

TURKEY

Industrial Design Regulations

Implementing Regulations under Decree-Law No. 554 pertaining to the Protection of Industrial Designs, including Amended Implementing Regulation of 31 December 1997

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PART ONE GENERAL PROVISIONS

Section One Object, Scope, Definition, Date and Place of Application, Persons Entitled to Protection

1. Object and Scope

The object of this Regulation is to specify the procedures and the rules to be followed concerning the time and place of filing and the preparation of the application documents for registering an industrial design, and other matters related with designs as provisioned in the Decree-Law No. 554 Pertaining to the Protection of Industrial Designs. This Regulation encompasses the principles, the rules and the conditions for the protection of designs by granting certificates to those designs conforming to the design registration provisions.

2. Legal Foundation

This regulation has been prepared based on the provisions of the Decree-Law No. 554 Pertaining to the Protection of Industrial Designs.

3. Definitions

For the purposes of this Regulation;

- (a) "Institute" means the Turkish Patent Institute,
- (b) "The Decree-Law" means the Decree-Law No. 554 Pertaining to the Protection of Industrial Designs dated 24.6.1995.
- (c) "design" means the entirety of the various features such as lines, color, texture, shape, sound, elasticity, material or other characteristics perceived by the human senses of the appearance of the whole or part of a product or its ornamentation.
- (d) "product" means any industrial or handicraft item, parts of a complex system, sets, compositions of items, packaging, get-ups, graphic symbols and typographic typefaces, excluding the computer programs and semi-conductor products.
- (e) "designer" is the creator of the design to be protected.
- (f) "date of reference" means the date of filing the application for registration or, if a priority is claimed, the date of priority.
- (g) "Official Industrial Design Bulletin" means the Bulletin in which the industrial designs are published.
- (h) "class" means the international classification of industrial designs.
- (i) "Circular" means the Circular of Fees to be administered by the Turkish Patent Institute in accordance with Articles 6/f and 25 of the Decree-Law No. 544.

4. Place and Time of Application

All local and foreign applications shall be filed at the Turkish Patent Institute or at the body it may authorize as such.

The date of filing is the date, hour and minute as accorded by the Institute or by the body authorized as such by the Institute.

An application filed by post shall have effect as of the date of arrival at the Institute or at the body as authorized within the terms of the second paragraph above.

Section Two Persons Entitled to Protection

5. Persons Entitled to Protection

The protection as conferred by the Decree-Law No. 554 shall be available to natural and legal persons who are domiciled or who have industrial or commercial establishments within the territory of the Turkish Republic, or to the persons who have application rights resulting from the terms of the Paris or Berne Conventions or the Agreement Establishing World Trade Organization.

Natural or legal persons other than those referred in paragraph (a) above, who are nationals of states which accord legal and de facto protection to the nationals of the Turkish Republic shall enjoy according to the reciprocity principle design protection in Turkey.

The principle of reciprocity shall be accepted to exist where countries have registered the designs of Turkish nationals or have declared by writing that registrations shall be administered.

Section Three The Right to be Recognized as a Designer

6. The Right to be Recognized as a Designer

Where an application has been filed by someone other than the designer, the designer has the right to demand that his name be cited as the designer in the priority documents and in the publications and in the register. If a design has been created by a team, this shall be indicated in the application. The names of the designers shall be listed in the application petition and if necessary additional pages shall be used.

The right to be recognized as a designer cannot be transferred and surrendered.

PART TWO APPLICATION, EXAMINATION, REGISTRATION AND RENEWAL

Section One Application Form and the Annexed Documents

7. Application Form

A design application petition, conforming to the sample form attached to this Regulation as Annex 1, shall be prepared on an A4 size plain white paper using a typewriter or a computer printer, and all of the questions shall be answered.

8. Documents to be Annexed

Following must be submitted with the application petition:

(a) 10 copies of the representation (8x8 cm) of the design. Representation can be prepared as drawing, picture, graphic, photograph or a similar way, but must clearly show all special characteristics of design and must be suitable to publish.

If the representation contains trademark characteristics this can be accepted in case of those were registered as a trademark on the name of applicant. Otherwise, the part of containing trademark characteristics must be cleared on representation. If the representation consist of only trademark characteristics, it can't be accepted as a representation.

(b) the original receipt for the payment of the application fee. For multiple applications the receipt for the additional fee in addition to application fee.

