

TURKEY

Patent Law

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PART I PRELIMINARY PROVISIONS

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

Art. 1. Aim and Scope

The aim of this Decree-Law is to protect inventions by granting

1. patents or
2. utility model certificates,

in order to promote inventive activity and contribute to technical, economic and social development by implementing inventions in industry.

This Decree-Law contains the principles, rules, conditions and requirements for the issue of patents or utility model certificates for inventions qualifying for the grant of industrial property rights.

Art. 2. Persons Entitled to Protection

The protection conferred by this Decree-Law shall be available to natural and legal persons who are domiciled or have industrial or commercial establishments within the territory of the Republic of Turkey, or to persons entitled to file applications under the provisions of the Paris Convention. Natural or legal persons other than those referred to in the first paragraph of this Article who are nationals of States that accord legal or de facto protection to nationals of the Republic of Turkey shall enjoy patent and/or utility model protection in Turkey according to the principle of reciprocity.

Art. 3. Definitions

For the purposes of this Decree-Law, "Institute" means the Turkish Patent Institute set up in accordance with Decree-Law No. 544.

For the purposes of this Decree-Law, "Paris Convention" means the International Convention for the Protection of Industrial Property of March 20, 1883.

Art. 4. Priority Application of International Agreements

Where international agreements that have entered into force according to the laws of the Republic of Turkey contain provisions that are more favorable than those of this Decree-Law, the persons referred to in Article 2 may request the benefit of those more favorable provisions.

Section II Patentability Requirements

Art. 5. Patentable Inventions

Inventions that are novel, go beyond the state of the art and are applicable in industry shall be protected by patents.

Art. 6. Non-Patentable Subject Matter and Inventions

The following, not being inventions by nature, shall remain outside the scope of this Decree-Law:

- (a) discoveries, scientific theories, mathematical methods;
- (b) plans, methods and rules for performing mental acts, conducting business activities and playing games;
- (c) literary and artistic works, scientific works, creations having aesthetic characteristics, computer programs;
- (d) methods of collecting, arranging, presenting and transmitting information that have no technical features;
- (e) methods of diagnosis, therapy and surgery applicable to the human or animal body.

The provisions in subparagraph (e) of the first paragraph of this Article shall not apply either to the actual products and compositions used in connection with the said methods or to the manufacturing process thereof. Patents shall not be granted for inventions relating to the following:

- (a) subject matter contrary to public policy or generally accepted standards of morality;
- (b) plant and animal varieties or processes for breeding plant or animal varieties that are based mainly on biological factors.

Art. 7. Novelty

Any invention that is not part of the state of the art shall be deemed novel.

The state of the art shall be held to consist of information pertaining to the subject matter of the invention that has been made accessible to the public in any part of the world before the filing date of the patent application by disclosure either in writing or orally, by use or in any other way.

Patent and utility model applications filed in Turkey prior to the filing date of the patent application and published on or after that date shall be considered included in the state of the art as from the first disclosure

of their contents.

Art. 8. Disclosures Not Affecting Patentability

Disclosure in the following circumstances of information that otherwise would affect the patentability of the invention claimed in an application shall not affect the patentability of that invention where the information was disclosed during the 12 months preceding the filing date or, where priority is claimed, the priority date of the application:

(a) by the inventor;

(b) by an office when the information was contained

1. in another application filed by the inventor and should not have been disclosed by the office;

2. in an application filed without the knowledge or consent of the inventor by a third party who obtained the information directly or indirectly from the inventor;

(c) by a third party who obtained the information directly or indirectly from the inventor.

For the purposes of the first paragraph of this Article, any person who, on the filing date of the application, had the right to the patent shall be deemed the inventor.

The effects of the first paragraph of this Article shall not be limited in time and may be invoked at any time.

Where the applicability of the first paragraph of this Article is contested, the party claiming the application of the said paragraph shall have the burden of proving that the conditions of the paragraph are fulfilled or are expected to be fulfilled.

Art 9. Inventive Step

An invention shall be deemed to go beyond the state of the art (to involve an inventive step) when it is the result of action that cannot obviously be deduced from the state of the art by a person skilled in the technical field concerned.

Art. 10. Applicability in Industry

An invention shall be regarded as being applicable in industry where it is susceptible of being produced or used in any given field or industry, including agriculture.

PART II RIGHT TO A PATENT, APPROPRIATION OF THE RIGHT AND NAMING OF THE INVENTOR

Art. 11. Right to a Patent

The right to a patent shall belong to the inventor or to his successor in title and shall be transferable.

Where an invention has been made jointly by two or more persons, the right to apply for a patent shall belong to them jointly unless they have agreed otherwise.

Where an invention has been made independently by two or more persons at the same time, the right to a patent shall belong to the person who files the first application or who can claim an earlier priority right than the others.

