

TURKEY

Industrial Design Law

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PART I GENERAL PROVISIONS

Section I Aim, Scope, Persons Entitled to Protection, Definitions

Art. 1 Aim and Scope

The aim of this Decree-Law is to protect designs conforming to the provisions thereof and to promote the formation and development of industry and competition.

This Decree-Law establishes principles, rules and conditions for the protection of registered designs. General legislative provisions shall be applicable to unregistered designs.

The rights conferred by this Decree-Law shall in no way invalidate the protection conferred by the Law on Literary and Artistic Works.

Art. 2 Persons Entitled to Protection

The protection conferred by this Decree-Law shall be available to natural and legal persons domiciled or having industrial or commercial establishments within the territory of the Turkish Republic, or to persons having application rights deriving from the terms of the Paris or Berne Conventions or the Agreement Establishing the World Trade Organization. Natural or legal persons other than those referred to in the first paragraph of this Article who are nationals of States that accord legal and de facto protection to nationals of the Turkish Republic shall enjoy design protection in Turkey according to the principle of reciprocity.

Art. 3 Definitions

For the purposes of this Decree-Law:

(a) "design" means all the various features, such as lines, colors, texture, shape, sound, elasticity, material or other characteristics, perceived by the human senses as constituting the appearance of the whole or part of a product or its ornamentation;

(b) "product" means any industrial or handicraft item, parts of a complex system, sets, compositions of items, packaging, get-up, graphic symbols and typefaces, with the exception of computer programs and semiconductor products;

(c) "designer" means the creator of the design to be protected;

(d) "Institute" means the Turkish Patent Institute, entrusted with the implementation of the provisions of this Decree-Law;

(e) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 30, 1883;

(f) "Berne Convention" means the Berne Convention of September 9, 1886, for the Protection of Literary and Artistic Works;

(g) "Agreement Establishing the World Trade Organization" means the International Agreement of April 15, 1994, Establishing the World Trade Organization;

(h) "reference date" means the filing date of the application for registration or, if priority is claimed, the priority date.

Art. 4 Priority of International Agreements

Where the provisions of international agreements that have entered into force as provided in the Laws of the Turkish Republic offer more favorable conditions than this Decree-Law, the persons referred to in Article 2 may request treatment according to those more favorable conditions.

Section II Conditions of Protection

Art. 5 General Conditions

Protection shall be granted to a design that is new and has individual character. The designs of products that are parts of complex items shall be protected if and when the design of the part is itself new and has individual character.

Art. 6 Novelty

A design shall be considered new if, before the reference date, no identical design has been made available to the public in the world. Designs differing only in immaterial details shall be deemed identical. The notion of making available to the public shall cover all forms of sale, use, publication, advertising, display or other such activities.

Art. 7 Individual Character

A design shall be regarded as having individual character if the overall impression that it conveys to the informed user is significantly different from the overall impression conveyed to the same user by any design referred to in the second paragraph of this Article.

For any other design to be used to determine, by comparison, the individual character of a design:

(a) it shall have been made public in Turkey or elsewhere in the world before the application date;

(b) it shall have been published by the Institute as a registered design, and its term of protection shall not have expired on the application date

of the design with which it is to be compared. When individual character is determined, emphasis shall be placed on the common features of the designs, and the degree of freedom exercised by the designer in developing the design shall also be taken into consideration.

Art. 8 Disclosures Not Prejudicial to Novelty or Individuality

If a design for which protection is sought has been made available to the public during the 12-month period prior to the filing date of the application or, if priority is claimed, during the 12-month period preceding the priority date, either by the designer or his successor in title or by a third party with their approval or in breach of relations with the designer or his successor in title, such disclosure shall not affect the novelty and individuality referred to in Articles 6 and 7.

Art. 9 Designs Contrary to Public Policy and Morality

Designs contrary to public policy and general principles of morality shall not be protected.

Art. 10 Other Situations Outside the Scope of Protection

Designs determined by a technical function that does not allow the designer any freedom in the design of characteristics and elements shall be outside the scope of protection.

A design that must necessarily be reproduced in its exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically assembled or connected to other products shall be outside the scope of protection.

However, designs serving the purpose of allowing simultaneous and infinite or multiple assembly or connection of identical or mutually interchangeable products within a modular system shall be within the scope of protection, subject to compliance with the provisions of Articles 6 and 7.

Section III Scope and Term of Protection

Art. 11 Scope of Protection

All designs that convey to the informed user a significantly similar overall impression in conformity with Article 7 shall be taken into consideration when the scope of protection is determined.

Art. 12 Term of Protection of the Registered Design

The term of protection of the registered design shall be five years from the filing date of the application.

The term of protection shall be renewable for successive periods of five years up to a total term of 25 years.

PART II ENTITLEMENT, CLAIMS AND LIMITATIONS

Section I Entitlement, Rights, Infringement

Art. 13 Right to the Design

The right to the designs shall vest in the designer or his legal successor in title.

If more than one person is the designer, the provisions governing joint ownership shall apply unless otherwise agreed between the parties.

Each person qualifying for design rights may do the following on his own initiative, independently of the other joint holders:

(a) He may freely dispose of his share of the design rights; joint holders shall have priority purchase options in the event of transfers to third parties.

