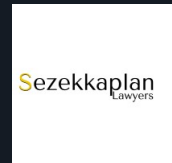


# Legal 500 Country Comparative Guides 2023

## Turkey Patent Litigation

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This country-specific Q&A provides an overview of patent litigation laws and regulations applicable in Turkey.

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# Turkey: Patent Litigation

## 1. What is the forum for the conduct of patent litigation?

Patent cases are monitored before the specialized Courts for Intellectual and Industrial Property Rights (IP Courts) in Turkey. IP Courts are located only in Ankara, Istanbul, and Izmir. Patent cases are monitored before the Civil Courts of First Instance where there are no IP Courts (especially in Anatolia).

Both IP Courts and Civil Courts of First Instance have single judge who don't have to be trained academically in the field of intellectual property. Nevertheless, they are supported by special trainings in the said field.

Competent Courts are regulated under the Article 156 of the Law on Industrial Property No. 6769. Accordingly:

- The competent court in the lawsuits to be filed against the decisions of the Turkish Trademark and Patent Office, which is the authority to register patents, is Ankara Civil Court of Intellectual and Industrial Property Rights.
- The competent court in the lawsuits to be filed against the third parties (patent owners or infringers) is the court where plaintiff is domiciled or where the unlawful act (patent infringement) has taken place.
- The competent court in the lawsuits where the plaintiff is a foreigner and has no domicile in Turkey, is the place where plaintiff's patent attorney in Turkey is recorded at the date of filing of lawsuit, if the plaintiff has no attorney, then it is Ankara Civil Court of Intellectual and Industrial Property Rights.

Having patent disputes resolved before the IP Courts in Ankara, Istanbul and Izmir when applicable with the regulation about the Competent Court, may be more advantageous thanks to the experience of these courts.

If the plaintiff claims for damages in a patent case, the plaintiff must first apply to the commercial mediator, as required by legal regulations, since this is a commercial claim.

Mediator must resolve the dispute within 4 weeks at the latest. Mediator gathers the parties for this purpose,

seeks for a mutual reconciliation and conducts one or two meetings. If the parties fail to negotiate following these meetings, then the mediator closes the file with a record and the plaintiff can launch the litigation process thereafter.

There is no mediator stage in the patent disputes that does not have claim for damages and the plaintiff should file the lawsuit directly before IP Courts.

## 2. What is the typical timeline and form of first instance patent litigation proceedings?

In general, litigation process takes about 18 and 24 months for the district court to render a decision, but it may vary depending on the complexity and significance of the case.

According to Turkish Law, infringement and invalidity lawsuits are not necessarily divided in terms of proceedings.

Plaintiff can file a single lawsuit and claim for invalidation and infringement, but also has a right to file lawsuit relying upon only one of these claims.

Court cannot examine ex-officio a patent infringement (violation), only analyzes the claim of infringement and/or invalidation of the plaintiff party, if any. In case of a violation, the defendant can file a counteraction against the plaintiff and claim the non-infringement. In such probability, both cases are combined by the Court.

Provisions applied in civil cases are applied in both lawsuits.

### a) Provisional Injunction (optional)

Plaintiff can claim a provisional injunction about the subject of patent in the beginning of the lawsuit (for instance, ceasing the use of the product subject to patent infringement temporarily by virtue of Court's decision).

If plaintiff demands for provisional injunction, Court examines this demand and issues a decision prior to the hearing or at the upcoming stages of litigation; it may accept or reject such demand at its own discretion.

### b) Formal examination and acceptance of Plaintiff's

## Petition by the Court

If the plaintiff's petition is formally acceptable, then the Court notifies the defendant of this petition and appoints a response time of 2 weeks.

### c) Submission of Parties' Claims, Responses and Counter Arguments

Parties have a right to submit 2 reply briefs in total, before the start of litigation (plaintiff's petition, defendant's reply brief / plaintiff's response to reply brief and defendant's final reply).

No claims or defenses shall be extended or changed following the completion of this stage of exchange after the petitions are submitted. This exchange stage takes nearly three months. The preliminary examination phase takes place once the judge appoints a hearing date after this stage of exchange is finalized.

### d) Preliminary Examination (First Hearing)

Date of first hearing is appointed, and litigation is launched following the exchange of petitions. Technical name for this first hearing is "Preliminary Examination Hearing".