(c) power of attorney if an agent is appointed. The power of attorney shall be notarized for acts relating to withdrawal or cancellation of an application. Those who are not domiciled in Turkey have to appoint an agent in Turkey in order to register their designs and to utilize their design rights,

(d) if the applicant is legal person notarized signature circular,

(e) 4 copies of written description and representation of the design. The representation must be explained in detail and differences from the publicly known design and parts of design protection requested must be shown and the date of marketing such as exhibition, selling, using, explaining, publishing or similar way must be given.

If the place for description isn't enough, additional page can be used. "As it shown on the representation" certainly cannot be accepted as a description.

Descriptions must be signed and given date.

(f) in case of multiple applications separate descriptions and representations of the designs. Descriptions and representations must

be prepared separately for every design as stated in paragraph (e).
(g) a sample of the product in maximum 20x30 dimensions where the object of the application is a two-dimensional design and a deferment of publication is requested, and if it is not possible to supply a drawing, painting, graphic, photographic or similar representation of the design suitable for reproduction reflecting all of its specific features,
(h) if a priority right is claimed, documents evidencing the priority claim to be obtained from the relevant authority of the country of application and its Turkish translation,
(i) where the priority claim concerns an exhibition in Turkey, a certified copy of a document obtained from the officials of the exhibition specifying the name of the product, first display date and the official opening date along with photographs showing the product at display clearly and at its entirety.

For the products displayed in foreign countries, the evidence as specified in subparagraph (i) shall be supplied by the relevant authorities of the state concerned.

Section Two Changes with Respect to the Ownership of the Priority Right, Relation Between the Applicant and the Designer

9. Changes with Respect to the Ownership of the Priority Right

If the owner of the first application in another country is different from the applicant in Turkey, a declaration, conforming to the form given in Annex 1, shall be prepared indicating the names of the persons involved with respect to the change of ownership, the date of the first application and shall be signed by the applicant or the agent.

10. Relation Between the Applicant and the Designer

The identity of the designer shall be cited in the application. If the applicant is not the designer or not the sole designer, an explanation shall be supplied on how the right to apply for registration is obtained, and a declaration shall be submitted conforming to the form given in Annex 1 to be signed by the applicant or his agent asserting that the designer(s) indicated on the application are the rightful designer(s).

Section Three Examination, Remedying Deficiencies, Filing Date

11. Examination and Filing Date

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

3.

Institute shall examine whether the application complies with the conditions specified in Articles 26 and 28 and whether there are deficiencies. If the Institute concludes that there are no deficiencies, the application is accorded the date of filing as the date, hour and minute on which the application was filed originally at the Institute or at the body authorized as such by the Institute.

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

12. Remediating Deficiencies

If deficiencies with respect to conditions of Article 11 are established, the Institute shall request the applicant to remedy these deficiencies within the periods as specified below.

The application shall be accorded the filing date, as of the date, the hour and the minute when an application petition conforming to the sample in Annex 1, and a drawing, painting, graphic, photographic or similar representation of the design suitable for reproduction reflecting all of its specific features as provisioned in the sub-paragraph (b) of the first paragraph of Article 26 of the Decree-Law, and the original receipt for the payment of fees have been deposited. Where these documents have not been submitted at filing of the application, the Institute shall allow one month for remediating these deficiencies, and the filing date shall be the date these deficiencies are remedied.

Institute shall allow three months for remediating deficiencies which fall outside the scope of the second paragraph above and for the payment of the fees prescribed in the Circular. In the case of non-compliance of deficiencies within three months, Institute shall allow once additional one month on condition provided payment according to Circular of Fees. If these deficiencies are remedied within mentioned periods the application shall be accorded the date of filing the date on which the deficient application was originally filed.

The Institute shall refuse an application, deficiencies of which have not been remedied within the periods prescribed in the second and third paragraphs.

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

Section Four Registration, Recording the Register, Publication and Deferment of Publication

13. Registration and Recording the Register

An application which has complied with all the conditions of application and therefore has been accorded a date of filing in accordance with the provisions of Articles 32 and 33 of the Decree-Law shall be entered in the Design Register and if there is no opposition within six months after the publication date, the certificate of design is given.

In the case of opposition, Re-examination and Evaluation Board examines according to the Article 38 of the Decree-Law. The result of examination can be cancellation of design party or completely or continuation of registration. According to the decision of Reexamination and Evaluation Board the certificate of design is given.

