has suffered prejudice or official bodies, through public prosecutors, may request a declaration of invalidation. Moreover, any person who has a right to grant of patent may seek a declaration of invalidation, in accordance with paragraph 1 (d) of Article 129.

An action for invalidation of patent may be brought during the term of the patent or during the five years after its forfeiture.

An action for invalidation of patent, shall be brought against the person registered as the owner of the patent in the Patent Register at the time of bringing the action. Persons owning rights in the patent and duly entered in the Register shall be notified accordingly so that they may take part in the proceedings.

### **Effect of Invalidation**

**Article 131.** Where a declaration of invalidation is made, the consequences of the declaration shall be retrospective. Therefore, the legal protection granted to the patent or patent application, by virtue of this Decree, shall be deemed not to have arisen, insofar as invalidation has been declared.

Without prejudice to compensation for damages due to the owner of the patent acting in bad faith, the retroactive effect of invalidation shall not affect the following:

(a) decisions on infringement of the patent that have become *res judicata* and have taken place prior to the declaration of invalidation of the patent;

(b) contracts concluded and executed before the declaration of invalidation of the patent, to the extent they were executed prior to the declaration. However, for reasons of equity and to the extent justified by the circumstances, partial or total restitution of the amounts paid under the contract may be claimed.

Once it has become final, the declaration of invalidation of a patent shall become *res judicata* in respect of all persons.

#### **Applicability of the Declaration of Invalidation to Additions to Patents**

**Article 132.** The declaration of invalidation of a patent shall not necessarily imply the annulment of the additions. However, unless an application is made to transform the additions into separate patents, within three months following notification of the declaration of invalidation, the invalidation of the patent shall result in the invalidation of the additions to patents as well.

## **CHAPTER II**

### **Forfeiture of patents**

#### **Reasons of Forfeiture**

**Article 133.** Patents shall be forfeited in any of the following cases:

(a) at the expiration of the period of protection for which they were granted;

(b) renunciation of his right to patent by the patent owner;

(c) failure to pay the annual fees and the corresponding surcharge within the time limits prescribed.

From the time at which the circumstances causing the patent's forfeiture occurred, the subject matter of the invention forfeited shall be deemed to have fallen within the public domain. This fact shall be declared by the Institute in the relevant bulletin.

Where there is failure to pay an annual fee, it shall be understood that the

reason giving rise to the patent's forfeiture occurred as at the date when the annual fee was due.

#### **Failure to Pay the Annual Fee due to Reasons of *Force Majeure***

**Article 134.** A patent the forfeiture of which is due to failure to pay an annual fee shall be restored if the owner proves that failure to pay was due to reasons of *force majeure*.

The claim of *force majeure* may only be brought during the six months following the publication of the forfeiture of the patent in the relevant bulletin. The patent owner's claim of *force majeure* shall be announced in the bulletin. Any interested party may formulate observations thereon within a period of one month.

Restoration shall be granted by the Institute. The restoration of the patent shall be without prejudice to the rights of third parties arising from the patent's forfeiture. The recognition and scope of such rights shall be within the competence of the Court.

Where restoration of the patent has occurred, the owner of the patent shall be liable to pay the unpaid fees and the corresponding surcharge.

#### **Renunciation of the Right to Patent**

**Article 135.** The owner of a patent may renounce the patent as a whole or one or various claims therein.

Where the patent is partly renounced, it shall continue in force in respect of that or of those claims not included in the renunciation, provided that they constitute the subject matter of a separate patent and that renunciation does not involve extending the scope of the object of the patent.

Renunciation shall be communicated in writing to the Institute. Renunciation shall have effect from the date of its entry in the Patent Register.

The owner of a patent may not renounce a patent for which effective rights or licenses are recorded in the Patent Register without the consent of the owners of the said rights.

A patent, the ownership of which has been claimed by a third party, may not be renounced without the latter's consent.

PART X

INFRINGEMENT OF PATENT RIGHTS AND ACTION  
FOR THE INFRINGEMENT

CHAPTER I

Acts of infringement

**Acts Constituting Infringement of Rights**

**Article 136.** The following acts shall be held to infringe rights deriving from a patent:

(a) imitation of the product which is the subject matter of the invention by manufacturing partially or wholly without the consent of the patent owner;

(b) manufacturing, offering for sale, putting on the market or using the product that is the subject of the patent or importing or possessing the product manufactured by partly or wholly infringing the patented invention;

(c) making use of a process that is the subject matter of a patent or product obtained by such process, offering such use, marketing, importing without the consent of the patent's owner;

(d) broadening the rights conferred by the contractual or compulsory license without prior consent and transferring these rights to third parties;

(e) participating in, promoting or facilitating any of the acts mentioned in the preceding paragraphs in any circumstances or form;

(f) avoiding to supply information about the source and manner of acquisition of the product that was produced or marketed through infringement.

Where a patent concerns a process for the manufacture of products, it shall be presumed that any product with the same characteristics has been obtained by using the patented process. The defendant shall bear the burden of proof.

When the patent application is published in accordance with the provisions of Article 55 of the present Decree, the owner of a patent may bring civil or criminal action in respect of infringement of the patent. No consideration will be given to the publication of the application where the infringing party has already been informed of the application and its content. Where the Court rules that the infringing party has acted in bad faith, infringement shall be deemed to have existed prior to publication.