Judge listens to the parties verbally, records the claims and defenses and analyzes the matters of dispute between the parties in this preliminary examination hearing.

This examination can be considered as detecting the matters of dispute.

### e) Examination Stage

Judge grants a short period (generally 15 days) to the parties to submit their evidence and starts the inquiry, following the first hearing. The purpose of inquiry is to review and evaluate the evidence.

### f) Expert Examination

In patent disputes, the court commonly refers to the technical knowledge of expert witnesses. Expert reports are usually prepared by 3-person committees. Although the court is not bound by these reports, in practice, it is often seen that the reports are taken as a basis for the judgment.

### g) Final Hearing

After collecting and evaluating all the evidence, the court announces its decision by inviting the parties.

## 3. Can interim and final decisions in patent cases be appealed?

Both the interim decision and final decisions in patent cases can be appealed.

There is a four-phase judicial system applicable in Turkey.

The first phase is the court of first instance explained above. The decision issued by this court can be appealed before the District Court of Appeal. After this stage, either party can appeal before the Supreme Court.

Following the Supreme Court stage there is a chance of "Revision of Decision", which is an exceptional right of appeal. This final remedy shall be considered only if there is a gross fault of litigation, or a new circumstance arises in the course of lawsuit.

If it is decided for the Invalidation of Patent or Prevention of Patent Infringement, the execution of shall take place after all appeal stages stated herein are completed or if the defendant does not exercise its right to appeal. In other words, the decision of the Local Court should become definite, that is to say the appeal processes should be consumed.

Appeals before the Supreme Court are examined by a special chamber (11th Civil Chamber of the Supreme Court) consisting of Judges who are specialized in the intellectual property law and commercial law).

The period of appeals is set as 2 weeks by local regulations.

If either party exercises its right to appeal, finalization of a patent infringement may take at least 4 and approximately 5 years.

A preliminary injunction decision may be issued against the patent (pursuant to the article 159 of the Law on Industrial Property) in the course of lawsuit. This is an interim decision and can be appealed separately.

## 4. Which acts constitute direct patent infringement?

Any case regarded as the violation of patent right should take place to speak of an infringement against a patent right. Such cases are regulated under clause 141 of the Law on Industrial Property.

According to the said article, below are the acts that are deemed as an infringement of a patent right:

A. To imitate partially or completely the subject of patent as a result of production without the consent of owner of patent.

B. To use, sell, distribute, release to commercial area, import, keep for commercial purposes or put into commercial use the products subject to the patent and patent procedures that are partially or completely imitated.

C. To expand the rights granted by owner of patent through contractual license to transfer these rights to third parties without any permission.

### **5. Do the concepts of indirect patent infringement or contributory infringement exist? If, so what are the elements of such forms of infringement?**

Yes, this term is defined in Article 86 under the Industrial Property Law as "prevention of indirect use of the invention" :

Preventing the indirect use of the invention ARTICLE 86 –

(1) The patentee has a right to prevent the factors or equipment regarding a part which makes the practice of the invention subject to a patent possible and constitutes the basis of the invention from being released third parties to parties who do not have an authority to use the invention subject to a patent. In order to implement this provision, the subject third parties must be aware that such factors or equipment are sufficient to use the invention and must be aware of using them for this purpose; or the situation must be clear enough. (2) If the factors or equipment mentioned in the paragraph 1 are products which can be found anytime in the market, the provision of the paragraph 1 shall not be implemented in case the third parties do not induce the subject unauthorized parties to perform such practices. (3) The performers of the practices specified in the subparagraph (a), (b), (c) and (ç) of the paragraph 3 of Article 85 shall not be considered as those who are unauthorized to use the patent according to the provision of paragraph 1.

Within this frame, prevention of the indirect use of a patent element to third parties can be summarized as follows:

A. The prohibition about the issuance of an element subject to the patent is for those who are not authorized to use the invention.

B. The prohibited element should be related to the part

allowing the performance of the patent subject that also constitutes the fundamentals of the invention.

C. In order to speak of an indirect patent infringement, third parties should know that these elements are sufficient to perform the invention and used for this purpose (or the case should be clear).

There will be no prevention, if the elements mentioned within the scope of indirect infringement as per the second paragraph of the said article are the products that always exist in the market.