The transfer of the share shall be made by means of a written statement and recorded in the Register. The Institute shall notify the other shareholders of the situation within two months to enable them to exercise their priority purchase options. Priority purchase options shall be exercised within one month of receipt of the notice.

(b) He may make use of the design after having informed the other shareholders.

(c) He may take the necessary action to protect the design.

The design may be licensed to third parties with the approval of all the shareholders. However, the court may, under justifiable circumstances, grant that right to one of the shareholders.

(d) He may institute legal proceedings against third parties in the event of infringement of the joint design rights. The other shareholders shall be informed of the institution of proceedings within one month in order to enable them to take part therein.

Art. 14 Entitlement in Employment Relations

Where designs are developed by employees in the performance of their duties, the design rights shall vest in their employers unless otherwise provided in the contract or understood from the nature of the work.

Design rights shall vest in the employers in respect of designs that are not required by contract but are developed by employees using information and equipment available to them in the course of their work.

In such cases the employee shall be given a reward the value of which shall be determined by the merit and significance of the design.

The court shall set a suitable figure for the reward if the parties fail

to agree on the value thereof.

Art. 15 Designs Created by University Staff

Notwithstanding Article 14, in the case of designs developed by teaching staff engaged in scientific work at university faculties and schools, the designs rights shall vest in the relevant member of the teaching staff. The term teaching staff shall be understood in the sense given it by the provisions of the Higher Education Law.

Where the educational institute has defrayed the cost of certain equipment and supplies, it shall be informed when the design is exploited, and the designer shall make available, at the request of the institute, information on the means of exploitation of the design and on the revenue derived from that exploitation. The educational institute may then, within three months of receipt of the written information, claim a suitable share in the revenue, provided that the amount requested shall not in any event exceed the expenses incurred by the institute.

Art. 16 Entitlement Under Contracts Other Than Employment Contracts

For designs developed under service contracts other than employment contracts, the design rights shall vest in the client, except where the contract provides otherwise.

Art. 17 Scope of Design Rights

The holder of the design rights shall have exclusive rights in relation to the use of the design. Third parties may not, without the consent of the holder of the design rights, produce, place on the market, sell, offer, import, put to commercial use or keep in stock for those purposes any product in which such a design is incorporated or to which it is applied.

Art. 18 Right to Be Recognized as Designer

The designer, as distinct from the applicant for or the holder of the design rights, shall have the right to be cited as the designer in the priority documents and in the publication.

Any transfer or renunciation of that right shall be without legal effect. Where the design is the result of teamwork, that condition shall be clearly stated.

The implementation procedures of the second paragraph above shall be laid down in the Implementing Regulations by the Institute.

Art. 19 Claims to Entitlement

Where an application for design rights has been made by a person not entitled

thereto or where design rights have been registered in the name of a person not entitled thereto under Article 13, the entitled person may, without prejudice to any other rights and claims accruing to him from his design rights, demand that the design rights be transferred to him.

In the case of partial entitlement to design rights, a claim to be a joint holder may be made under the preceding paragraph.

Legal proceedings to press claims under the first and second paragraphs above may be instituted within two years following the date of publication of the registration, and until the end of the term of protection if there is evidence of bad faith in the original claim of entitlement.

The fact that legal proceedings have been instituted under this Article, the final decision or the termination of the proceedings in any other way shall be recorded in the Register at the request of the party concerned to be binding on third parties.

Art. 20 Effects of a Judgment on Entitlement

Where there is a change in the ownership of a design by virtue of the provisions of Article 19, licenses and other third-party rights shall lapse on the entry of the change in the Register.

If, before the rightful ownership has been registered, the holder of the design rights or licensee has exploited the design or made genuine and effective preparations for doing so, he may request a non-exclusive license from the new holder. The license shall be granted for a reasonable period and on reasonable terms.

The period for the request referred to in the second paragraph above shall be two months for the person previously registered as the holder of the design rights and four months for the licensee. The period shall start on the date on which the Institute notifies the parties concerned that the rightful owner's name has been entered in the Register.

The second and third paragraphs above shall not apply if the previous holder of rights or the licensee was acting in bad faith when he began to exploit the design or to make preparations for doing so.

Section II Limitations on Design Rights

Art. 21 Limitations on Design Rights

The rights conferred by a registered design shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes;
- (c) acts of reproduction for the purposes of quotation or teaching, provided

that such acts are compatible with fair trade practice and do not prejudice the normal exploitation of the design, and that the source of the design is mentioned;

(d) the equipment on ships and aircraft registered in another country when they temporarily enter the territory of the Turkish Republic, and the importation of spare parts and accessories for the repair of such craft, including the execution of the repairs.

Art. 22 Use for Repair Purposes

The use of the design, after three years from the time at which a product incorporating the design or to which the design is applied is first placed on the market by third parties by virtue of the provisions of Article 17 shall not be considered an infringement of rights provided that the following conditions are met:

(a) the product designed is part of a complex product on whose appearance the design is dependent;

(b) the use is for repair purposes to restore its original appearance to the complex product;

(c) the public is not misled as to the origin of the product used for repair.

