

Amendments to the Statutory Decree no 551

Finalization of the Application Date

Article 43 - The patent application date will be finalized as of the date, hour and minute that the following components which are defined in form and scope in the Regulation are delivered to the Institute or its competent authority:

- a- The petition of application, the description in Turkish or any of the foreign languages in article 42, claim or claims, even if not compliant with the formal requirements of this Statutory Decree and the Regulation;
- b- The drawings referred to in the description, claim or claims.

If the subject of the invention in the application for a patent is partially or completely modified **to go beyond the scope defined in the initial application** while evaluating the patent application, the application date will be the date of the related application for modification.

Denial of Application

Article 53 - Upon fulfillment of the provisions of article 43, **the application date will be finalized**. If it is determined that the requirements of article 43 are not met or the application fee is not paid in seven days or Turkish translations of the description and claim or claims written in any of the foreign languages in article 42 are not provided in one month, the Institute will deny the application and report the decision for denial.

Evaluation of the application in terms of compliance with formal requirements

Article 54 - After finalization of the application date, the Institute will examine compliance of the application with the formal requirements in articles 42 and 52 and the Regulation.

Whether the description, claim or claims and drawings met the conditions for issuing a patent is outside the scope of the evaluation. The Institute will evaluate if the subject of application is within the scope of issues and inventions which cannot be protected under a patent according to articles 6 and 10 of this Statutory Decree and if it is applicable to the industry. However, if the invention in the application does not meet the requirements for innovation or applicability to the industry clearly and without any doubt, after receiving the counter claims of the applicant, the Institute will deny the application by reporting the justifications.

After the examination, if the application has a procedural deficiency or it is determined that the subject of the application is not an invention which can be protected under a patent according to article 53, evaluation will be ceased and the applicant will be asked to eliminate deficiencies or report objections to the Institute within the period set forth in the Regulation.

The applicant can modify the claim or claims or divide the application into multiple parts during this process.

If the objection of the applicant to the decision that the patent in the application is not an invention which can be protected under a patent is not accepted by the Institute or if the current deficiency is not corrected according to the forms and requirements set forth in the Regulation, the Institute will deny the application partially or completely by the claim or claims.

If it is determined by the Institute after the assessment under this article that there is not any deficiency in terms of compliance with formal requirements or if the concerned deficiencies are eliminated or completed according to the provisions of this Statutory Decree, the applicant will be reported that he/she needs to make a request within the periods set forth in article 56 for making research on the state of the art if no previous request was made.

In case of change of address, the new address should be reported in written to the Institute. If such notification is not made, the notifications delivered to the latest address recorded at the Institute will be deemed to have been duly served.

Arrangement, Announcement and Publication of the Research Report on the State of the Art

Article 57 - A research will be made on the state of the art after the application is evaluated according to article 54 by the Institute and the applicant makes a request for a research on the state of the art according to article 56. The research report on the state of the art will include the components of the state of the art to be the basis for innovation and exceeding the state of the art for the invention which is the subject of the application. The research report will be issued by the Institute or internationally acknowledged research organizations to be determined by the Institute by the claim or claims considering the description and drawings, as applicable. After the research report is issued, it will be notified to the applicant. The copies of the reference patent and publications specified in the report will be delivered with the report to the applicant. After expiry of the three month period from notification of the research report to the applicant, which is granted to the applicant according to article 59, the research report will be published by the Institute. The fact that the research report has been published and if the applicant prefers patent by examination or patent without examination will be published in the bulletin. If the patent application has not been previously published, the research report will be published with the patent application on the date of issue of the research report.

Article 73/A – Article 73/A. — Within the scope of this Statutory Decree;

a) those who make false declarations to meet the requirements of article 44 in terms of the patent or utility model application, who remove the patent or utility model mark justifiably attached on an object or package with a patent or a utility model without authorization or who falsely identify themselves as the patent or utility model application or patent or utility model owner will be sentenced to imprisonment from one year to two years or a heavy fine from fourteen billion liras to twenty seven billion liras or both,