### **6. How is the scope of protection of patent claims construed?**

Law on Industrial Property No. 6769 regulates the scope of protection of a patent within the framework of claims. Accordingly, the scope of protection for a patent is defined with "claims".

Patent's scope of protection may be narrowed or extended, depending on the method applied on the claims.

All essential characteristics of an invention should be defined in an independent claim, multiple dependent claims can also be issued to define more clearly the characteristics of an invention demanding protection.

Specifications and drawings are regarded in interpreting the claims, claims shall not be interpreted limited to words.

Applicant's statements are also considered in the claims. This was regulated in the relevant legal regulation (article 89/7) as the doctrine of restrictive statements. According to such doctrine, the statements of the applicant based of in defining the scope of protection (claim).

The said article is as follows:

89/7 – If the patent includes samples regarding the invention, the claims shall not be interpreted as limited to such samples. The product or the method shall not be left out of the extent of the protection provided by the claims especially in cases that the additional features of the product or method do not exist among the samples mentioned in the patent; do not cover the features of such samples; or cannot reach every objective or feature specified in such samples.

Elements equivalent to the elements in the claims on the date the existence of violation is asserted are regarded. This is defined as "doctrine of equivalents" and regulated

under articles 89/5 and 89/6 of the Law No. 6769.

In Turkish Law, the "doctrine of equivalents" is adopted and patents are also protected against equivalent infringements.

## 7. What are the key defences to patent infringement?

The most common defence method used against the claims of infringement in the practice is to claim for "invalidation of a patent" by filing a counteraction.

In case an invalidation lawsuit is filed, this will be deemed as preliminary issue for the infringement lawsuit and firstly the claims of invalidation will be addressed before the IP Courts.

On the other hand, rights resulting from the prior use may also be claimed.

Pursuant to the law, a patent owner cannot file an invalidation lawsuit against those who used the invention in good faith or those who used it as a precaution against the bad faith attempts in Turkey before the application date. Such good faith and precautionous uses are protected, patent owner does not have a right to prevent this.

"Bolar Exemption" as set out in our law practice and doctrine (Article 85/3) is the most commonly asserted defense in the claims for pharmaceutical patents. Accordingly:

85/3: The practices mentioned below shall be out of the scope of the rights provided by a patent:

- A. practices which do not involve industrial or commercial purposes and are confined to special purposes,
- B. trial practices involving the invention subject to a patent,
- C. trial practices involve the performances of the invention subject to a patent in order to register drugs including necessary tests and experiments needed for this purpose,
- D. using the drugs prepared in pharmacies without a mass production in order to prepare only one prescription and practices regarding drugs prepared this way,
- E. using the invention subject to a patent in making and running ships, space vehicles, airplanes or land transport vehicles for party countries of Paris Convention or in meeting the needs of such vehicles; using the mentioned

vehicles provided that they are within the borders of Republic of Turkey temporarily or accidentally.

Exclusion of patent rights on a product is another defence. Pursuant to the 152nd Article of the Law, in order to exclude an intellectual property right in Turkey, it would be sufficient to release into market anywhere in the world a product with an intellectual property right.

## 8. What are the key grounds of patent invalidity?

Article 138 of the Industrial Property Law lists the invalidity conditions for patents. Accordingly; if the invention does not meet the conditions for patentability, if the invention is not disclosed in a sufficiently clear and comprehensive manner, if the subject matter of the patent exceeds the scope of the first version of the application, or if the patent is based on a divisional application but exceeds the scope of this application, if it is proven that the patentee does not have the right to request a patent, and if the scope of the protection provided by the patent has been exceeded, the invalidation of the patent is decided by the court.

The validity of a patent can only be challenged before IP Courts or Civil Courts of First Instance. (See Question 1) Therefore, a patent can only be invalidated by a Court decision. In responding to this question, please consider if there are any requirements for the valid grant of a patent that are not reflected in the available grounds of invalidity upon which a patent may be revoked.

## 9. How is prior art considered in the context of an invalidity action?

Prior art is the entire information about the invention, asserted in written or verbally, or explained through use, anywhere in the world, prior to the subject patent application.

It has been accepted as a principle that the invention beyond the prior art is novelty. Exceeding the prior art is amongst the conditions required for an invention to make use of a patent protection.

Pursuant to Turkish law, everything disclosed anywhere in the world before the patent application is included in the prior art. If the main claim subject to the patent has been published priorly anywhere in the world, then the application shall not be patented.

