PATENT PROTECTION

Introduction

A patent is a legal document, granted by the official authority, giving an inventor the exclusive right to make, use, and sell an invention for a specified number of years. In principle, the patentee has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention being subject to a patent cannot be commercially made, used, distributed, imported, or sold by others without the patentee's consent or permission.

Patent rights are protected under Code of Industrial Property ("CIP").

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Conditions of Patentability

A patent is granted for inventions in all areas of technology on the condition that they (i) have novelty, (ii) contain an inventive step, and (iii) are applicable in the industry.

The first and most crucial condition of patentability is having novelty. An invention which is not implicit in the state of the art is regarded as a novel invention. Secondly, the condition of containing an inventive step can be described as a phenomenon making a progress in the state of art and being subject to an extremely slight possibility to be devised by an expert in the relevant area of technic. The last condition of patentability, being applicable in the industry denotes being usable and implementable in any branch of industry including agriculture.

While inventions in all areas of technology can be subject to patentability, certain areas and works are rendered to be unpatentable. If the invention for which a patent is requested falls within the scope of (i) discoveries, scientific theories and mathematical methods, (ii) intellectual activities, work activities or plans, rules and methods pertaining to games (iii) computer programs, (iv) products having the feature of aesthetics, and works of literature, art and science, (v)

presentation of information, then it is deemed that the relevant invention is unpatentable. Additionally, inventions being contrarian to public order and morality cannot be granted a patent as well.

Process of Patent Application

The application for a patent regarding an invention shall be made to the Turkish Patent and Trademark Office with the documents stated below:

a) Application form,
b) Specification explaining the subject of the invention,
c) Claims,
d) Drawings referred to in specification or claims,
e) Summary,
f) Proof of the payment of the application fee.

The abovementioned specifications, claims, summaries and, if any, drawings can be submitted in the language of a country being a party of the Paris Convention, or the Agreement Establishing the World Trade Organization, or applying the principle of reciprocity, at the date of the application.

Once the request for the patent, the identification and communication information of the applicant, and the specification written in Turkish or a language as mentioned above or a reference to be made to a foregoing application are submitted to the Turkish Patent and Trademark Office, the application is officially put into the process.

Pre-Emptive Right

A person or his successor having duly applied for a patent or a utility model in a country being a party of the Paris Convention or the Agreement Establishing the World Trade Organization, including Türkiye, in order to make an application for the same invention in Türkiye, can benefit from the pre-emptive right within 12 months commencing from the date of the first application.

The request of pre-emptive right must be made within 2 months, together with a required fee, commencing from the date of application; and the documents pertaining to such a

request must be submitted within 3 months to the Turkish Patent and Trademark Office.

It is regulated in CIP that more than one pre-emptive right may be requested regardless of the origination from different countries. When applicable, several pre-emptive rights may be requested for each claim. When more than one pre-emptive right is requested, the time periods commencing from the date of pre-emption start from the earliest one among all.

Scope and Limits of Patent Right

Once a patent is granted for an invention, the possessor of the invention is entitled to have the patent right of the relevant invention. The patentee benefits from its patent right regardless of the place of the invention, the technological area of the invention, and whether the products are domestic or imported. The Patentee is entitled to have the right to claim the inhibition of certain actions taken by third parties, infringing its patent right.

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These actions are stated in CIP as:

a) The manufacture, sale, use and import of the products being subject of a patent right, and the possession of these products for the said purposes for a reason other than the personal need.
b) The use of a process being subject to a patent,
c) The offer made to others regarding the use of a patent of a procedure of which use is known or should be known to be prohibited.
d) The manufacture, sale, use and import of the products obtained directly through the procedure being subject of a patent, and the possession of these products for the said purposes for a reason other than the personal need.

Although the patentee has the right to claim the inhibition of any kind of infringement of his patent right, there are some cases that are not deemed to be in breach of a patent right. Firstly, the actions having no industrial or commercial purpose, instead being limited with a private purpose are not considered to be infringing patent rights. Secondly, tentative

actions containing the invention being subject of a patent right is also not contrarian to patent rights.