b) those who transfer, grant, give as a pledge and make a transaction on any of the rights listed in article 86 or a related license even though they know or are expected to know that they are not available or they do not have authority on the same, and those who attach a mark on the object or package put to sale or on commercial papers or advertisements to give the impression that it is related to a protected patent or utility model although they are not the owner of an invention protected under a patent or utility model or their protection period has expired or it has been decided for nullity or termination of the patent or the utility model for the reasons written in articles 129, 133 or 165 or who use such markings and writings in announcements and advertisements will be sentenced to imprisonment from two years to three years or a heavy fine from twenty seven billion liras to forty six billion liras or both,

c) those who commit one of the acts listed in article 136 in terms of an invention under a patent or utility model will be sentenced to imprisonment from two years to four years or from twenty seven billion liras to forty six billion liras or both and their workplaces will be shut down for at least one year and they will be excluded from commercial operations for the same duration.

If the crimes listed in clauses (a), (b) and (c) are committed by employees of an enterprise directly or upon order during their service, the employees and the enterprise owner, manager or representative and the person who administers the enterprise under whichever title, who fail to prevent the crime will be penalized the same. If any of the crimes listed in article 136 is committed while executing the works of a legal entity, the legal entity will be severally responsible for the expenses and the fine. The provisions of articles 64, 65, 66 and 67 of the Turkish Penal Code no 765 will be applicable for those involved in the action depending on the nature of the incident. Litigation for the aforementioned crimes is initiated upon complaint.

In implementation of the provisions of this article, clause (8) of the first paragraph of article 344 of the Code of Criminal Procedures no 1412 will not be applicable. Other than the person whose rights arising from the patent or the utility model are violated, for crimes listed in article 136, the Institute, and when a false declaration is

made to meet the requirements of article 44 and when a mark or statement is attached on the goods produced or put to sale by them or others or on packages or commercial papers or announcements to give the impression that it is related to a protected patent or utility model or is used in announcements and advertisements for such purposes although they are not the owner of an invention protected with a patent or utility model or the protection period of the patent or the utility model has expired or the same has become null or terminated, the organizations and consumer associations subject to the Law no 5590 and dated 8.3.1950 or the Law no 507 dated 17.7.1964 will also have the right to file a complaint. The complaint should be filed in two years from the date when they are informed of the incident and the offender.

Complaints for these crimes will be considered urgent work. The provisions of article 36 of the Turkish Criminal Code no 765 and the Code of Criminal Procedures no 1412 will be applicable in seizure, confiscation or annihilation of objects production or use of which requires penalization and the tools, equipment, devices, machinery and other medium used to produce the concerned objects due to violation of the patent or utility model application or the rights arising from the patent or utility model.

Limits of the Scope of the Rights Arising from the Patent

Article 75 - The following actions are outside the scope of the rights arising from the patent: a- actions which are not for industrial or commercial purpose and limited with a private purpose, b- actions for trial purposes which include the invention in the patent, c- using pharmacy produced medication without mass production only for a single prescription and actions related to medication prepared this way, d- using the invention in the patent in production or operation of vessels or spacecrafts or aircrafts or land transport vehicles of countries which are a party to the Paris Convention or to meet the needs of the concerned vehicles, using the concerned vehicles on temporary or occasional basis within the borders of the Republic of Turkey, e- if the actions listed in article 27 of the International Civil Aviation Treaty dated 7.12.1944 are related to the aircraft of a state, the provisions of this article will be applicable for the concerned vehicles, **f- actions for trial of the registered invention including licensing of medication and necessary tests and analyses.**

Actions Which Violate the Rights Arising from the Patent

Article 136 - The following actions are deemed to be in violation of the rights arising from the patent:

a- to imitate the product which is the subject of the invention partially or completely by production without the approval of the patent owner, b- to sell, distribute or otherwise commercially use or import or maintain for commercial purposes or put to use the products which are produced through violation although they know or are expected to know they are partially or completely created by imitation

c- to use the method which is the subject of the invention or to sell, distribute or otherwise commercially use or import for such purposes or use by implementing the products which are directly obtained through the method which is the subject of the invention,

d- to expand or transfer to third parties the rights granted by contractual license or compulsory license by the patent owner

e- to get involved in or help or encourage or facilitate on any condition the actions listed in clauses 1 and 4 of this article,

f- to avoid reporting where and how the object which is held by them and is unfairly produced or put to commercial market is obtained.