## CHAPTER II

### Legal proceedings

#### Claims of the Patent Owner and the Competent Court

**Article 137.** The patent owner whose rights have been infringed may seek:

- (a) cessation of the acts that infringe his rights;
- (b) compensation for the damage and prejudice suffered;
- (c) seizure of the objects produced or imported in infringement of his rights, as well as the means exclusively used for such production or for carrying out the patented process;
- (d) whenever possible, attribution of the ownership of the objects and means seized in accordance with the provisions of the preceding subparagraph. In such cases, the value of the goods concerned shall be deducted from the compensation for damage and prejudice. Where that value exceeds that of the compensation granted, the owner shall pay the excess amount to the other party;
- (e) the adoption of the necessary measures to prevent continued infringement of the patent, in particular, the transformation of the objects or means seized in accordance with the provisions of subparagraph (c) above, or their destruction when such is indispensable in order to prevent infringement of patent;
- (f) publication of the judgment against the person infringing the patent, at his cost, by means of announcements and notification to the persons concerned.

The Court that is located at the domicile of the plaintiff or where the offense has been committed or the effects of the infringement have occurred shall be the competent Court.

Where the plaintiff is not domiciled in Turkey, the competent Court shall be the Court at the place where the patent agent's business is based, or, in cases where he is no longer authorized, the place where the central office of the Institute is situated.

The competent Court for the actions against the owner of the patent or patent application shall be the Court seated in the domicile of the defendant. Where the owner of the patent or patent application is usually resident abroad, paragraph 3 of this Article shall apply.

Where there are several competent Courts, the relevant competent Court shall be the Court where the action was first started.

### Compensation

**Article 138.** Any person who, without the consent of the owner of the patent, manufactures or imports objects protected by the patent or uses the patented process, shall be liable for the damage and prejudice caused.

Persons who in any other way work the subject matter protected by the patent shall only be liable for compensation for the damage and prejudice caused if the owner of the patent has notified them of the existence of the patent in question and of their infringement and has required them to cease such infringement, or their action has been culpable or negligent.

### Documentation to Prove the Infringement

**Article 139.** In order to fix the amount of the damage and prejudice suffered through unauthorized working of an invention, the owner of the patent may require the submission of the documentation belonging to the person responsible.

### Lost Profits

**Article 140.** Compensation for damage and prejudice due to the owner of the patent shall not only include the amount of the loss that he has suffered, but also the profits lost through infringement of his rights.

The profits lost shall be calculated in accordance with one of the following criteria, at the choice of the injured party:

(a) the profits the owner could foreseeably have earned from working the patented invention if there had been no competition from the person infringing his rights;

(b) the profits earned by the latter party from working the patented invention;

(c) the amount the person infringing the patent would have paid to the owner for granting a license that would have allowed him to work the patent legally.

In fixing the amount, special consideration shall be given, *inter alia*, to the economic importance of the patented invention, the term of the patent at the time infringement commenced and the number and class of the licenses granted at that time.

Where the Court considers that the owner does not fulfil the obligation to work the patent as laid down in the present Decree, the profits lost shall be fixed in accordance with the provisions of paragraph 2 (c), above.

#### **Increase in the Amount of Profits Lost**

**Article 141.** Where the injured party has chosen one of the criteria laid down in subparagraphs (a) and (b) of paragraph 2, Article 140 above, for fixing the amount of the profits lost, calculation of those profits may also take into account, to the extent deemed reasonable by the Court, the profits obtained from working other objects of which the patented invention constitutes an essential part from a commercial point of view.

The invention shall be deemed to be an essential part of goods from the commercial point of view when its incorporation constitutes a determinant factor in the demand for the said goods.

#### **Reputation of the Invention**

**Article 142.** The owner of the patent may also require compensation for the prejudice suffered as a result of the loss of reputation of the patented invention caused by the person infringing his rights through defective manufacture or unsatisfactory presentation of the invention on the market.

#### **Reduction in the Amount of Compensation to be Paid**

**Article 143.** The remuneration the owner of the patent has received from other persons for working the same invention in any other manner shall be deducted from the compensation to be paid by the person who has produced or imported the invention without the owner's consent.

#### **Persons against whom compensation may not be claimed**

**Article 144.** The owner of the patent may not bring any of the actions specified in this Chapter in respect of persons who work the objects presented on the market by persons who have paid appropriate compensation for the damage and prejudice caused.

#### **Limitation of Actions**

**Article 145.** The time limit for bringing a civil action for infringement of a patent shall be fixed in accordance with the provisions of the Turkish Code of Obligations.

### **CHAPTER III**

#### **Specialized courts**

##### **Competent Courts**

**Article 146.** Specialized Courts established by the Ministry of Justice shall



deal with the legal actions brought in accordance with the provisions of this Decree.

The High Council of Judges and Prosecutors, on the proposal of the Ministry of Justice, shall select Commercial Courts of First Instance as well as Criminal Courts of First Instance, that will be appointed as Specialized Courts and determine their mandate.

All actions brought against the decisions of the Institute or actions brought by third parties who suffered damage or prejudice on account of the decisions of the Institute taken in accordance with the provisions of the present Decree, shall be dealt with by the Specialized Courts mentioned in paragraph 1 of this Article.

#### **Publication of the Court Decision**

**Article 147.** Where the party, in whose favour the judgment is entered, has a legitimate interest in doing so, he shall have the right to request from the Court, the publication of the final judgment through daily newspapers or similar means at the cost of the losing party. The decision may be published in full or in summary.

The content and form of the publication shall be determined in the judgment. Where such a request for publication is not made within three months from the date of the final judgment, the right of publication shall lapse.

### **CHAPTER IV**

#### **Special provisions**

##### **Legal Action by a Licensee and Conditions thereof**

**Article 148.** Unless otherwise agreed, the holder of an exclusive license may, in his own name, exercise any action recognized in the present Decree that may be exercised by the owner of a patent in respect of third parties who infringe his rights. The holder of a non-exclusive license may not exercise such actions.

A licensee who, according to the provisions of the preceding paragraph, is not entitled to bring an action for infringement of a patent may notarially request the owner of the patent to commence the relevant legal action.

Where the owner refuses to do so or does not bring the appropriate action within a period of three months, the licensee may do so in his own name, annexing the request made.