The following particulars shall be recorded in the Register:

- (a) the number and the date of application,
- (b) the applicant's name, nationality and address,
- (c) registration number,
- (d) representation of the design,
- (e) the classes and the list of the goods in which the design is incorporated or to which it is applied,
- (f) if appointed, the name and address of the agent,
- (g) the name(s) and address(es) of the designer(s).

14. Publication

A design which has been recorded in the Register shall be published with the following particulars in the Official Industrial Designs Bulletin to be published monthly. Institute may publish supplementary bulletins without being bound by this period.

- (a) the number and the date of the application,
- (b) registration date and number, and if a priority has been claimed, the priority date, country and the number,
- (c) the name, address and the nationality of the design right holder,
- (d) the name(s) and the address(s) of the designer(s),
- (e) representation of the design,
- (f) if appointed, the name and address of the agent,
- (g) the classes and the list of the goods in which the design is incorporated or to which it is applied.

15. Deferment of Publication

When filing the application for the registration of a design, if the

applicant has requested that the publication be deferred, the requested deferment period should also be specified which should not exceed a period of 30 months. The applications with a request for deferment of publication shall be published in the Official Industrial Designs Bulletin. The publication shall include information on the identity of the holder of the registered design right, the application date, the classes of the goods in which the design is incorporated or to which it is applied, and the requested period of deferment.

The deferment period may be canceled at the request of the holder of the registration right at any time during the period of deferment. Where upon the Institute's request, the registration right holder has paid within three months the publication fee and in the case of a multiple application the additional application fees, and filed a representation of the design suitable for reproduction if at the original filing a sample of the product in which the design is incorporated or has been applied has been deposited, the publication shall be effected in accordance with Article 14 of this Regulation.

If these provisions are not complied within three months, the rights arising from the registration of the design shall be deemed to have not existed from the date of the filing of the application.

Section Five Renewal

16. Renewal

Registration of the registered design shall be renewed, upon the payment of the renewal fee at the request of the right holder or of the person authorized by him.

The request for renewal shall be submitted and the renewal fee paid within a period of six months before the last day of the month in which the protection ends. In failing this deadline, the request may be submitted within a further period of six months from the last day of the month in which the protection ends upon payment of an additional fee.

The request for renewal must be filed with a petition and the original receipt for the payment of renewal fee. The Institute may request if necessary other documents missing in the file. The deficiencies with respect to renewal and changes that have occurred after the registration shall be remedied within the periods as specified in Article 12.

PART THREE OPPOSITION

17. Opposition to Publication

Natural or legal persons or related professional organizations may submit to the Institute within six months of the publication an opposition with the following particulars against the validity of a Registered Design:

(a) a petition describing the justifications of the opposition prepared according to this Regulation as Annex 4,

(b) the original receipt of the payment of the fee prescribed in the Circular.

An opposition will not be considered unless these documents are submitted. Institute may request additional documents, evidences and justifications to be complied within one month.

If the requested additional documents and justifications not given to Institute within mentioned period, the opposition deemed not to be done. The opposition with its justification shall be communicated to the holder of the design right enabling him to submit his views and observations.

18. Examination of the Opposition

During the examination of the opposition, the Institute when it deems fit and as often as necessary may request the written observations of the parties and communicate to the parties involved such observations and objections submitted by the parties.

It's decided about opposed design the after the six months of the publication date on the Re-examination and Evaluation Board within the concept of evidences and written observations of the parties.

The acceptance of an opposition filed within the provisions of sub-paragraphs (a) and (b) of the first paragraph of Article 43 of the Decree-Law, shall result in the invalidation of the Design Certificate and the entering into force of the provisions of Article 45 of the Decree-Law. The invalidation of the Design Certificate shall be published in the Official Industrial Design Bulletin.

PART FOUR CHANGES AFTER THE REGISTRATION

Section One Changes of Address and Title

19. Changes Concerning the Address and Title

The proprietor of a design right has to inform the Institute any changes with respect to a design. If after the registration of a design changes have occurred with respect to the address, the title and the characteristics of the firm, such changes shall be recorded in the Register upon the request of the proprietor or if such changes are identified at the time of a new application of the proprietor of the design, corrections shall be requested with respect to the other designs registered or applied for in the name of the proprietor.

Following documents have to be submitted for recording the changes concerning the address, title and the characteristics of the firm:

(a) For changes of address:

- (1) a petition,
- (2) the original Design Certificate of Registration,
- (3) the original receipt of payment of fees.