If the patent is for a method of production of a product, every product with the same qualifications will be deemed to be made according to the patented method. The defendant who claims to have produced the product without violating the method is required to demonstrate with proof.

If the patent application is published according to article 55 of this Statutory Decree, the applicant is authorized to bring civil and criminal suits due to violations of the invention. If the violator is informed about the application or its scope, whether the application is published is irrelevant. If the court rules for bad intentions of the violator, violation will be deemed to have existed also before the publication.

If the patent application is published according to article 55 of this Statutory Decree, the applicant is authorized to bring civil and criminal suits due to violation of the invention. If the violator is informed about the application or its scope, whether the application is published is irrelevant. If the court rules for bad intentions of the violator,

violation will be deemed to have existed also before the publication. However, the court cannot decide for applicability of the claims made before the publication in the bulletin of the announcement for the issue of the patent or utility model.

Competent Court

Article 146 - The competent court in cases specified in this Statutory Decree is specialized courts. These courts have single judge. It will be decided by the High Council of Judges and Prosecutors upon recommendation of the Ministry of Justice which of the civil courts of first instance and criminal courts of first instance will be commissioned as specialized courts and the scope of jurisdiction of these courts. The competent court in cases to be brought against all decisions of the Institute taken according to this Statutory Decree and against the Institute by third parties damaged by the decisions of the Institute will be the specialized courts of Ankara among those listed in the first paragraph of this article.

Determination of Evidence

Article 150 - The person who is authorized to claim the rights granted by the patent can ask from the court to determine the incidents which might violate the concerned rights.

Applicability of the Provisions of the Code of Civil Procedure

Article 153 - The provisions of the Code of Civil Procedure will be applicable for requests for determination and other conditions for provisional injunction.

Inapplicability of Rights to Third Persons

Article 158 - If the essence of the subject of the utility model is taken from the descriptions, drawings and models, equipment or installation of third party or parties without approval, protection provided by issuing a utility model certificate with this Statutory Decree cannot be claimed by the owner of the utility model certificate against the person or persons.

Therefore, recording of the case and the case result in the register and publication in the bulletin will be realized upon application to the Institute. The utility model certificate owner reserves the rights for indemnification.

Nullity of the Utility Model Certificate

Article 165 - The competent court will decide for nullity of the utility model certificate on below conditions:

- a- If it is demonstrated that the subject of the utility model certificate is in violation of the provisions of articles 154, 155 and 156 of this Statutory Decree;
- b- If it is demonstrated that the subject of the utility model certificate is not clearly and completely defined for a specialist in the concerned technical field to implement the invention;
- c- If it is demonstrated that the subject of the utility model certificate is outside the scope of the application for utility model certificate or is based on an application for which the utility model certificate is reserved according to article 45 or an application made according to article 12 and is outside the scope of the same;
- d- If it is demonstrated that the owner of the utility model certificate does not have the right to request a utility model certificate according to article 157.

Nullity of the utility model certificate can be requested by damaged third parties or competent official authorities through the Public Prosecution Office or those who are eligible for requesting a utility model certificate according to clause (d) of the first paragraph of this article.

Nullity of the utility model certificate can be requested during the protection period. It can only be claimed by the inventor or successors that the owner of the utility model certificate is not eligible for requesting a utility model certificate according to article 157.

In this case, article 12 of this Statutory Decree will be applicable. If reasons for nullity are only related to a part of the utility model certificate, partial nullity can be decided by termination of the claim or claims which only affect the concerned part. Partial nullity is not applicable for a claim. After partial nullity, if the claim or claims which are not terminated in the utility model certificate are compliant with articles 5 and 7 of this Statutory Decree, the utility model certificate will remain applicable for the concerned claim or

claims. If the utility model certificate is issued without taking into consideration the justified objections of third parties by the applicant and the court decides for nullity of the utility model certificate based on the objection, third parties damaged who have filed an objection can ask for indemnification from the owner of the utility model certificate which has been rendered null.

Pharmaceutical Production Methods and Preservation of Pharmaceuticals

Temporary Article 4 - Protection provided by the patent certificate under this Statutory Decree for medical and veterinary drug production methods and products will start on 1 January 1999.