Prior to expiration of the aforementioned period, the licensee may request the Court to adopt preventive measures in order to avoid serious damage.

A licensee who brings an action, in accordance with the provisions of paragraph 3 of this Article, shall inform the owner of the patent accordingly.

#### **Action to Prove that Infringement has not Occured and Conditions thereof**

**Article 149.** Any interested party may bring an action against the owner of the patent so that the Court may declare that a particular act does not constitute infringement of the patent.

Before bringing this action, subject to the preceding paragraph, the interested party shall, through notarial channels, ask the owner of the patent to make known his views as to whether the industrial working intended or carried out in Turkey by the plaintiff or the serious and effective preparations being made for that purpose constitute an infringement of the rights deriving from the patent.

At the expiration of a period of one month from the date of the request, if the owner of the patent has not replied or if the plaintiff does not agree with his reply, he may bring the action specified in paragraph 1, above.

The action specified in paragraph 1, above, may not be brought by any person against whom a claim for infringement of the said patent has been made.

The claim shall be communicated to all persons owning rights in the patent and duly entered in the Patent Register.

The action referred to in the present Article may be brought jointly with an action to declare the invalidation of the patent.

#### **Inquiries to Substantiate Facts**

**Article 150.** The person authorized to bring action derived from the patent may request the Court to agree to inquiries to substantiate facts that might constitute an infringement of the exclusive right granted by the patent.

#### **Request for Preventive Measures**

**Article 151.** Any person bringing or about to bring any action of the type provided for in the present Decree may request the adoption of preventive measures to ensure the effectiveness of the said action, provided that it is

proved that the patent that is the object of the action is being worked in Turkey or that serious and effective preparations are being made to do so.

Preventive measures may be requested before the action is brought, together with the action, or after it. The request for preventive measures shall be dealt with separately.

#### **Nature of Preventive Measures**

**Article 152.** The preventive measures to be adopted shall be those that duly ensure total effectiveness of the judgment to be pronounced, in particular, the following:

- (a) cessation of acts that infringe the plaintiff's rights;
- (b) withholding and storing of the objects produced or imported in infringement of rights and the means exclusively used for such production or for carrying out the patented process, within the Turkish territory or free trade zones or ports;
- (c) security for any compensation for damage and prejudice;

#### **Application of the Provisions of the Code of Civil Procedure**

**Article 153.** The provisions of the Code of Civil Procedure shall apply to the actions for preventive measures and actions for substantiating facts.

### PART XI

#### UTILITY MODEL CERTIFICATES

##### **Inventions Protected by Utility Model Certificates**

**Article 154.** In conformity with Article 156 of the present Decree, inventions that are new, and, within the meaning of Article 10, the inventions susceptible of industrial application may be protected by utility model certificates.

##### **Inventions that may not be Protected by Utility Model Certificates**

**Article 155.** Utility model certificates shall not be granted for the subjects mentioned in Article 6 of the present Decree nor to processes and products or chemical substances obtained through those processes.

### **Novelty**

**Article 156.** The utility model shall not be considered new, if prior to the filing of utility model application, it has been disclosed in Turkey, in writing or by any other means, and made available to the public, or if it has been used locally or nationwide.

Publications, disclosure or use by the applicant or his predecessors within a period of twelve months from the date of filing the utility model application or the priority date, shall not be considered as destroying the novelty of the utility model.

Applications for patents or utility model certificates filed in Turkey, earlier than the filing date of the utility model application, shall be considered as destroying the novelty of the invention which is the subject of the application, although they may have been published after the date of the application.

### **Right to a Utility Model Certificate**

**Article 157.** The right to obtain a utility model certificate shall belong to the inventor or his successors in title and shall be transferable.

Where an invention which is the subject of the utility model certificate has been made jointly by a number of persons, the right to obtain a utility model certificate shall belong to them jointly, unless agreed otherwise. Provisions of the Turkish Civil Code concerning joint ownership shall apply accordingly.

Where the same invention has been made independently by various persons and one of them has applied for the certificate, provisions of Articles 11 and 12 of the present Decree shall apply to determine the applicant.

### **Preclusion of Rights Against Third Parties**

**Article 158.** Where the subject matter of the invention for which protection is sought by a utility model certificate has been copied from the description, drawings, and models or equipment and installations of a third party without authorization, the protection by the grant of the utility model certificate may not be claimed against the third parties mentioned above.

The owner of the utility model certificate, against whom an action for invalidation has been brought, in accordance with the provisions of Article 156 above, may not claim the rights deriving from the said certificate in respect of third parties until the action is concluded. The registration of the court action together with the subsequent decision and their publication in the relevant bulletin shall be carried out at the request of the parties concerned to the Institute. The claim for compensation by the owner of the utility model certificate shall not be prejudiced.

### **Application for a Utility Model Certificate**

**Article 159.** In order to obtain a certificate of protection for a utility model, an application containing the documents, referred to in Article 42 above, shall be filed with the Institute and it shall be stated that this is the form of protection sought.

Provisions of Articles 43 and 53 of the present Decree shall apply when determining the date of application for the utility model certificate.

### **Examination and Publication of the Application as to Formal Requirements**

**Article 160.** After determining the date of application, the utility model application shall be subject to verification as to formal requirements laid down in Articles 42 to 52 and in the Regulations.

Where the verification shows that the form of the application is defective or that its object may not be protected as a utility model in accordance with the provisions of Articles 154 and 155, the procedure shall be suspended. The Institute shall notify the applicant giving justified reasons and allow him a period of three months from notification of its decision to rectify the defects, modify the claim or claims, and to state his opposition.

Having examined the arguments and, where appropriate, the modifications put forward by the applicant, the Institute shall take the final decision. The Institute may grant the utility model certificate for all or some of the claims.

