

IP LAW REFORM IN TURKEY

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THE FIRST IP LAWS IN TURKEY

The first intellectual property laws in Turkey were Alamet-i Farika Nizamnamesi (the Trademark Decree Law) of July 20, 1871 and İhtira Berati Kanunu (the Law of Patent Rights) of March 23, 1879, which remained in force and unamended until 1995.

With the radical changes introduced in 1995, many of the EU standards were met and the progress of intellectual property in Turkey commenced. Entry to the International Patent Application (PCT) (1996) and European Patent (EP) (2000) systems meant Turkey was able to engage with IP on an international platform.

Since 1995, the following decrees/laws have entered into force:

- Decree/Law no.556 pertaining to the protection of trademarks has been in force as from June 27, 1995
- Decree/Law no.551 pertaining to the protection of patents has been in force as from June 27, 1995
- Decree/Law no.554 pertaining to the protection of industrial designs has been in force as from June 27, 1995
- Decree/Law no.555 pertaining to the protection of geographical signs has been in force as from June 27, 1995.

After 1995, progress continued with Turkey's entry, in 2004, into international agreements and treaties, including The Rome Convention. This highlighted the need for legislation or a specific act in the area of intellectual property and led to research into a new draft law. One of the main reasons behind the need for legislation was EU harmonisation efforts. Another important reason was the increasing interest in the area of intellectual property among the public. The establishment of the Special Courts for Intellectual and Industrial Property Rights has also had a considerable impact on the recognition of intellectual property matters in Turkey, and yielded to a need for legislation in the area.

Moreover, one of the important debates on current intellectual property legislation in Turkey concerns the fact that it has decree/law status. This causes some difficulties regarding the implementation of criminal sanctions, especially since a Constitutional Court decision in which it was decided that criminal sanctions cannot be implemented by a decree/law according to the principle of legality. Therefore, the legislation proceedings have become a hot topic in the law reform agenda.

The legislative reform initiated in 2004 has not yet been finalised with a specific law. Although it has taken a quite long time, especially considering

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the urgent need for laws in the areas of trademarks, patents and industrial designs, the current versions of the laws are much improved compared to the first drafts submitted at the very beginning of 2004. These improvements were shaped on the basis of the demands of the public as well as the requirements of the EU harmonisation efforts. Besides the important developments and improvements in the drafts, consultancy from non-governmental organisations (NGOs) has also played an important role from the viewpoint of collaboration of government with the NGOs. The collaborative approach of the government has positively affected the law reform, although it has delayed the process.

It can be said that the drafts are based on European Community regulations, especially those providing harmonisation with the EU legislation. Hence, the drafts are not only harmonised but also structured as a response to the needs arising from both national and international developments. However, the supranational nature of the Community regulations does not exactly fit the national system. Therefore, some gaps and deficiencies have arisen due to the different natures of the systems. For instance, the draft Patent Law has some missing parts and gaps regarding the post-grant procedures of the patent, although the provisions perfectly fit with EU legislation in the pre-grant period. Accordingly, providing the compatibility of the drafts to the Turkish national law will solve the main problems in the draft laws and will make the final versions of the drafts fully updated and responsive to the developments in the international arena.

Consequently, the law reform studies that commenced in 2004 have approached their final versions with the consultancy of the NGOs. Despite the fact that finalisation of the draft laws is lagging behind the legislation schedule, the drafts have become more up to date, responsive and harmonised with the related EU legislations.

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