In addition to above, 84th Article of the Law regulates the conditions that do not affect granting a patent (or utility model) to a patent. Accordingly:



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

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

A. the statement is made by the inventor,

B. the statement is made by an authority to which the application for a patent 1) was made and the information released by this authority, is mentioned in the inventor's other application and the mentioned application is revealed by the related authority even though it was required not to be revealed, 2) is mentioned in the application that was filed by a third party who obtained the information directly or indirectly from the inventor without the inventor's permission.

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

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

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

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

### 10. Can a patentee seek to amend a patent that is in the midst of patent litigation?

Our law practice prohibits any amendment on the patent following the grant of a patent. For this reason, patent owner has no right to make amendment on the patent.

Moreover, amendment can be made on the patent during the registration process of the patent (prior to registration).

This case may be observed in two ways. First one is the likelihood of opposition against the patent by third parties after the publication on the official bulletin. In accordance with the Article 99/4 of the Law on Industrial Property,

patent owner can make amendment on the patent within 3 months after being notified of the opposition.

The second case is regulated on Article 103. Pursuant to this article, the patent application can be amended by the applicant on condition of not exceeding the extent of the first version of the application during the transaction by the Office.

On the other hand, while there is an ongoing invalidation lawsuit against the European patents, the owner of the European patent can apply to Turkish Patent Office and demand the restriction of claims. If this restriction is accepted, Patent Office notifies the Court, and this restriction is also approved by the Court accordingly.

### 11. Is some form of patent term extension available?

There is no patent term extension available in Turkish Law practice.

### 12. How are technical matters considered in patent litigation proceedings?

The most important evidence in the lawsuits is the expert opinion (please refer to paragraph f of the answer to 2nd question).

The vital evidence in the lawsuit is the expert report issued by the special experts, as the patent matters usually require a knowledge of engineering, although the specialized IP Court judges have experience in the field of intellectual property.

On the other hand, even if the expert report is the most important evidence for litigation, Judge is not bound by such report and can always receive the opinion of additional experts.

### 13. Is some form of discovery/disclosure and/or court-mandated evidence seizure/protection (e.g. saisie-contrefaçon) available, either before the commencement of or during patent litigation proceedings?

There is no obligation of any discovery or disclosure before the commencement of a patent litigation proceeding in Turkish Law. However, although not an obligation, the patent owner can apply for recording of evidence or preliminary injunction, which are defined as temporary protection measures in our law practice.

Accordingly, if there is a risk that the evidence may be changed or disappear, either party can apply to a civil court and demand for the recording and maintenance of evidence. The demand of recording of evidence can be filed prior to or during the concrete case.

Demand for recording of evidence shall be submitted via a detailed petition indicating the claims of discovery and relevant aspects.

This procedure can be applied to ensure the safety of any kind of evidence from printed materials to websites. Recording of evidence is performed faster than other rules of procedure (is finalized assumedly within 1 month).

#### **14. Are there procedures available which would assist a patentee to determine infringement of a process patent?**

Yes, there is a regulation available in our Law that assist a patentee to determine infringement of a process patent. The regulation set out on Article 141/2 of the Law on Industrial Property is as follows:

141/ (2): In the event that the subject of the patent becomes a method related to obtaining of a product or material, the court may request the defendant to prove that the method related to obtaining of the same product or material is different from the method forming the subject of patent. In case that product or material obtained by method forming the subject of patent is new, the same product or material produced without permission of patent owner is deemed to have been obtained by the method forming the subject of patent. Anyone who claims otherwise shall be obliged to prove it. In such a case, the legitimate interests of the defendant shall be considered to protect the production and business secrets of the defendant.

#### **15. Are there established mechanisms to protect confidential information required to be disclosed/exchanged in the course of patent litigation (e.g. confidentiality clubs)?**

All documents submitted to the lawsuit folder can be accessible by the adverse party. Plus, the copy of each document is served to the other party. However, if either party has a request for confidentiality, this should be evaluated by the Court in charge.

If such request is approved, the document is kept in the Court's safe. This document can be examined by the

adverse party only with the permission and within the premises of the Court, for the purposes of defense.

#### **16. Is there a system of post-grant opposition proceedings? If so, how does this system interact with the patent litigation system?**

Post-grant opposition proceedings are available in line with the Industrial Property Law practice. An opposition can be filed within six months as of the publication of a patent on the official Office bulletin.