Where the Institute's verification shows that no defects prevent the granting of protection or where such defects have been satisfactorily rectified, the Institute shall notify the applicant of the favourable decision on continuation of the procedure and shall make the application available to the public, together with a description of the invention, any copies of the drawings and the claim or claims for the utility model applied for, in accordance with the provisions of the Regulations. The application which shall be published in the relevant bulletin shall conform to the conditions and form specified in the Regulations.

The report on the state of the art which is issued by the Institute for patents shall not be issued for the utility model certificates. However, if the owner of the utility model certificate or the applicant makes a special request for obtaining the report on the state of the art, the Institute shall prepare such a report for utility models as well.

### **Objections by Third Persons**

**Article 161.** Within three months following publication of the application,

any person with a legitimate interest may oppose the protection sought for the utility model. In his statement he may cite the failure to fulfil any of the requirements for its grant, including lack of novelty in accordance with Article 156, or the inadequacy of the description.

The statement of opposition shall be accompanied by the relevant documentary evidence.

At the expiration of the period allowed for opposition the Institute shall transmit to the applicant the oppositions received.

Where opposition has been received, the applicant shall be allowed three months from notification of opposition to put forward justified arguments he considers relevant against the opposition or modify the claim or claims, if he deems it appropriate, or request the Institute to issue the certificate without taking the opposition into consideration.

Any opposition against the applicant shall be made before the Court. Such claims made to the Institute shall not be taken into consideration.

#### **The Decision of the Institute, Granting of the Utility Model Certificate and Publication thereof**

**Article 162.** Following the expiration of the period allowed to the applicant to contest opposition or, where appropriate, make the necessary modifications, the Institute shall take a decision on whether or not to grant protection without considering the oppositions of third parties, and inform the applicant of the decision and ask for the payment of the fee prescribed in the Regulations within three months.

Where the prescribed fee has not been paid within three months from the notification date, or no extension of time requested, the utility model certificate shall not be issued and the application shall be considered as withdrawn.

The pamphlets referred to in Article 61 above shall not be published for utility model certificates.

The genuineness and usefulness of the subject of the utility model certificate shall not be guaranteed by the State.

The grant of the utility model certificate shall be published in the relevant bulletin with the following information:

- (a) number of the certificate;
- (b) class or classes to which the invention belongs;
- (c) a title clearly describing the subject matter of the invention;

(d) name, nationality and domicile of the owner of the certificate of the invention;

(e) an abstract;

(f) the date and number of the bulletin in which the application for the utility model certificate was published;

(g) the date on which the certificate was granted;

(h) the possibility of consulting the documentation concerning the utility model certificate granted and the observations and comments made thereon.

### **Opposition as to Formal Deficiencies After Grant of Utility Model Certificates**

**Article 163.** Following the grant of a utility model certificate, third parties may file oppositions with the Institute against formal deficiencies mentioned in Articles 42 to 52, excluding the provisions of Article 45 on unity of invention. It shall not be necessary to have made a prior opposition to the published application for a utility model certificate in order to file an opposition in respect of the above.

Where the examination carried out by the Institute reveals that a formal procedural requirement specified in Articles 42 to 52, except for the requirement concerning unity of invention, has not been met, or that there is a serious procedural omission, the resultant decision of the Institute has the effect of annulling the procedures concerning the grant of the utility model certificate and the resumption of the said procedures from the point where the deficiency or omission had occurred.

### **Term and Form of Protection**

**Article 164.** The protection of a utility model shall confer on its owner the same rights as a patent.

The non-extendible term of protection for utility models shall be ten years from the date of filing the application.

Additions to utility models shall not be granted within the meaning of Article 121 of the present Decree and by analogy therewith.

### **Conditions for Invalidation of Utility Model Certificates**

**Article 165.** Protection of a utility model shall be declared invalid by the competent Court in the following cases:

(a) where the subject matter of the utility model certificate is not contrary to the provisions of Articles 154, 155 and 156 of the present Decree;

(b) where the invention is not described in a sufficiently clear and comprehensive manner to enable it to be carried out by a person skilled in the art;

(c) where the subject matter goes beyond the content of the application for a utility model as filed or, where the utility model has been granted as a result of a divided application in accordance with Article 45 or of an application filed on the basis of the provisions of Article 12 above, when the subject matter of the utility model goes beyond the content of the original application as filed;

(d) where the owner of the utility model is not entitled to protection in accordance with the provisions of Article 157 above.

The invalidation of a utility model certificate may be claimed by third parties who have suffered loss or by interested official bodies through the Office of the Public Prosecutor or by those persons entitled to claim utility model certificates in accordance with paragraph (d) of the present Article.

In order that third parties who have suffered loss, or interested official bodies may claim invalidation of a utility model certificate, they must have filed opposition in accordance with the provisions of Article 161.

The invalidation of the utility model certificate may be claimed at any time during the term of protection.

The claim that the owner of the utility model certificate is not entitled to this right may only be made by the inventor or by his successors in title in accordance with Article 157. In this event, Article 12 of the present Decree shall apply.

Where the reasons for invalidation only affect part of the utility model, partial invalidation shall be declared through the annulment of the claim or claims affected. Partial invalidation of a claim may not be declared.

Where invalidation is partial, the utility model shall continue in force in respect of the claim or claims not annulled, provided that they constitute the subject matter of a separate utility model in accordance with Articles 5 to 7.

The grant of the utility model certificate without taking the substantiated objections of the third parties into consideration or where the utility model certificate has been annulled in consequence of a court decision on account of its connection with the aforementioned objection, the parties who claim to have suffered loss shall have the right to request compensation from the owner of the utility model certificate.



#### **Applicability of Provisions for Patents**

**Article 166.** In the absence of provisions specifically applicable to utility models, the provisions laid down in the present Decree for patents shall apply, provided that they are not incompatible with the specificities of utility models.