(b) For changes concerning the title:

- (1) a petition,
- (2) the copy of the Trade Registry Gazette showing the change of title or other

document evidencing such change,

- (3) the original Design Certificate of Registration,
- (4) the original receipt of payment of fees.

(c) For changes concerning the characteristics of the firm:

- (1) a petition,
- (2) a document evidencing the change,
- (3) the original Design Certificate of Registration,
- (4) the original receipt of payment of fees.

20. Transfer by Inheritance

The following documents have to be submitted in order to record in the Register changes resulting from the transfer of a design right by way of an inheritance:

- (a) a petition,
- (b) the court decision,
- (c) the original receipt for the payment of fees,
- (d) The original Design Certificate of Registration.

21. Assignment of the Design Right

An application for the registration of a design or a registered design right can be subject to assignment.

Following documents have to be submitted for an assignment:

- (a) a notarized assignment certificate containing the signatures and declarations of both the assignee and the assignor,
- (b) the original Design Certificate of Registration,
- (c) the original receipt for the payment of fees,
- (d) signature circular if the assignee is a legal entity,
- (e) power of attorney if an agent is appointed.

22. Licenses

The application right or the design right may be licensed to be effective within the total or part of the territory of the national boundaries. The following documents have to be submitted for recording a license in the Design Register:

- (a) notarized license contract containing the declarations and the signatures of the licensee and the licensor, the registration number of the design, the duration and the fees of the contract,
- (b) the original Design Certificate of Registration,
- (c) the original receipt for the payment of fees,
- (d) signature circular if the licensee is a legal entity,
- (e) if appointed power of attorney for the agent.

23. Effects of Invalidity

The court decision concerning the invalidity of a design right shall be recorded in the Register; and published in the next issue of the Official Industrial Design Bulletin after recording in the Register.

Section Two Fees, Copies, Register and Priority

24. Fees

The fees payable with respect to an application and registration of a design shall be published in the Circular of Fees to be Administered by the Turkish Patent Institute in accordance with the provisions of Articles 6/f and 25 of the Decree-Law No. 544.

The fees are payable by the applicant or the design right holder or by the agent.

Institute shall issue notices to the applicant or to the design right holder or to the agent for the payment periods. If the payments are not effected within the prescribed periods the application shall be considered

to be invalid.

25. Copy

A copy of the Design Certificate of Registration shall be supplied upon the request of the design right holder or of the agent.

Following documents have to be submitted for obtaining a copy:

- (a) a petition,
- (b) the original receipt for the payment of the fee.

26. Registry

Upon request and payment of the prescribed fee in the Circular a copy of the Register shall be available except for the designs which have requested deferment of publication and their periods of publication deferment has not yet expired.

27. Priority

A priority claim must be requested in the application petition and the priority documents have to be filed within three months of the filing date. Where a priority claim is accepted, the following observations are recorded in the Register and on the Design Certificate of Registration. "It has hereby been recognized that the first application for the registration of this design has been filed at the administration of.....on the day of..... with filing No., and therefore is entitled to the priority right as of the day of....."

Where a priority claim from an exhibition is accepted, the following observations are recorded in the Register and on the Design Certificate of Registration.

"It has hereby been recognized that this design has been exhibited first at exhibition of as has observed from the evidence of the document as prepared by dated No., and therefore is entitled to the priority right as of the day of"

Section Three Surrender of a Design Right

28. Surrender of a Design Right

Holder of a design right may surrender part or whole of his rights arising from the design right or the application right. Holder of a design cannot surrender his right without having the consent of the licensees or holders of rights recorded in the Design Register. The surrender must be filed in writing at the Institute.

Surrender shall have effect as of the date of entry in the Design Register.

PART FIVE LAST PROVISIONS

Transitional Article 1

The fees which have not been paid before coming into force of this Implementation Regulation for the Decree-Law No. 554 on the Protection of Industrial Designs and before coming into force of the Circular of Fees to be Administered by the Turkish Patent Institute in accordance with the provisions of Articles 6/f and 25 of the Decree-Law No. 544, shall be paid within two months of the coming into force of this Regulation. The applications shall be considered withdrawn if their fees are not paid within this period.

29. Entry into Force

This Regulation shall enter into force on the day of publication.

30. Execution

This Regulation shall be executed by the President of the Turkish Patent Institute.