The person who is the first to apply for a patent shall be invested with the right to apply for the patent until the contrary is proved.

Art. 12. Appropriation of the Right to a Patent

A person claiming to be properly invested with the right to apply for the patent in conformity with the first paragraph of Article 11 may initiate legal proceedings against the applicant in accordance with the provisions of Article 129. No action may be taken before the Institute to claim that the applicant is not the person properly invested with the right to apply for the patent.

Where the court decision on the right to a patent is in favor of the plaintiff, the holder of the right to a patent may take one of the following courses of action within three months after the judgment has become res judicata:

(a) he may request that the prior patent application regarding which the court action for appropriation was brought be nevertheless accepted as his application and be further prosecuted as such;

(b) he may file a new application for the same invention claiming the same date of priority; such an application shall be prosecuted as of the filing date of the first application; in which case the allegedly appropriated application shall remain without effect;

(c) he may request that the allegedly appropriated application be rejected.

The provisions of the third paragraph of Article 45 of this Decree-Law shall apply to every new application filed under the first paragraph of this Article.

Where a court action has been instituted in accordance with the first paragraph, above, to establish the right to a patent, the application

may not be withdrawn without the consent of the plaintiff. The court shall order the suspension of the patent grant procedure from the date of publication of the application to the date on which the judgment becomes res judicata where the plaintiff's claim is rejected and, where the plaintiff's claim is accepted, for a period of up to three months following the date on which the judgment becomes res judicata.

Art. 13. Appropriation of a Patent

Where a patent has been granted to a person other than the rightful owner according to the first paragraph of Article 11, the person claiming to be properly invested with the right to the patent may institute a court action claiming transfer of ownership of the patent, without prejudice to any other rights and claims accruing to him by virtue of the patent. Where only a partial right to the patent is claimed, a court action may be instituted seeking recognition of joint ownership of the patent in accordance with the first paragraph of this Article.

The right to assert claims and institute court actions under the first and second paragraphs of this Article shall be exercised within two years following the date of publication of the patent or, in cases of bad faith, up to the expiry of the term of protection of the patent.

At the request of the interested party, a court action instituted in accordance with this Article and the claims made therein, and the final ruling or any other measure concluding the court action shall be entered in the Patent Register in order to be binding on third parties.

Art. 14. Consequences of Termination of Appropriation

Where the ownership of a patent changes pursuant to Article 13, any license granted or other rights accruing to third parties in virtue of the patent shall expire with the entry of the said change of ownership in the Patent Register.

Where, prior to the entry of the rightful patent owner in the Patent Register in accordance with the first paragraph of this Article, the person who is subsequently found to be the wrongful owner of the patent or a person who has been granted a license for the patent at issue prior to the institution of the court action, has put the said patent to use or taken effective and definite steps to that end, that person may request the rightful patent owner or owners to grant him a non-exclusive license.

Such a request may be filed within a period of two months in the case of the person appearing as the former owner in the Patent Register, or within a period of four months in the case of the licensee. The said periods shall run from the date on which the Institute notifies the

interested parties of the date of the entry of the rightful patent owner in the Patent Register.

A license granted under the second paragraph of this Article shall be granted for a reasonable period and under fair conditions. When such period and conditions are determined, the provisions concerning the grant of compulsory licenses shall apply by analogy.

The provisions of the second and third paragraphs of this Article shall not apply where the owner of the patent or the licensee, on starting to work the patent or making serious preparations for such working, have acted in bad faith.

Art. 15. Naming of the Inventor

The name of the inventor shall be stated in the patent. The inventor shall have the right to request that the applicant or patentee name him as the inventor in the patent.

PART III EMPLOYEE INVENTIONS

Section I Employee Inventions

Art. 16. Employee Inventions

For the purposes of this Decree-Law, employee inventions are those inventions that qualify for protection under a patent or utility model certificate.

Technical improvement proposals do not qualify for protection under a patent or a utility model certificate.

For the purposes of this Decree-Law, an employee is a person who is in the service of another person and is responsible for carrying out the work specified by the employer, with personal liability towards the employer, in accordance with the provisions of a private legal contract or legal relations of a similar nature. Trainees and students serving and undergoing practical training who are not receiving payment and are not bound to a specific work schedule are also considered employees for the purposes of this Decree-Law.

Art. 17. Service Inventions and Free Inventions

For the purposes of this Decree-Law, employee inventions are classified as either service inventions or free inventions.

Service inventions are those that are made by the employee in the course of his employment in a private enterprise or public authority while performing, by virtue of his obligations, the tasks assigned to him, or those that are based to a large extent on the experience and work of the said private enterprise or public authority.

Employee inventions that do not conform to the definition of the inventions referred to in the second paragraph, above, shall be deemed to be free inventions. Free inventions shall be subject to the provisions of Articles 31 and 32.