#### **Transformation of Utility Model Applications to Patent Applications**

**Article 167.** The owner of the application for a utility model certificate may request the Institute to transform the application to a patent application before the grant of the utility model certificate.

The Institute shall inform the applicant of the required documents to transform the utility model application to a patent application within one month from the date of the request. The applicant shall prepare the requested documents within one month from the date of the notification of the Institute. Where the documents are not forwarded within the given period the request shall be considered as withdrawn and the application shall continue as for the utility model certificate application.

When the utility model application is transformed into a patent application, the utility model application shall be ineffective.

Where a request has been made for the transformation of the utility model application to a patent application, if priority has been claimed for the utility model application, the said priority shall continue to apply as of the date of the utility model application.

According to paragraph 4 of the present Article, following the receipt of the documents forwarded by the applicant, the Institute shall publish the transformation of the utility model application to a patent application in the relevant bulletin. The date and number of the bulletin in which the utility model application and its enclosures was published shall also be mentioned.

#### **Transformation of the Patent Applications to Utility Model Applications**

**Article 168.** Provisions of Article 65 of the present Decree shall apply for the transformation of a patent application into a utility model application.

#### **Registration of the Subject of the Utility Model Certificate as an Industrial Design**

**Article 169.** The subject of a utility model certificate may also be registered as an industrial design. In this event, the relevant legal provisions shall apply.

### **Inadmissibility of Granting a Utility Model Certificate and a Patent in Respect of the Same Invention**

**Article 170.** A patent and a utility model certificate shall not be granted for the same invention independently.

An application filed for a patent or a utility model certificate may only be transformed from one into the other subject to the provisions of Articles 65, 167 and 168 of the present Decree.

## **PART XII**

### **PERSONS ENTITLED TO ACT AND PATENT AGENTS**

#### **Persons Entitled to Act**

**Article 171.** The following persons may act before the Institute:

- (a) natural persons or legal entities;
- (b) patent agents registered as such with the Institute.

Legal entities shall be represented by a person or persons appointed by the organizations concerned.

Foreign residents shall always act through their patent agents.

Where an agent has been appointed, all proceedings before the Institute shall be carried out by the agent. Notification to the agent shall be deemed to have been made to the principal.

## **PART XIII**

### **PAYMENT OF FEES AND LEGAL CONSEQUENCES THEREOF**

#### **The Prescribed Periods and Consequences**

**Article 172.** Fees in respect of the patent application and the patent itself, as prescribed in the Regulations shall be paid by the applicant or patent owner or his agent.

The Institute shall notify in advance the applicant or patent owner or his agent of the date on which the fees prescribed in the Regulations are due.

Where the fee, in respect of a procedure, has not been paid, within the period prescribed in the Regulations, the said procedure shall be deemed to be

deprived of all its effects from the date on which the Institute informed the applicant of the omission.

Where the fee prescribed for dealing with a patent application has not been paid, within the periods laid down in the present Decree, the patent application shall be deemed to have been withdrawn.

#### **Annual Fees**

**Article 173.** The annual fees, specified in the Regulations, to maintain a patent or a patent application in force, shall be payable one year in advance during the term of the patent. The date on which the annual fees are due shall be the month and day corresponding to the date on which the patent application was filed.

Where the annual fees are not paid on the due date, as specified in paragraph 1 of this Article, the said fees may be paid within the following six months from the due date together with a relevant surcharge laid down in the Regulations.

Where the annual fees have not been paid within the periods stated in paragraph 1 of this Article, the right to a patent shall lapse as from the last payment date of this fee.

### **PART XIV**

#### **FINAL PROVISIONS**

#### **Provisions Repealed**

**Article 174.** All the provisions of The Patent Law of March 10, 1296 (March 23, 1879) with the exception of Articles 39, 40, 41, 42, 43, 44, 45, 46 and 47 and Law No. 100, amending Article 12 of The Patent Law of Rebiulahir, 1297 are hereby repealed.

#### **TRANSITIONAL PROVISIONS**

#### **Enforcement of the Provisions of Prior Law**

**Transitional Article 1.** Patent applications filed prior to the promulgation of the present Legislative Decree shall be dealt with and resolved according to the legislative provisions in force on the date they were filed.

In the case of any transfer, assignment or license procedures carried out and registered prior to the promulgation of this Legislative Decree any modifications of procedure shall be subject to the provisions of the present Legislative Decree, without prejudice to rights acquired under prior law.

**Preparation of the Report on the State of the Art Pending the Establishment of an Organization to Undertake the Preparation of the Search Report at the Institute.**

**Transitional Article 2.** Until an organization responsible for the preparation of the report on the state of the art is established, the report as prescribed by the provisions of this Legislative Decree shall be prepared by internationally recognized searching authorities.

**Payment of Annual Fees**

**Transitional Article 3.** In the case of patents which have become invalid on account of the omission of payment of the fees on the due date, the right to the patent shall continue to exist, if the fees and the surcharge, which is twice as much of the said fee prescribed in the Regulations are paid within six months from the date of the notification of the Institute. This provision may apply only where the term of protection for the patent has not expired.

**Pharmaceutical Processes and Protection of Pharmaceutical Products**

**Transitional Article 4.** The protection provided by a patent certificate by virtue of the present Legislative Decree, in respect of processes for the production of medical and veterinary pharmaceuticals and products thereof, commences on January 1, 2000.

The date mentioned in the preceding paragraph may be postponed for five years by a decision of the Council of Ministers.

The protection for medical and veterinary products provided by a patent certificate by virtue of the present Legislative Decree shall commence as of January 1, 2005.