The opposition is accepted, if the patent does not meet the criteria of patentability, not disclosed in detail, or the inventive step is not exceeded.

Upon the opposition, patent owner can provide a response or submit amendment within three months.

The validity of a patent is approved, it is accepted after examining the opposition that the patent is duly in order. Patent becomes null if it is decided that it is not patentable.

In addition, a lawsuit for cancellation of the decision can be filed against the decision of the Office before the Ankara Intellectual and Industrial Rights Civil Court within 2 months following the notification of the final decision.

#### **17. To what extent are decisions from other fora/jurisdictions relevant or influential, and if so, are there any particularly influential fora/jurisdictions?**

Turkish Courts are not bound by the decisions or opinions of other national courts.

However, Turkish Courts may deem, assess, and adopt these decisions as precedent.

Decisions/opinions of the European Patent Office (EPO) also have a strong impact on Turkish Courts, which can be deemed as such supportive evidence. Likewise, EPO's decisions regarding the European Patents, are valid and binding for the validity of such patent in Turkey within the scope of EPC.

#### **18. How does a court determine whether it has jurisdiction to hear a patent action?**

Principles regarding the authority in civil justice are regulated under the Code of Civil Procedure.

Competent Courts are set out on Article 156 of the Law on Industrial Property No. 6769. Accordingly:

- The competent court in the lawsuits to be filed against the decisions of the Turkish Trademark and Patent Office, which is the authority to register patents, is Ankara Civil Court of Intellectual and Industrial Property Rights.
- The competent court in the lawsuits to be filed against the third parties (patent owners or infringers) is the court where plaintiff is domiciled or where the unlawful act (patent infringement) has taken place.

The competent court in the lawsuits where the plaintiff is a foreigner and has no domicile in Turkey, is the place where plaintiff's patent attorney in Turkey is recorded at the date of filing of lawsuit, if the plaintiff has no attorney, then it is Ankara Civil Court of Intellectual and Industrial Property Rights.

Foreign patents are regarded as the same as the national patents in Turkish Law practice, if these are amongst the patents of the countries signatory to the Patent Cooperation Treaty (PCT). General litigation principles are applied, and no different procedure is performed for these patents.

### 19. What are the options for alternative dispute resolution (ADR) in patent cases? Are they commonly used? Are there any mandatory ADR provisions in patent cases?

The applicability of arbitration or ADR in dispute resolution is a controversial matter in Turkish law.

It is generally accepted that the disputes other than patent invalidation can be resolved via arbitration (along with that, there are present opinions in the doctrine defending that the patent disputes should be addressed by the Courts of Intellectual and Industrial Property Rights with a specialty in the matter).

There is a consensus that disputes relating to patent invalidation cannot be resolved via arbitration or ADR. That is because, the matter not only affects the parties, but also the rights and statuses of the third parties.

Besides, patents are registered by the state, therefore it is accepted that it is not possible to demolish a patent right via an arbitration decision to which the state is not a party.

It is also accepted that the claims for damages resulting from the invention of employees should be resolved via arbitration. However, there is an ongoing cancellation lawsuit, claiming that the procedure of arbitration for patent disputes, including the compulsory arbitration clause is against the law and unconstitutional.

### 20. What are the key procedural steps that must be satisfied before a patent action can be commenced? Are there any limitation periods for commencing an action?

Lawsuits are filed via petitions in our law practice.

The petition should clearly include the names of the plaintiff and defendant, addresses, attorneys (if any), all claims, aspects, together with the final demand.

The statute of limitations should be observed in patent disputes.

According to the Turkish Code of Obligations, a patent infringement lawsuit must be filed within 2 years after the infringement is learned and in all cases within 10 years.

The invalidation action can be filed as long as the patent protection period continues.

In this framework, it should be taken into account that the patent protection period is 20 years, that it is possible to file a lawsuit within 5 years following the expiration of the patent right, and that an invalidation lawsuit can only be filed for a patent published in the official bulletin.

In addition to all of these, it is necessary to apply to a mediator in any patent dispute with a claim for compensation. On average, a mediation process of this nature is concluded within 4 weeks.

If the plaintiff claims for damages in a patent case, the plaintiff must first apply to the commercial mediator, as required by legal regulations, since this is a commercial claim.