Art. 23 Rights of Prior Use

The holder of design rights may not invoke his rights to prevent the use of a design by third parties who have, in good faith, commenced use or made real and effective preparations to that end before the filing date of the application for registration or, if priority is claimed, before the date of priority, and where the design has been developed independently of the registered design which on the said date had not yet been made available to the public. This situation shall be recorded in the Register. However, the third parties entitled to exploit the design under this Article may not exceed the scope and needs of the undertaking within which the use was made or to be made. This right may not be transferred separately from the undertaking.

Art. 24 Exhaustion

Acts relating to a product in which a design is incorporated or to which it is applied shall be outside the scope of protection of the design after the product has been put on the market in Turkey by the holder of the design rights or with his consent.

PART III REGISTRATION, RENEWAL, OPPOSITION

Section I Applications and Conditions

Art. 25 Registration Authority

The body authorized to register designs is the Institute. All applications shall be filed with the Institute or with whatever body it may authorize for the purpose.

Art. 26 Filing of Applications

An application for registration of a design shall be filed together with the following:

(a) a request, the form and contents thereof as specified in the Implementing Regulations, including information identifying the applicant;

(b) a drawing or painting or graphic, photographic or similar representation of the design suitable for reproduction and showing all of its specific features. The application shall contain a written description of the design and the list of the products in which it is to be incorporated or to which it is to be applied.

If the subject matter of the application is a two-dimensional design, deferment of publication may be requested under Article 35. If deferment is requested and the representation of the design referred to in the first paragraph above cannot be supplied owing to the nature of the design, a specimen of the product in which the design is incorporated or to which it is applied may be deposited instead.

For the filing to be valid, an application fee shall be paid and the receipt of payment annexed to the application.

The identity of the designer shall be stated in the application. If the applicant is not the designer or not the sole designer, an explanation shall be given of the means by which he has obtained the right to apply for registration.

All documents filed with the application for registration of a design or submitted to the Institute later shall comply with the Implementing Regulations.

Application procedures may be simplified by the Institute, in an Implementing Regulation, for designs relating to products in industries subject to frequent fashion changes.

Art. 27 Classification

In the implementation of this Decree-Law, use shall be made of the International Classification for Industrial Designs for the classification of the products in which the designs are incorporated or to which they are applied.

Art. 28 Multiple Applications

One and the same application may relate to two or more designs. However, this possibility shall be subject to the condition, except in the case of ornamentation, that the products in which the designs are to be incorporated or to which they are to be applied all belong to the same subclass or to the same set or composition of items. Such a multiple application shall be subject to payment of an additional application fee, to be specified in the Implementing Regulations, over and above the fees referred to in Article 26.

Art. 29 Right of Priority

Natural or legal persons or their legal successors in title who are nationals of any State party to the Paris Convention or, if not nationals, who are domiciled or have an active business in such a State, shall enjoy a right of priority of six months from the date of the filing of a valid application with the authorized bodies of the State concerned for the filing of an application to obtain a registration certificate in Turkey for the same design.

Priority rights not exercised within the six months specified in the preceding paragraph shall be considered void.

Where priority is claimed under the first paragraph above, all applications filed and registration certificates obtained by third parties shall be declared invalid as of the date recognized as the priority date for designs within the scope of protection.

Natural and legal persons who are nationals of States referred to in the second paragraph of Article 2 shall enjoy the priority rights provided for in this Article.

If a natural or legal person who is a national of a State party to the Paris Convention has filed a valid application in a State not party to the Paris Convention, he shall enjoy the priority rights provided for in this Article in respect of that filing.

A subsequent application in respect of a design that has been the subject of a previous first application filed in the same State shall be considered the first application for the purpose of determining priority.

However, to be considered the first application on the filing date of

the subsequent application, the previous application must have been withdrawn, abandoned or refused without having been laid open to public inspection, and no right therein may remain outstanding. The previous application may not thereafter serve as a basis for a priority claim.

Art. 30 Exhibition Priority

Natural or legal persons as referred to in the first paragraph of Article 29 who have displayed products in which the design is incorporated or to which it is applied at national or international exhibitions in Turkey or at official or officially recognized national or international exhibitions in the States party to the Paris Convention may claim a right of priority for the registration of the design in Turkey if the priority application is filed within a period of six months from the date of the first display of the products.

If the product has been displayed at the exhibition before the official opening date, the right of priority shall start on the date on which the product was first displayed at the exhibition.

The officials of the exhibition held in Turkey shall supply evidence attesting the name of the product, the first display date and the official opening date, together with photographs clearly showing the whole of the product on display.

For the products displayed in foreign countries, the evidence specified in the third paragraph above shall be supplied by the relevant authorities of the State concerned.

A product in which a filed or registered design is incorporated or to which it is applied may not be prevented from being displayed at an exhibition in Turkey or from being returned to its country of origin after the close of the exhibition.

Where there are two or more applications for the same or a similar product in which a filed or registered design is incorporated or to which it is applied, the applicant who first displayed the product or, if two or more displayed it at the same time, the one who filed his application first shall enjoy the right of priority.

Art. 31 Claiming and Evidencing Priority, Effect of Priority Rights

The effects of the priority rights deriving from Articles 29 and 30 shall obtain as of the date of the application the priority of which is claimed. An applicant wishing to avail himself of his priority rights shall file a claim of priority with his application for design registration. If the claim of priority is not substantiated within three months of the filing of the application, the claim of priority shall be considered

invalid.