**Entry into Force**

**Article 175.** The present Legislative Decree shall enter into force on the date of its publication.

**Implementation**

**Article 176.** The Council of Ministers shall implement the provisions of this Legislative Decree.

## AMENDMENTS

*Articles 43, 53, 57 of Legislative Decree No. 551 of June 24, 1995 have been amended by Article 1 of Law No. 4128 of November 3, 1995, published in the Official Gazette No. 22456 of November 7, 1995.*

**Article 43.** In the last paragraph of Article 43, the phrase which reads as "the subject matter of the invention, for which a patent is requested is either totally or partly changed", has been amended as follows, "the subject matter of the invention, for which a patent is requested is either totally or partly changed, so that it extends beyond the content of the application as originally filed".

**Article 53.** The sentence, "A date of filing shall be obtained by fulfilment of the requirements specified in Article 43 and the payment of the corresponding fee.", has been amended as follows, "A date of filing shall be obtained by fulfilment of the requirements specified in Article 43".

**Article 57.** In paragraph 5 of Article 57, the phrase "provisions of Article 63" will be amended as "provisions of Article 59".

*Article 73/A has been added by Article 1 of Law no. 4128 of November 3, 1995, so as to follow Article 73 of Legislative Decree No. 551 of June 24, 1995.*

**Article 73/A.** (a) any person shall be punished with imprisonment between one to two years and by a fine not less than three hundred million and not exceeding six hundred million Turkish liras, who makes a false statement with regard to the declaration prescribed in Article 44; or removes from a patented article or its packaging designations placed legitimately thereupon indicating the existence of a patent; or, unrightfully, creates the impression that he is the owner of the patent application or patent;

(b) any person shall be punished with imprisonment between two to three years and by a fine not less than six hundred million and not exceeding one billion Turkish liras, who transfers or grants or uses as security any of the rights mentioned in Article 86 or the license deriving from this right, or who in any way exploits these rights when he is aware, or the circumstances make it obvious that he does not possess any of the aforementioned rights or has any interest therein or the right to exploit them; and places on articles or their packaging or their commercial documents and advertisements markings of such a nature

as to create the impression that the articles are protected by a patent, when he is not the owner of the patented invention or where the term of protection of the patent has expired or where the patent has been declared invalid or forfeited on the grounds specified in Articles 129 and 133, or who uses designations and markings in newspapers, advertisements and notices to the same effect;

(c) any person who commits any of the acts specified in Article 136 of this Decree shall be punished with imprisonment between two to four years and by a fine not less than six hundred million and not exceeding one billion Turkish Liras, as well as by a ruling for the closure of the premises for a period of not less than one year and the cessation of commercial activity for the same length of time. If the offences described above are committed by the employees of an enterprise, whether on their own initiative or under instructions during the course of their employment, the employees and the owner of the enterprise, the director or his representative or any other person who is effectively in charge of the enterprise, irrespective of his title or position, will likewise be punished in the same manner. If any of the the offences specified in Article 136 are committed under the employment of a legal entity, the latter shall be held jointly and severally liable for the expenses and fines. The provisions of Articles 64, 65, 66 and 67 of the Turkish Criminal Code, shall apply in respect of those persons participating in the offence, according to the nature of the offence committed. Prosecution with regard to the offences mentioned above, shall be instituted only upon complaint. Paragraph 1, subparagraph 8 of Article 344 of the Code of Criminal Procedure No. 1412 shall not apply with regard to the implementation of the provisions of the present Article. The right of complaint shall belong to persons whose rights conferred by patents have been infringed, as well as to the Institute in respect of offences other than those listed in Article 136 and, to consumer associations and organizations regulated by the provisions of Law No. 5590 and Law No. 507, for the following offences: for making a false statement with regard to the declaration specified in Article 44; for placing markings on articles manufactured by himself or another person or put on the market, or their packaging or their commercial documents and advertisements giving the impression that protection under a patent exists, when he is not the owner of the patented invention, or where the term of protection of the patent has expired, or the patent has been invalidated, or the right to the patent has lapsed and for displaying such texts and markings, with the same intention as above, in advertisements and notices in the visual and verbal media. Complaints have to be made within two years from the time of obtaining knowledge of the infringement and of the identity of the infringer. Complaints with regard to infringements which fall within the scope of the above are treated as matters of extraordinary urgency. According to the provisions of the present Decree, the provisions of Article 36 of the Turkish Civil Code and the pertinent articles of the Code of Criminal Procedure shall apply for the seizure or confiscation or de-

struction of the articles, the production and use of which constitute grounds for punishment in respect of the infringement of the rights deriving from a patent or a patent application, as well as the means of production such as the equipment, apparatus and machines.

*Article 174 of Legislative Decree No. 551 of June 24, 1995 has been repealed by Article 1 of Law No. 4128 of November 3, 1995.*

**Article 174.** The Patent Law of March 1296 and the additions and amendments made thereto, together with Article 174 of the Legislative Decree are hereby repealed.

*Transitional Article 4 of Legislative Decree No. 551 of June 24, 1995 has been amended by Article 1 of Legislative Decree No. 566 of September 19, 1995, published in the Official Gazette No. 22412 of September 22, 1995.*

**Transitional Article 4.** The protection provided by a patent certificate by virtue of the present Legislative Decree, in respect of processes for the production of medical and veterinary pharmaceuticals and products thereof, commences on January 1, 1999.

### Translator's Notes

For the purpose of preparing the English translation of the Legislative Decree No. 551 on the Protection of Patent Rights, a comparative study of the laws of several countries as well as of international conventions and treaties has been conducted. In particular, the World Intellectual Property Organization's (WIPO) *Industrial Property Laws and Treaties* have been a primary source in the task. Among them, the Spanish<sup>1</sup> and German<sup>2</sup> national laws were considered as especially relevant to the Turkish Legislative Decree No. 551, with considerable fundamental and verbal similarities.