Mediator must resolve the dispute within 4 weeks at the latest. Mediator gathers the parties for this purpose, seeks for a mutual reconciliation and conducts one or two meetings. If the parties fail to negotiate following these meetings, then the mediator closes the file with a record and the plaintiff can launch the litigation process thereafter.

There is no mediator stage in the patent disputes that does not have claim for damages and the plaintiff should file the lawsuit directly before IP Courts



## 21. Which parties have standing to bring a patent infringement action? Under which circumstances will a patent licensee have standing to bring an action?

Every inventor whose patent right is registered in Turkey can file patent infringement lawsuit.

If the patent is owned by multiple persons, one of the owners can file the lawsuit singly. The co-owner who filed the lawsuit must post a notice to allow other owners to join the lawsuit.

If there exists a License Contract about the patent, the owner of an exclusive licensee can file the same lawsuits against the third parties on its own behalf as the patent owner, unless otherwise specified in the contract.

Licensee who does not have an exclusive right, on the other hand, cannot file lawsuit in cases of infringement. However, may demand from the patent owner to file the lawsuit. If the patent owner does not file the demanded lawsuit within three months, or rejects the demand, then the licensee who does not have an exclusive right can file the lawsuit singly.

No one apart from those cited above, has a right to file a patent infringement lawsuit.

## 22. Who has standing to bring an invalidity action against a patent? Is any particular connection to the patentee or patent required?

Patent invalidation lawsuit can be filed by any beneficiary, Public Prosecutors or relevant Government Agencies.

Patent Invalidation concerns the public order; therefore it is accepted that almost everyone has a condition of interest.

## 23. Are interim injunctions available in patent litigation proceedings?

Yes, interim injunctions are available. Given that intellectual property rights may be irremediably and irremediably damaged by acts of third parties, injunctions play an important role in litigation.

Injunctions can be obtained before the litigation or during a trial. To provide an injunction decision from the relevant IP Court, the plaintiff must prove irreparable harm (or the potential harm that will happen shortly) if the injunction is not granted.

Although the courts may decide on interim injunction according to the characteristics of each case, in practice, this decision can be granted very exceptionally. When such a decision is made, Courts usually require the plaintiff party to deposit a large deposit amount.

In practice, courts receive preliminary opinion, by sending the file an expert review. If the legal experts conclude that there has been a violation in their report, the Court can issue an interim injunction.

## 24. What final remedies, both monetary and non-monetary, are available for patent infringement? Of these, which are most commonly sought and which are typically ordered?

Typical remedies granted to successful plaintiffs include:

- A. Material compensation for damages,
- B. Moral compensation, especially the reputational damage of the plaintiff party,
- C. Confiscation on the products subject to patent infringement,
- D. Demolishing the infringing products,
- E. Publication of the Court decision with the commonly circulated newspaper in Turkey.

Generally, the plaintiff parties claim material compensation, even though it is technically hard to calculate the material compensation (namely, the loss of the plaintiff party's commercial profit caused by the patent infringement, or the omitted profit of the defendant) from the commercial records.

## 25. On what basis are damages for patent infringement calculated? Is it possible to obtain additional or exemplary damages?

Damages in patent infringement are calculated by the following methods.

The first method is the damage suffered by the infringing party (patent owner) as a result of this infringement. This loss may mean loss of potential customers or loss of sales of the patented product in the market.

The second method is the sales profit of the infringer party.

The last method is the "precedent license fee". If the

patentee grants the defendant a license to use the patent in question, the value of that license also determines the pecuniary damage.

The plaintiff may choose only one of the above-mentioned methods.

According to Article 150/2 of the IP Law, additional compensation may be claimed if the reputation of industrial property right (patent) is damaged and the value of the patent has decreased in the market.

In practice, the above-mentioned compensation amounts are calculated based on the commercial books of the infringer or by taking into account fair market values.

## **26. How readily are final injunctions granted in patent litigation proceedings?**

If patent infringement is found in the case, no additional elements are required for the Court to grant a final injunction. Here, the Court will order the prohibition of the use and confiscation of the products that are the subject of the lawsuit. In addition, the Court will also award monetary and non-pecuniary damages, if requested (please see our answers to points 24 and 25).