Priority granted by virtue of the exhibition priority provisions shall not extend the period of priority laid down in Article 29.

Section II Registration Procedure, Renewal, Opposition

Art. 32 Examination

The Institute shall refuse an application for design registration the subject and scope of which is not covered by the provisions of Article 3.

The Institute shall examine the application for compliance with the conditions specified in Articles 26 and 28 and for deficiencies. If the Institute concludes that there are no deficiencies, the application shall be accorded as its filing date the date, hour and minute on which it was originally filed with the Institute or with the body authorized by the Institute for the purpose.

If a priority claim has been filed, the Institute shall undertake an examination in accordance with the provisions of Articles 29, 30 and 31.

Art. 33 Remedying Deficiencies

If deficiencies are noted with respect to the conditions laid down in Articles 26 and 28, the Institute shall request the applicant to remedy them.

If the applicant complies with the Institute's request and remedies, within the time specified in the Implementing Regulations, the deficiencies that fall within the scope of the first paragraph of Article 26, the Institute shall allow as the filing date the date on which those deficiencies are remedied.

If the applicant complies with the Institute's request and remedies, within the time specified in the Implementing Regulations, the deficiencies that fall within the scope of the first paragraph of Article 26, the Institute shall allow as the filing date the date on which the deficient application was originally filed.

If the deficiencies noted pursuant to the first paragraph above are not remedied in accordance with the provisions of this Decree-Law or are not remedied within the prescribed period, the Institute shall refuse the application.

Failure to satisfy the requirements concerning the claiming of priority shall result only in the loss of priority for the application.

Art. 34 Registration and Publication

An application that has been accorded a filing date in accordance with the provisions of Articles 32 and 33 shall be entered in the Register of Designs.

A design entered in the Register shall be published in the relevant bulletin with the following particulars:

- (a) serial number and date of the filing and, if priority has been claimed, the priority date;
- (b) identity of the holder of the design;
- (c) identity of the designer or design team;
- (d) a drawing or painting or graphic, photographic or similar representation of the design showing all of its specific features;
- (e) where a specimen has been deposited, a mention of the deposit;
- (f) other particulars prescribed by the Implementing Regulations.

Art. 35 Deferment of Publication

The applicant for a design registration may, on filing the application, request deferment of publication for a period not exceeding 30 months from the filing date of the application.

An application containing a request for deferment of publication shall be entered in the Register after it has been accorded a filing date, provided that neither the representation of the design nor the contents of the file relating to the application shall be open to public inspection. The Institute shall publish in the relevant Bulletin a mention of the deferment of publication of the registered design. The mention shall include information on the identity of the holder of the design rights, the filing date of the application, the period of deferment requested and any other particulars prescribed by the Implementing Regulations. On the expiry of the period of deferment, or on any earlier date at the request of the holder of the rights, the Institute shall open the file relating to the application and all Register entries to public inspection, and shall publish the registered design. However, before publication, the publication fee and, in the case of a multiple application, the additional publication fee shall be paid, and a representation of the design suitable for reproduction shall be filed if a specimen of the product in which the design is incorporated or to which it has been applied was deposited with the original application. If these conditions are not met within the period specified in the Implementing Regulations, the design registration shall be deemed never to have had the effects specified in this Decree-Law from the outset.

In the case of multiple applications, the provisions of this Article may be applied to only some of the designs included therein.

The institution of legal proceedings on the basis of a design registration during the period of deferment of publication shall be subject to the condition that the information contained in the Register and in the file relating to the application has been communicated to the person against whom the action is brought.

References in this Decree-Law to the date of publication of a registered design subject to deferment of publication shall be construed as references to the date on which the Institute performs the acts referred to in the fourth paragraph above.

Art. 36 Renewal

The registration of a design shall be renewed, on payment of the renewal fee, at the request of the holder of the rights or of the person authorized by him.

The Institute shall inform the holder of the rights of the expiry of the registration within the time limit specified in the Implementing Regulations. The Institute shall not be liable for failure to provide such information.

The request for renewal shall be submitted and the renewal fee paid within six months before the last day of the month in which protection ends. If this deadline is not met, the request may be submitted within a further period of six months from the day referred to in the preceding sentence, subject to payment of an additional fee.

Renewal shall take effect on the day following the date on which the existing registration expires. The renewal shall be entered in the Register. The provisions of this Decree-Law shall cease to have effect on design registrations that have not been renewed within six months following the expiry of the period of protection.

Art. 37 Opposition

Natural or legal persons or related professional organizations may, according to the procedures prescribed in the Implementing Regulations, file a request for invalidation of a design registration with the Institute after the publication thereof.

The request for a declaration of invalidity, which shall clearly explain the objections, shall be filed in the form of a written statement within six months following publication and the fee prescribed in the Implementing Regulations must be paid before it can be considered. The Institute may request the provision of additional documents, evidence and justifications

within a period set by itself.

Art. 38 Examination

During the examination of the request for a declaration of invalidity, the Institute may, when it deems fit and as often as necessary, request the written observations of the parties and communicate such observations and objections to the other parties involved.