Below is a list of the principal problems and difficulties that were encountered during the course of the translation and the possible solutions offered for resolving them, with a view to drawing attention to ambiguities and complexities that may arise in practice in the future. Most of these ambiguities arise from the inadequacy of the terminology used in the Turkish Decree to express the corresponding terms in the patent laws issued in or translated into the English language. This question has particular significance at the present time in view of the necessity to harmonise Turkish legislation on intellectual property rights with those of its European counterparts.

'*Legislative Decree*': the term is generally used as the equivalent of 'Kanun Hükümünde Kararname'. The example of the Algerian Legislative Decree on patents may be cited here. It has to be noted that the prevalent European practice, in this respect, is to issue laws rather than decrees for regulating patent rights.

'*inventive step*': Article 5 states that for an invention to be patentable, the invention must, *inter alia*, involve an inventive step. Presumably, this is meant to be expressed by the phrase, 'teknîğin bilinen durumunu aşan' (literally: that which surpasses the state of the art). The lack in Turkish of a specific term in this sense results in a tautological statement when read together with Article 7, paragraph 2 which states that "An invention shall be considered to be new if it does not form part of the state of the art". Yet, in Article 5, the quality of novelty is taken as one of the conditions of patentability, similar to the Spanish (Section 4 (1)) and German (Section 1(1)) legislation, where a clear distinction is made between what is 'new' and what involves an 'inventive step' or an 'inventive activity' (Section 1(1))<sup>3</sup>. Another and perhaps a better equivalent in Turkish has been offered by the board of translators of Francis Gurry's paper on "The World Intellectual Property Organization and the Patent Cooperation Treaty"<sup>4</sup> as

1 Law No. 11/1986 of March 20, on Patents, English translation by WIPO.

2 Patent Law of December 16, 1980, English translation by the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law.

3 Model Law For Developing Countries on Inventions, published by the United Bureaux for the Protection of Intellectual Property.

4 Paper delivered in Ankara on October 12-13, 1992, during the International Symposium on Patent Systems and Patent Office Organizations, published with the Turkish translation by the Turkish Ministry of Industry and Commerce and the Research Institute for Banking and Commercial Law.



'buluş aşaması' (p. 19, paragraph 10; literally: step forward or stage of invention).

'service invention': in Turkish, 'hizmet buluşu' (Article 17). The term occurs in this standard form in numerous sources<sup>5</sup>. However, on account of the fact that the exact terminology has not been established, the English version of Decree No. 551 prepared by the Turkish-German Chamber of Commerce<sup>6</sup>, has rendered this term into English as 'inventions made in execution of employment' or 'employment inventions' (Sections 17 and 18).

'defendant/plaintiff': Article 84 of the Turkish Legislative Decree, which bears a striking similarity to Section 61 of the Spanish Patent Law with regard both to content and wording, introduces a significant difference in paragraph 3. The English translation of the Spanish Law states in Section 61 (3), "During proceedings to prove the contrary,... the legitimate interests of the **plaintiff** shall be taken into account so as to protect his manufacturing or trade secrets". The Turkish Decree, in paragraph 3 of Article 84, reads as "During proceedings to prove the contrary... the legitimate interests of the **defendant** shall be taken into account so as to protect his manufacturing or trade secrets" (bold type has been added). As may be noted, the word 'plaintiff' (davacı) is replaced by 'defendant' (davalı) in the Turkish text. One assumes that, in the Spanish Law, since the burden of proof rests upon the plaintiff, the law provides for the protection of his trade secrets, thus taking his legitimate interests into account, whereas in the Turkish Decree it is the defendant, whose interests are safeguarded by extending protection over his trade secrets. It is noteworthy that in the translation prepared by the Turkish-German Chamber of Commerce, 'davalı' (defendant) has been rendered as 'plaintiff' (davacı) perhaps on the assumption that there may have been a typographical error in the Turkish text.

'predecessor/successor': Article 157, paragraph 1 of the Turkish Decree states that "The right to obtain a utility model certificate shall belong to the inventor or his successors in title...". This Article has its parallel in article 144 (1) of the Spanish Patent Law where it is stipulated that "the right to protection of utility models shall belong to the inventor or his successor in title...". Article 156, paragraph 2 of the Turkish Decree, on the other hand, which deals with the question of novelty, states that "Publications, disclosure or use by the applicant or his predecessors within a period of twelve months from the date of filing the utility model application or the priority date, shall not be considered as destroying

5 e.g. B.P. Beatty, "Employee-Inventors' Patent Rights and Compensation and Employers' Rights In Foreign Countries", *The Encyclopedia of Patent Practice and Invention Management*, ed. R. Calvert (New York and London, 1964), pp. 233-34; and J.W. Baxter, *World Patent Law and Practice* (London, 1973), pp. 277, 285, 301, 317.

6 Decree on the Protection of Patent Rights, trans. and published by Deutsch-Türkische Industrie- und Handelskammer Istanbul.

the novelty of the utility model". Presumably, because the clause lacks precision as to the specific conditions that lead to the destruction of novelty, the word 'selef' (predecessor) has been rendered as 'successor' (halef) in English, in the translation by the Turkish-German Chamber of Commerce. Alternatively, the word 'successor' may have been introduced here out of a concern for achieving consistency with Article 157 and on the assumption that the use of the term in the Turkish Decree may have been due to a typographical error.

Indeed, there is a provision for disclosures made by the 'predecessors' of the applicant in certain situations i.e. Section 12(1) of the German Patent Law, which describes conditions where disclosures are made prior to the application and states that "If the applicant or his predecessor in title has, before applying for a patent, disclosed the invention to other persons...". Similarly, the European Convention on the Unification of Certain Points of Substantive Law on Patents for Invention (November 27, 1963), includes the following provision, *inter alia*, for novelty preservation: "Novelty is not destroyed by prior disclosure of an invention (a) in evident abuse of the rights of an applicant, or his legal predecessor; or (b) by the applicant, or legal predecessor, at an official or officially recognised international exhibition...".