Apart from the general exceptions mentioned so far, CIP contains regulations pertaining to the exceptions applied to the infringement of patent rights regarding pharmaceuticals. It is set forth in CIP that tentative actions including the tests and experiments executed for the purpose of the registration of the pharmaceutical products do not constitute a breach of patent rights.

While regulating the protection of patent rights, CIP also prohibits the unlawful use of the subject of the patent right. The subject of the patent cannot be used in a contrarian manner to the laws, public order, morality, or public health. Additionally, the use of the patent must be abiding the current or future legal prohibitions and restrictions imposed/to be imposed for a definite or indefinite time.

Indirect Use of Invention

The patentee has the right to prevent the transfer of the components and tools facilitating the implementation of the invention being subject of the patent and pertaining to an essential part of the invention, from third parties to those having no authority to use the invention.

Nonetheless, for this rule to be applied, the said third parties must know that the relevant components and tools suffice for the implementation of the invention and that these will be used for this purpose. Even if the said third parties do not have the aforementioned information regarding the use of the components and tools, if such information is explicitly apparent, then the patentee can use his abovementioned right.

If the components and tools stated in the first paragraph can be easily found in the market, as long as the third parties do not incentivize those having no authority regarding the patent to commit the actions infringing the patent right, the patentee has no right to prevent such a transfer. In other words, if the said third parties do not instigate others to breach the relevant patent right, where constituents of the invention

are ubiquitous, then the patentee has no right to claim the inhibition of the transfer of the said constituents.

Prior Use of Invention

CIP regulates the rights of those having been using the invention being subject of the patent before the date of application. The patentee has no right to inhibit the actions of those having been using the invention inside the country in good faith, at the date of application or before this date, or those who have taken significant measures for the use of the invention.

Nevertheless, the said persons can use the relevant invention only within a reasonable manner to meet the needs of their business. This situation is defined as "the right arising from the prior use" in CIP. In this regard, such a right cannot be expanded by way of granting a license, and this right can only be transferred to a third party together with the transfer of the business.

"The term of protection for a patent is 20 years, commencing from the date of application..."

Scope of Protection

The scope of the patent application and of the protection patent provides are determined with the claims. For the interpretation of the submitted claims, patent specifications and drawings are used. According to the regulations of CIP, the claims cannot be interpreted literally based on the meanings of the words used therein. Nonetheless, for the determination of the scope of the protection, the claims cannot be expanded in such a manner that they contain the features which can be deduced through an interpretation of the specifications and drawings by an expert in the relevant area and which are not requested by the inventor, despite being thought of, within the claims. The claims shall be interpreted in such a way that they provide the rightful protection for the patentee or the applicant, and express a reasonable level of precision regarding the scope of the protection to the third parties.

The scope of the patent application is determined based on the claims submitted within the period until the patent is granted. However, the feature of the granted patent, or the

revised version thereof upon the objection and invalidity processes, retrospectively designates the scope of the protection the patent application provides, on the condition that the scope of protection has not been expanded.

Term of Protection

The term of protection for a patent is 20 years, commencing from the date of application; and it is 10 years for utility model. It is not within the boundaries of possibility to prolong such terms.

The annual fees required for the protection of the patent or the patent application shall be paid at the end of the second year from the date of application and in every consecutive year in a timely manner during the term of protection. If the annual fees are not paid in time, the patent right terminates at due date, and such a termination is notified to the patentee and is declared in the bulletin. If the compensation fee is paid within 2 months commencing from the date of notification of the termination of the patent right, the patent right gains validity at the date of the payment.

GURULKAN
ÇAKIR
GÜNAY

GURULKAN ÇAKIR GÜNAY AVUKATLIK ORTAKLIĞI

Beybi Giz Plaza, Office 43
Maslak 34398
Istanbul, Türkiye

T +90 212 215 30 00
M info@gurulkan.com
W www.gurulkan.com