PART IV TRANSFER OF APPLICATION AND DESIGN RIGHTS; LICENSE AGREEMENTS

Section I Transfer, Security, and Attachment

Art. 39 Transfer, Attachment

The right deriving from a design application or design registration may be transferred to third parties, and may also be transferred by succession. Application and design rights may be given as security and may be attached. At the request of one of the parties, the relevant rights shall be entered in the Register and published. The relevant provisions of the Turkish Civil Code and the Bankruptcy and Execution Law shall apply to security rights and attachment.

Inter vivos transactions involving application and design rights shall be conducted in writing.

The inheritance or transfer of application or design rights shall be entered in the Register and published on payment of the fee specified in the Implementing Regulations. The effects shall be binding on third parties as from the publication date.

Art. 40 Non-Divisibility

Application or design rights may not be apportioned for transfer purposes or for establishing entitlement to them as such, even where there are two or more holders of the rights.

Section II Licensing

Art. 41 Licensing

Application rights and design rights may be licensed to be effective on all or part of the national territory. A license may be exclusive or non-exclusive.

The holder of the application or design rights may bring legal action against the licensee in the event of a breach of the contract conditions by the licensee.

Unless otherwise specified in the contract, the license shall be understood to be non-exclusive. The licensor may make use of his design rights personally, and may license the same design rights to third parties. In the case of an exclusive license, the licensor may not grant licenses to third parties and may not avail himself of the design rights unless the contract specifically so provides.

The licensee may not transfer the rights arising from the license or grant a sub-license unless the contract specifically so provides.

Unless the contract provides otherwise, the licensee shall have exclusive rights in relation to the use of the design throughout the national territory during the period of protection.

Licensing contracts shall be in writing, and at the request of one of the parties shall be entered in the Register and published.

Unless the contract provides otherwise, the holder of an exclusive license may, in the event of infringement of the design rights, institute in his own name all legal proceedings that have been made available to the holder of the design rights by this Decree-Law. Holders of non-exclusive licenses shall not have the right to institute legal proceedings.

In the event of infringement, the holder of a non-exclusive license may serve notice on the holder of the design rights, through a notary public, to institute such proceedings as may be required.

In the event of the holder of design rights refusing, or within three months of receipt of the above notice failing, to institute proceedings, the holder of a non-exclusive license shall have the right to do so in his place.

The licensee may, in the face of serious damage that is liable to persist with the passage of time, apply to the court for the issue of a restraining injunction.

The licensee who has instituted proceedings in respect of the tenth paragraph above shall notify the holder of the design rights that the proceedings have been instituted.

Art. 42 Unlawful Transfer of Rights and Licensing

Where application rights or design rights have been licensed or transferred by an unauthorized person, that person shall be liable to the persons concerned for his acts.

In the event of withdrawal or refusal of the application or invalidation of the design rights by the court, the provisions of Article 45 of this Decree-Law shall apply insofar as the parties have not provided by contract for further liability of the licensor or the transferee of the rights. The period for claiming damages arising from the provisions of this Article shall start on the date of the final court ruling on liability. The relevant provisions of the Code of Contractual Obligations shall apply to the time limit.

Where the licensor or the transferee has acted in bad faith, there shall be no time limit on his liability.

PART V INVALIDITY OF THE DESIGN REGISTRATION AND TERMINATION OF DESIGN RIGHTS

Section I Invalidity of the Design Registration

Art. 43 Invalidity

A design registration shall be declared invalid by the court in the following cases:

(a) where it is proved that the design is not eligible for protection under the provisions of Articles 5 to 10 inclusive of this Decree-Law;

(b) where it is proved that the design rights provided for in Articles 13, 14, 15 and 16 of this Decree-Law actually belong to another person or persons;

(c) where there is a conflicting design that has been made available to the public at a later date but has an earlier date of filing.

A declaration of invalidity due to non-entitlement in terms of Article 13, 14, 15 or 16 may only be filed by the holders of rights under those Articles. In such a case the provisions of Article 19 of this Decree-Law shall be applied.

Where the invalidity affects only part of the application or of the registered design, partial invalidity shall be declared in respect of the product or products affected by the part declared invalid. The protection shall remain valid for the product or products incorporating the part not declared invalid.

Art. 44 Request for a Declaration of Invalidity

Any person may request invalidation except as provided in the second paragraph below.

A declaration of invalidity under subparagraph (c) of Article 43 may be requested only by the previous holder of rights, and under Articles 13, 14, 15 and 16 only by the holders of the design rights.

A declaration of invalidity may be requested during the term of protection or within five years following the termination of the rights.

Invalidity actions brought before the court shall be directed against the holder of design rights registered in the Register of Designs at the time of the institution of proceedings.

Art. 45 Effects of Invalidity

The final decision declaring invalidity shall have retroactive effect. Therefore, the legal protection afforded by this Decree-Law to an

application or registered design shall be deemed never to have existed from the outset when invalidity is declared.

The retroactive effect of invalidity shall not extend to the following, but without prejudice to compensation claims for damage due to negligence or lack of good faith on the part of the holder of the design rights and to unjust enrichment:

(a) any final decision on infringement of design rights reached and enforced prior to the declaration of invalidity;

(b) contracts concluded and executed prior to the declaration of invalidity; however, partial or total repayment of sums paid under the contract may be claimed, on grounds of equity, to an extent justifiable by the circumstances.