It has to be noted, however, that in both the examples, mentioned above, where 'predecessor' occurs, the conditions for the disclosure and the context are clearly explained. It may, indeed, be due to the over-conciseness of the Turkish text and the consequent lack of clarity in this respect that an ambiguity arises.

'*the inventor*': in the Turkish Decree, 'the inventor' is expressed by the term 'buluş sahibi' (literally: the owner of the invention). The Turkish phrase 'buluş sahibi' might, however, give rise to ambiguity, since there is a distinction between 'the owner of the invention' and the 'inventor'<sup>7</sup>. However, in the Turkish Decree it is clear from the context that what is implied by the phrase 'buluş sahibi' is 'the inventor'. In this respect, the translators of F. Gurry have, decided, perhaps more aptly, on the word 'mucit' as the Turkish equivalent of 'inventor'.

'*object of the patented invention*': the Turkish wording of Article 97, paragraph 2 is as follows: "patent konusu buluşun satışa sunulduğunu..." (literally: that the invention which is the subject matter of the patent is being marketed). However, it is clear from the context and the preceding sentence that what is indicated is the 'object' of the invention, and not the invention itself. Such ambiguity or lack of precision, as may exist, must be attributed once again to the inadequacy of the terminology (see also Spanish Patent Law, Section 84 (2)).

<sup>7</sup> cf. J. Phillips and M.J. Hoolahan, *Employees' Inventions in the United Kingdom* (Oxford, 1982), pp 52-57.

'subject/object': Article 135, paragraph 2 reads in Turkish "Patentten kısmen vazgeçilirse, istem veya istemlerin ayrı bir patentin konusunu teşkil etmesi ve vazgeçmenin patentin kapsamının genişletilmesine ilişkin olmaması şartıyla,...". In the Spanish Law, where Section 118(2) corresponds very closely to the above, it is stated that "where the patent is partly renounced, it shall continue in force in respect of those claims not included in the renunciation, provided that they constitute the subject matter of a separate patent and that renunciation does not involve extending the scope of the object of the patent".

It is interesting to note that although in the Turkish text the phrase, 'the subject matter of the patent' corresponds exactly to the phraseology in Section 118(2) of the Spanish Law, referred to above, yet in the case of the extension of 'the scope of the object of the patent', the word 'object' has been omitted in Turkish. This creates an ambiguity, for it is clearly not the patent but its 'object', the scope of which is extended. Hence, the term 'object' has been inserted in the Turkish translation for the sake of clarity.

**Punctuation and Typographical Errors:** Needless to say grammatical inconsistencies and punctuation mistakes make the translator's task even harder. In this context, it is impossible to resist commenting on the erratic use of the 'comma'. One is tempted to think that the 'comma' in this text is possessed by a mischievous spirit intent on leading the reader astray, almost like Puck, Shakespeare's knavish fairy in *A Midsummer Night's Dream*, who takes delight in leading travellers astray, lighting their path with false fire in the dark. You never know where it will reappear and is not to be found where you expect to see it. There are several examples, but I will mention below only two of the most tantalizing ones.

*Article 107(a):* the comma between 'inhisari' (exclusive) and 'lisans' (license), causes an unnecessary rupture in an adjectival phrase, i.e. 'exclusive license' and creates a grammatical ambiguity in the Turkish sentence.

*Article 73/A(c) [Amendments]:* the comma is missing after 'Enstitü' (Institute) in the sentence beginning with the words, "Patentten doğan hakları..." ("The right of complaint shall belong..."). The lack of the comma in this case creates a grammatical confusion as to the parties to whom the right of complaint belongs.

As a last note on the punctuation, I have to add that, in cases where the original text has not made a break in the sentence with a full stop, when the grammatical structure requires that there should have been a stop (e.g. Article 50, paragraph 2, after the verb 'başlar'), I have opted for using a semi-colon to keep the sentence intact, so as not to create a separate clause.

Finally, I have to add that these notes are not in any way directed at excusing any mistakes I may have myself committed in the translation. The minor inconsistencies and errors noted above, no doubt an indication of the great speed with which the Decree was prepared, can in no way detract from the enormity or significance of the task achieved by the Law Commission. However, since we are now entering a phase when Turkish legislation will be increasingly brought into line with those of other European nations, translations will naturally acquire greater importance. Hence, I hope that an account of the difficulties and problems I have encountered will be helpful for the preparation of future translations.

## ERRATUM

Please make the following correction in *Annales de la Faculté de Droit d'Istanbul*, XXX No 46 March 1996:

The title of the translation which appears on page 280 as "Gesetz gegen den unlauteren Wettbewerb" should be corrected as "Gesetz über den Schutz des Wettbewerbs".

The same correction should also be made in the Contents page and on the page headings between pages no. 281-303.

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Wir möchten in der Zeitschrift "Annales de la Faculté de Droit d'Istanbul XXX No. 46 March 1996" einen Fehler korrigieren.

Der Titel der Übersetzung auf der Seite 280 muß statt "Gesetz gegen den unlauteren Wettbewerb" wie folgt lauten: "Gesetz über den Schutz des Wettbewerbs".

Diese Berichtigung sollte auch auf der Umschlagseite der Zeitschrift, im Inhaltsverzeichnis und bei den Seitenüberschriften auf Seite 281-303 durchgeführt werden.

x x x

Nous vous prions de faire la correction suivante dans les *Annales de la Faculté de Droit d'Istanbul*,. XXX No. 46 March 1996 :

Le titre de la traduction "Gesetz gegen den unlauteren Wettbewerb" à la page 280, au sommaire et aux sus-titres aux pages 281-303 doit être corrigé comme "Gesetz über den Schutz des Wettbewerbs".