Art. 18. Service Inventions and Obligation to Report

An employee who has made a service invention is obliged to report the invention to his employer, in writing, without delay. Where the invention has been made by more than one employee, the report to the employer may be made jointly. The employer shall notify without delay, in writing, the persons who made such report of the date on which it was received by him.

In the report, the employee shall be required to disclose the technical problem, its solution and how the service invention was achieved. For

the better understanding of the invention, the employee shall provide the employer with the drawings of the invention, if there are any. The employee shall moreover specify the experience and work of the enterprise from which he has benefited; any contributions from other employees, the nature of those contributions, the instructions he received in connection with his work and the contributions that he considers to be his own.

The employer shall, within two months from the date of receipt of the employee's report, inform the employee of the corrections that he considers should be made therein. Where the employer fails to request correction of the report within the said period of two months, the report referred to in the second paragraph of this Article shall be deemed to be legally valid even where it fails to meet the prescribed conditions.

The employer shall be under the obligation to provide the employee with such assistance as will enable him to report in compliance with this Decree-Law.

Art. 19. Employer's Right to an Invention

An employer may claim the right to all or part of a service invention. The employer shall notify the employee of his claim in writing. The claim must be made within four months of the date of receipt, by the employer, of the employee's report.

Art. 20. Effect and Consequences of the Claim

Where the employer claims full ownership of the service invention, all rights in the said invention shall pass to him, subject to notification of the employee, in writing, of his declaration to that effect.

Where the employer claims partial ownership of the service invention, he may use the invention on the basis of his partial claim. Should such use by the employer considerably impede the employee's further exploitation of his invention, the employee may request his employer, within a period of two months, either to assume full ownership of the service invention or to renounce it in his favor.

Arrangements made by the employee in connection with a service invention before his employer makes a claim on it shall not be binding on the said employer where such arrangements infringe the rights of the employer.

Art. 21. Service Inventions that Become Free Inventions

A service invention shall become a free invention in any of the following situations:

- (a) where the employer renounces his rights in the service invention in a written statement;
- (b) where the employer makes a partial claim on the service invention;
- (c) where the employer has not made a claim on the service invention within four months of receiving the report of the employee according to Article 18, or has not responded within two months to the request made under the second paragraph of Article 20.

The fact that an invention has become free under item (b) of the first paragraph of this Article shall not affect the employer's right to make use of it under the second paragraph of Article 20.

Notwithstanding the provisions of Articles 31 and 32, the employee may freely dispose of a service invention that has become a free invention.

Art. 22. Compensation Where Full Ownership Is Claimed

Where the employer claims full ownership of the service invention, the employee shall have a claim against him for reasonable compensation. When compensation is calculated, due consideration shall in particular be given to the economic or commercial applicability of the service invention, the duties of the employee within the enterprise and the enterprise's contribution to the invention.

Art. 23. Compensation Where Partial Ownership Is Claimed

Where the employer claims partial ownership of a service invention and uses the invention, the employee may demand reasonable compensation. When such compensation is calculated, the second paragraph of Article 22 shall apply.

After having made his claim to a service invention, an employer may not avoid payment of the compensation by alleging that the invention is not worthy of protection. Where the Institute, or if a case is brought against the Institute the court, decides that the invention is not patentable, the employee may not demand compensation. The employee's right to such compensation may be exercised until the decision on the patentability of the invention becomes *res judicata*.

Art. 24. Calculation of Compensation in the Regulation and Arbitration Procedure

The schedule of compensation for employee inventions and the arbitration procedure to be followed in cases of disagreement shall be laid down in a Regulation to be issued by the Ministry of Labor and Social Security within three months following the enactment of this Decree-Law and after

the professional organizations of employees and employers have been consulted.

Art. 25. Method of Calculating Compensation

The amount and the mode of payment of compensation shall be determined by the parties in accordance with the provisions of the Regulation provided for in Article 24 after the employer has claimed full or partial ownership of the service invention.

Where the parties fail to reach an agreement on the amount of compensation and mode of payment within 30 days in accordance with the provisions of the Regulation, the dispute shall be settled by arbitration within 60 days.

The arbitration decision shall be binding on both parties.

Where two or more employees have contributed to a service invention, the amount of the compensation and mode of payment shall be determined separately for each of them in accordance with the above provision.

Any relevant provisions in the employment contract that are favorable to the employee shall apply.

Art. 26. Obligation on the Employer to Apply for a National Patent

An employer is entitled and obliged to apply to the Institute for the grant of a national patent for a service invention reported to him. Where protection of the invention with a utility model certificate appears more appropriate, the employer is obliged to file an application for a utility model certificate without delay.