A final declaration of invalidity shall be effective against all persons. The court decision received by the Institute shall be entered in the Register and published within the period prescribed by the Implementing Regulations.

Section II Termination of Design Rights

Art. 46 Reasons for Termination

Design rights deriving from this Decree-Law shall be considered terminated when:

(a) the term of protection has expired;

(b) the holder of the design rights has surrendered his rights.

The expiry of the term of protection provided for in this Decree-Law shall not affect the rights provided for in other laws where and when the conditions thereof are applicable.

Art. 47 Surrender of Design Rights

The owner of a design may surrender part or all of his rights arising from the design registration or the application therefor.

The surrender shall be filed in writing with the Institute. Surrender shall have effect as from the date of entry in the Register of Designs.

The owner of a design may not surrender his rights without the consent of the licensees or holders of rights recorded in the Register of Designs.

Where the design has been claimed by a third party and a court injunction to that effect has been recorded in the Register of Designs, the surrender of design rights may not be requested without the consent of the said

third party.

PART VI INFRINGEMENT OF DESIGN RIGHTS AND CIVIL PROCEDURES FOR INFRINGEMENT

Section I Infringement of Design Rights

Art. 48 Infringement

The following shall be considered infringement of design rights:

- (a) the making, producing, placing on sale, offering, selling, putting to use, importing or keeping in stock for those purposes of an identical or significantly similar design without the consent of the holder of the design rights;
- (b) the transfer to third parties or expansion of rights acquired under a license contract;
- (c) participation or assistance in or the encouragement or furtherance in whatever manner of the acts referred to in subparagraphs (a) and (b), above;
- (d) failure to explain where and how an illegally produced and marketed product was obtained when found to be in possession thereof;
- (e) unlawful appropriation of entitlement.

Where a design application has been published in accordance with Article 34 of this Decree-Law, the holder of the application rights shall be entitled to institute civil and criminal proceedings against the infringing party. Where the infringing party has been informed of the application and its scope, infringement shall be regarded as having occurred before publication when the court rules that the infringing party was acting in bad faith. The absence of any notice on the product or its packaging or in the invoice that the design is registered shall not negate the fact of infringement. The particulars in the Register shall be taken into consideration in the assessment of the infringement.

Art. 48A

- (a) Persons who make false statements as to the true identity of the holder of the design rights, or those who remove without authority the notice of design rights properly placed on a product or on its packaging, or who falsely present themselves as the owners of design application rights or design rights shall be sentenced to imprisonment for a term of between one and two years and to a fine of between 300 million and 600 million liras.
- (b) Persons who without authority transfer, deposit as security or take

any such action with a view to the exercise of any of the rights of transfer, use as security, attachment and other such rights provided for in the relevant Articles and those held under license, and who affix signs on a product produced or placed on sale by themselves or by others, or on the packaging thereof or in business documents or advertising material in such a way as to convey the impression that a relationship exists with legally protected design rights, or who to the same end use written matter, signs or expressions in advertisements and commercials in the published and visual media without being the rightful owners of the design rights, or who do the foregoing after the expiry of the term of protection or after invalidation or termination of the design rights shall be sentenced to imprisonment for a term of between two and three years and to a fine of between 600 million and 1 billion liras.

(c) Those who have committed any of the offenses specified in Article 48 shall be sentenced to imprisonment for a term of between two and four years and to a fine of between 600 million and 1 billion liras, in addition to which the judgment shall order the closure of the premises of their undertaking for a period of not less than one year, during which time they shall also be prevented from practicing any commercial activity.

Where the offenses specified above are committed by persons working in the undertaking, either on their own initiative or on instructions given them in the course of their duties, the staff and the owner or manager or their representative or the person holding whatever title who is de facto managing the undertaking who have not prevented the offense shall be punished in the same manner. Where the offenses specified in Article 48 have been committed in the performance of tasks on behalf of a legal entity, the legal entity shall also be liable for the fines, expenses and damages in place of the actual persons who have committed the offense. For those assisting in the acts, depending on the nature of the action, the provisions of Articles 64, 65, 66 and 67 of the Turkish Penal Code shall apply. Prosecution with respect to the offenses specified above shall be subject to complaint.

Subparagraph 8 of paragraph 1 of Article 344 of Criminal Procedure Code No. 1412 shall not apply to the implementation of this Article. The right of complaint shall belong to the person whose design rights have been infringed, and also to the Institute for all offenses except those provided for in Article 48; it shall belong to consumer associations and to establishments governed by Laws No. 5590 or 507 for false statements as to the true identity of the holder of the design rights, and for the affixing of signs on a product produced and placed on sale by oneself or by others,

or on the packaging thereof or in commercial documents or advertising material in such a way as to convey the impression that a relationship exists with protected design rights, or for the use to the same end of written matter, signs or expressions in advertisements and commercials in the published and visual media without being the rightful holder of the design rights, or for such acts performed after the expiry of the term of protection or after invalidation or termination of the design rights. Proceedings against such offending acts should be initiated within two years of the date on which the offending act and the offender became known.

