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## New Turkish Patent Legislation

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# The new Turkish Code of Industrial Property (Law on Industrial Property) No. 6769

- **When?**

10 January 2017

- **What?**

repealing the former Decree-Laws on  
Patents/Utility Models, Trademarks, Designs,  
Geographical Indications

# According to the general preamble of the IP Code, it is intended to;

- Comply with recent developments in EU IP Law,
- Bypass the annulment decisions of the Constitutional Court,
- Render the current legislation clearer, more understandable and systematic.

# Changes on the following:

- Requirement of use.
- Filing of declaration and evidence of use.
- Compulsory License.

# Requirement of Use (Art. 130/2)

- Introduction of the “application date” as an alternative date for putting the patent/application to use

**As a result of this amendment,  
according to the new IP Code, it  
becomes possible:**

- to offer for licence a patent application (Art. 128/1), and
- to request a compulsory licence for a patent application (Art. 130/2)

# **The current filing practice with the T.P.T. Office (T.P.T.O.) in regards of declaration and evidence of use is discontinued as it becomes optional**

- Unlike earlier legislation and practice, Article 117/8 of the **Implementing Regulation which is in force since 24 April 2017** provides that in case the right holder chooses to file a declaration with the T.P.T.O. of use or non-use “preferably for legitimate reasons”, said declaration shall be published in the official patent bulletin.

# Grounds for requesting Compulsory Licence extended

- Under the new IP Code, the sole sanction for non-use is the compulsory licence, once no cancellation is possible on ground of non-use.



# Article 129 of said IP Code mentions six grounds on the basis of which compulsory licenses may be requested and granted, as follows:

- *the patent is not put to use (Article 117 of the Implementing Regulation mentions that “market conditions” and “the circumstances/conditions beyond patentee’s control and will” shall be taken into consideration when assessing non-use),*
- *there are dependent patents (Article 131),*
- *there is public interest (Article 132),*
- *there is exportation of pharmaceutical products for addressing public health needs in other countries (This ground is introduced on the basis of the Protocol amending the TRIPs Agreement – Additional Art 31 bis) (New Ground),*
- *a plant breeder cannot develop a new plant variety without infringing an existing patent or a patentee cannot make use of its patent without infringing an existing plant breeders right (in which case the Law No. 5042 on Plant Varieties will be applied); (New Ground), and*
- *acts of patentee result in a restriction, distortion or breach of competition rules (New Ground)*

# “Competition Board”

- A new bureau introduced by the new IP Code, alongside the courts for cases when the ground for requesting “compulsory license” is the restriction, distortion or breach of competition rules (Art. 129/2).

- The significant change over the earlier practice with respect to the publication in the official patent bulletin of declarations filed with the T.P.T.O. , which also affects cases for which no declaration of use was filed, make it **recommendable to file such declaration with the T.P.T.O. as it can be of precious help not only within the context of a compulsory license request but also within the context of a court action directed against the patent/application.**

# Design Rights

- A major amendment regulated in **Book 3** of the new law is that novelty examination is provided for the registration of designs

# Examples of new provisions regarding the **patent system in Turkey**

- Article 53/(c),
- Article 54/(3),
- Article 56,
- Article 57,
- Article 88/(1), (2), (3), (4),
- Article 101,
- Article 122 (and Rule 136)

**more clear and understandable  
provisions on prior user rights,  
use/work requirement of the patent  
and service invention**

International Exhaustion Principle  
for any kind of IP rights, including  
patent rights

**Thank you for listening!**