## **27. Are there provisions for obtaining declaratory relief, and if so, what are the legal and procedural requirements for obtaining such relief?**

This method is a valid and useful method in Turkey especially for those, who are interested in a patented technology and want to secure their rights before entering the market.

In general, companies wishing to start a business related to certain pharmaceuticals in Turkey use this method. Any interested person may request information from the patent owner as to whether the commercial/industrial activities to be carried out in Turkey infringe the subject patent right.

If no opinion is given, or if the opinion is deemed insufficient, the claimant party may file a declaratory judgment action. The plaintiff must prove that it has a legal interest in the action.

## **28. What are the costs typically incurred by each party to patent litigation proceedings at first instance? What are the typical costs of an appeal**

## **at each appellate level?**

If the case is won, the defendant may be awarded damages (if requested). In addition, the legal costs incurred by the plaintiff, i.e. court fees, legal expertise fees and official translation fees, are charged to the defendant. The court will also order the defendant to pay the attorney's fees in accordance with the official tariff. If the defendant is awarded compensation, he/she will also pay an additional attorney's fee of 10% of the compensation amount.

## **29. Can the successful party to a patent litigation action recover its costs?**

According to the Civil Procedural Law, a losing party bears the judicial costs and the fixed attorney fee as explained in question 28. To recover other costs or losses, the requesting party must file another lawsuit with the compensation claim.

## **30. What are the biggest patent litigation growth areas in your jurisdiction in terms of industry sector?**

We are of the opinion that the concept of patent has gained a high level of importance and value today. In our opinion, it is inevitable that patent production will increase especially in the fields of medicine, pharmacology and engineering after the introduction of artificial intelligence into our daily lives. Likewise, the most important result of the globalization of trade and the spread of goods/services traffic is the increase in inventions.

For this reason, the high-level commercial competition encourages the entrepreneurs to make new inventions. We assume that the number of patents will increase in the coming period, especially in the medical field, in the digital field (especially virtual games) and in mechanical – electronic and civil engineering.

## **31. How has or will the Unified Patent Court impact patent litigation in your jurisdiction?**

Turkey is a party to the European Patent Convention but a non-European Union country. In the system renewed with the establishment of the Unified Patent Court, patent holders in countries that are not members of the European Union will also be able to include their European patents in the UPC system for UPC countries, or if they wish, they can keep their patents within the pre-

existing European patent system with an opt-out procedure, and the national patent protection in their domestic jurisdictions.

In practice, it would not be wrong to say that patent disputes in Europe are commonly made as a preliminary issue in Turkey. In this frame, with a similar approach, there is a possibility that the UPC may have a similar effect.

### 32. What do you predict will be the most contentious patent litigation issues in your jurisdiction over the next twelve months?

We are of the opinion that the effectuation of the Unified Patent Court system will be one of the most controversial patent litigation issues in the next twelve months.

Because, as mentioned above, although Turkey is a member of the European Patent Convention, it is not a member of the European Union.

Therefore, it is not yet known how this system originating from the European Union will be implemented in Turkey or its impact on the courts. Although a precedent decision that may be obtained in the coming period maybe a guideline, we anticipate that there will be differences of opinion among the courts as to whether the decisions taken in the UPC will be considered valid or precedent in Turkey.

### 33. Which aspects of patent litigation, either substantive or procedural, are most in need of

### reform in your jurisdiction?

The most important reform should be in the length of trials. An ordinary patent case takes 4 to 5 years to be concluded in Turkey, which is a serious waste of time and resources for right holders.

Judicial systems (in Turkey and around the globe), should be fully specialized, the duration of the litigation should be shortened and disputes should preferably be resolved in 3-4 months rather than 5 years.

In addition, the long duration of the expert examinations and the conflicting nature of the numerous reports received on the case also create confusion.

These unfavorable situations can be overcome by selecting qualified persons who are truly appropriate to the specifics of the case when compiling the expert lists.

### 34. What are the biggest challenges and opportunities confronting the international patent system?

First of all, we would like to point out that a national patent system is being adopted in Turkey. Therefore, a patent registration in another country is not valid in Turkey and must be registered with the Turkish Patent Office. However, registration processes take a long time.

Considering the long duration of the processes and the fact that the same process is repeated in different countries, this constitutes a conflict with procedural economy. With this understanding, we are of the opinion that a system such as UPC is useful, but it would be much better to develop the scope at a universal level.

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