Complaints concerning acts falling within the scope of this provision shall be treated as urgent matters. The provisions of Article 36 of the Turkish Penal Code and the relevant Articles of the Criminal Procedure Code shall apply to the seizure, confiscation or destruction of the goods, and of the equipment and machinery used to produce those goods, in relation to which offenses have been committed through infringement of the rights arising from a design rights application or a protected design in accordance with the provisions of this Decree-Law.

Section II Civil Proceedings

Art. 49 Action by the Holder of Design Rights and Competent Court

A holder of design rights whose rights have been infringed may in particular apply to the court for the following:

- (a) recognition of the existence of an infringement;
- (b) prohibition and prevention of the infringing acts;
- (c) remedies for infringement and compensation for damages incurred;
- (d) confiscation of the products produced or imported and of the equipment used directly to produce such products as have infringed the rights in a registered design;
- (e) ownership of the products confiscated under subparagraph (d), above, in which case the value of the products shall be deducted from the compensation awarded; if the value of the products is found to be greater than the compensation value awarded, the holder of the design rights shall repay the balance to the infringing party;
- (f) enforcement measures to prevent the continued infringement of rights, in particular the destruction of the goods and equipment if it is essential for the prevention of the acts of infringement or of alterations to the products and equipment confiscated under subparagraph (d);
- (g) disclosure of the court judgment to the public and to those concerned,

the cost thereof to be met by the offending party.

With regard to the measures, the court shall rule on precautionary measures in accordance with the relevant provisions of the Civil Procedure Code. The competent court for the institution of civil proceedings against third parties by the holder of the design rights shall be court of the domicile of the plaintiff, the place in which the act was committed or the place in which the act had effect.

Where the plaintiff is not a citizen of the Republic of Turkey, the competent court shall be that of the domicile of the authorized agent entered in the Register or, if the agent's registration has been canceled, that of the domicile of the Institute.

The competent court for the institution of proceedings by third parties against the holder of the design rights shall be the court of the domicile of the defendant. If the applicant for or holder of the design rights is not domiciled in Turkey, the provisions of the third paragraph above shall prevail.

Where there are several competent courts, the court at which the proceedings are instituted first shall be the competent court.

Art. 50 Compensation

Infringers who have committed acts provided for in Article 48 shall be liable for the damages incurred by the holder of the design rights.

Art. 51 Documents Evidencing Infringement

The holder of the design rights may request from the infringing party the documents relating to the use of the design without his consent, for the assessment of the injuries suffered as a result of the infringement of the design.

Art. 52 Non-Realization of Profits

The injuries suffered by the holder of the design rights shall include not only the value of the actual loss but also the income not realized owing to the infringement of the design rights.

The loss of income shall be calculated according to one of the following criteria at the discretion of the holder of the design rights who has suffered the injury:

- (a) the potential income that the said holder would have realized if there had been no competition from the infringing party;
- (b) the income actually realized by the infringing party from the use

of the design;

(c) the license fee that would have been paid if the party infringing the design rights had made use of the design under a legal license contract.

The calculation of the profits not realized shall take into account, in particular, the economic value of the design, the term of protection remaining at the time of infringement, the type and number of licenses outstanding and similar factors.

Art. 53 Increasing the Amount of the Profits Not Realized

Where the holder of the design rights has selected one of the calculation methods specified in Article 52, the court may add a reasonable additional amount if, in its opinion, the design contributes substantially to the economic value of the product.

The assessment of the design's contribution to the economic value of the product shall be based on verification that the demand for the product is to a large extent due to the design.

Art. 54 Reputation of the Design

The holder of the design rights may request extra damages for the harm attributable to the poor quality of the product incorporating the design and to the improper marketing methods used by the party infringing the design rights which were detrimental to the reputation of the design.

Art. 55 Reduction of Compensation

Where the compensation awarded to the holder of the design rights is more than the payment that the said holder has received from others for the use of the design, the compensation shall be fixed according to the said payment and the balance deducted from the award.

Art. 56 Persons Against Whom Action May Not Be Brought

The holder of the design rights may not institute proceedings under this Section of this Decree-Law against those who have used goods placed on the market by a person who has paid compensation to the said holder. This provision shall not apply if there is evidence of bad faith.

Art. 57 Time Limit

The provisions of the Code of Contractual Obligations on time limits shall apply to the time limits for action against infringements of design rights.

Section III Special Courts

Art. 58 Competent Courts

Special courts to be established by the Ministry of Justice shall have jurisdiction over all of the actions and claims provided for in this Decree-Law.

The High Council of Judges and Prosecutors shall determine which of the commercial courts of first instance and the criminal courts of first instance shall be appointed as special courts, and shall specify the jurisdiction of each one on a request from the Ministry of Justice.

The special courts referred to in the first paragraph above shall have jurisdiction over actions brought against decisions of the Institute under this Decree-Law and over actions brought against the Institute by third parties who have suffered from its decisions.

Art. 59 Publication of the Court's Decision

Where a court judgment has become final, the successful party may request the publication in full or in summary form of the final judgment in a daily paper or on the radio or television or another medium, the cost thereof to be met by the other party.

The nature and extent of the publication shall be specified in the judgment. The right of publication shall be void if not exercised within three months of the judgment becoming final.

Section IV Special Provisions

Art. 60 Action by the Licensee

Unless otherwise provided in the contract, the holder of an exclusive license may, in the event of infringement of the design rights, institute in his own name all legal proceedings that have been made available to the holder of the design rights by this Decree-Law. Holders of non-exclusive licenses shall not have the right to institute legal proceedings.

In the event of infringement, the holder of a non-exclusive license may, through a notary public, serve notice on the holder of the design rights to institute such proceedings as may be required.

In the event of the holder of the design rights refusing or, within three months of receipt of the aforesaid notice, failing to institute proceedings, the non-exclusive license holder shall have the right to institute proceedings.

In the event of serious damage that will persist with the passage of time,

the licensee may apply to the court for the issue of a restraining injunction. A licensee who has instituted proceedings under the third paragraph above shall notify the holder of the design rights that proceedings have been instituted.

Art. 61 Claims of Non-Infringement

Any interested party may institute proceedings against the holder of the design rights to obtain a non-infringement ruling.

Prior to the institution of proceedings under the foregoing paragraph, a notice shall be sent through a notary public for the attention of the holder of the design rights to enable the said holder to express his views on whether the industrial activities or related effective actions initiated in Turkey by the party serving the notice infringe his design rights. Where the holder of the design rights, on receiving such a notice, does not respond within a month of receipt thereof, or where the content of the response is not found acceptable by the party serving the notice, the latter party shall have the right to institute proceedings under the first paragraph above.

Persons against whom infringement actions have been brought in respect of the design rights may not institute proceedings under the first paragraph above.

The institution of proceedings shall be communicated to all holders of rights who are entered in the Register of Designs.

The actions referred to in this Article may also be instituted in conjunction with an invalidation action.

Art. 62 Action to Secure Evidence

Any person legally entitled to bring action this Decree-Law may request the court to determine and secure the evidence of infringement of design rights.

Art. 63 Precautionary Measures

Any person legally entitled to bring action under this Decree-Law may request the court to order precautionary measures.

The request for precautionary measures may be filed before or on the institution of proceedings or later. The request for precautionary measures shall be examined separately.

Art. 64 Nature of the Precautionary Measures

The precautionary measures shall be of such a nature as to permit the securing of the judgment and shall in particular provide for the following:

- (a) cessation of the acts of infringement of the plaintiff's design rights;
- (b) seizure within the borders of Turkey, including at the customs or in free ports or free trade areas, and the holding in custody of produced or imported goods that have infringed the design rights;
- (c) provision of security for such damages as may have to be compensated.

Art. 65 Civil Procedure Code

With respect to other securing actions and precautionary measures, the provisions of the Civil Procedure Code shall apply.

Art. 66 Seizure at Customs

The customs authorities shall withhold as a precautionary measure, on either exportation or importation, goods that have infringed, as fraudulent copies, the rights of the holder of the design rights.

Withholding procedures shall be laid down by legislation to be enacted for the purpose.

The withholding measure applied by the customs authorities shall cease to have effect if proceedings are not instituted before the special court or if a preventive injunction is not obtained from the court within 10 days of the said measure.

PART VII REPRESENTATION AND AGENTS

Art. 67 Representation Before the Institute

Representation before the Institute may only be undertaken by the following:

- (a) natural or legal persons who have filed an application;
- (b) qualified design agents. Qualified design agents shall be understood as those who meet the requirements of Article 30 of Decree-Law No. 544 and have been entered in the Register of Design Agents after having passed the design agent examination administered by the Institute. Those who are entered in both the Register of Trademark Agents and the Register of Patent Agents shall be entered in the Register of Design Agents without an examination.

Legal persons may only be represented by those duly empowered to do so by their authorized bodies.

Persons domiciled outside the country may only be represented by design agents.

Where an agent has been appointed, all procedures shall be conducted through him. All notices made to the agent shall be considered to have been made to his principal.

PART VIII PAYMENT OF FEES AND LEGAL EFFECTS

Art. 68 Conditions of Payment of Fees and Effects

The fees prescribed by the Implementing Regulations for the filing of an application and for a registered design shall be paid by the applicant, by the holder of the rights or by the design agent.

The payment periods for all the fees prescribed in the Implementing Regulations shall be notified by the Institute to the applicant, to the holder of the design rights or to the design agent.

Where the prescribed fees for any of the actions and submissions have not been paid within the period prescribed by the Implementing Regulations, the action or submission concerned shall be considered never to have had effect since the date of notification by the Institute.

Where the prescribed fee for the registration of a design has not been paid within the period provided for in this Decree-Law, the application for the registration of the design shall be deemed to have been withdrawn.

TRANSITIONAL PROVISION

Transitional Provision 1 Jurisdiction Pending Appointment of the Special Courts

For the purposes of this Decree-Law, until the special courts are established, at the request of the Ministry of Justice, the High Council of Judges and Prosecutors shall select, from among the commercial courts of first instance and the criminal courts of first instance, those to be appointed as special courts, and shall specify the jurisdiction of each.

Art. 69 Entry Into Force

This Decree-Law shall enter into force on the day of its publication.

Art. 70 Execution

This Decree-Law shall be executed by the Council of Ministers.