The employer is not obliged to file such an application in the following circumstances:

1. where the service invention has become free;
2. where the employee has agreed that no application should be filed;
3. where the confidentiality of the operational secrets of the enterprise requires that no application be filed.

Where, after claiming full ownership of a service invention, an employer does not comply with his obligation to file an application or fails to do so within a reasonable time limit set by the employee, the employee may file an application with the Institute in respect of the service invention in the name and on behalf of the employer.

Where a service invention has become free, the employee is entitled to file an application in his own name. Where the employer has already filed an application for the protection of the service invention, the rights

deriving from that application shall pass to the employee when the invention becomes free.

Art. 27. Filing an Application for a Service Invention in a Foreign Country

On claiming full ownership of a service invention, an employer is entitled to apply for protection of the said invention in a foreign country. For foreign countries in which an employer does not wish to obtain a patent, he is obliged to renounce his rights in the service invention in favor of the employee, and shall enable the employee to apply for a patent in those countries. The invention shall be declared free within a reasonable time to allow the employee to benefit from the deadlines for priority rights under international treaties.

The employer may reserve to himself a non-exclusive right to use the service invention against reasonable compensation in the foreign countries in which he has renounced his rights in order to enable the employee to obtain a patent for it, and shall have the right to claim protection for interests in the countries concerned.

Art. 28. Mutual Rights and Obligations of the Parties during the Patent Grant Procedure

On filing a patent application for a service invention, an employer shall give his employee copies of the application and its enclosures and, if so requested by him, shall keep his employee informed of the progress of the application procedure.

The employee is obliged to assist his employer in obtaining a patent and provide the necessary information to that end.

Art. 29. Obligations Deriving from a Patent Application or Patent

Where an employer, before meeting his employee's claim of reasonable compensation for a service invention, intends to discontinue prosecuting a patent application or relinquish patent protection, he shall inform his employee accordingly. At the employee's request and expense, the employer shall assign the patent rights to him and turn over to him any documents necessary for obtaining and maintaining a patent. The employer shall be entitled to relinquish his rights under the patent application or patent where the employee does not reply within three months of receiving the communication made to him to that effect.

At the same time as he makes the communication under the first paragraph, above, the employer may reserve to himself a non-exclusive right to use the service invention against reasonable compensation.

Art. 30. Abstention from Filing a Patent Application

Where the interests of the enterprise so dictate, the employer may abstain from filing a patent application for inventions reported to him that he believes to be legally patentable, and keep them secret.

When the compensation for an invention under the first paragraph of this Article is determined, account shall also be taken of the potential economic losses or disadvantages that the employee might suffer as a result of not obtaining a patent for the invention.

Art. 31. Free Inventions and Obligation to Notify

An employee who has made a free invention during the term of an employment contract shall notify his employer without delay. In the notification, the employee shall give the employer all the details concerning the invention, and if necessary concerning its realization, which the employer may need in order to determine whether it is in fact a free invention. Where the employer does not contest, in writing, the employee's contention that the invention notified to him is a free invention within three months of the notification, he may not thereafter claim that the invention is a service invention.

There shall be no obligation to notify the employer of a free invention where the invention is obviously not susceptible of use in the employer's field of activity.

Art. 32. Obligation to Offer

Before further exploiting a free invention in another way during the term of his employment contract, the employee is obliged to make his employer an offer, on a non-exclusive basis, to benefit from the invention on reasonable terms where the invention falls within the field of activity of the employer's enterprise, or where the employer's enterprise is making serious attempts to become active in the field of the invention. The employee may submit such offer together with the notification to be made in accordance with the provisions of the first paragraph of Article 31. Where the employer does not reply to the offer within three months of receiving it, he shall lose his right of precedence in the matter. Where the employer accepts the offer within the period specified in the preceding paragraph, but does not find the terms acceptable, the court shall determine the terms at the request of the parties.

Where important changes occur and affect the conditions that determined the amount and other aspects of the agreement, the employer of the employee may request the court to adapt the terms of the agreement to the new circumstances.

Art. 33. Technical Improvement Proposals

Pursuant to the provisions of this Decree-Law, with respect to technical improvement proposals that are not eligible for protection by patent or utility model certificate, the employer is obliged to pay reasonable compensation to the employee, provided that he makes use of the proposals notified to him by the said employee. The provisions of Article 18 on the obligation to report and Articles 22 and 25 on the calculation of compensation for service inventions shall apply by analogy. All other matters concerning technical improvement proposals shall be regulated by individual or collective employment contracts.

Section II Common Provisions on Employee Inventions

Art. 34. Mandatory Nature of the Provisions on Employee Inventions

The provisions of this Decree-Law on employees may not be amended to their detriment. Agreements concerning employee inventions shall be permissible, in the case of service inventions after a patent application has been filed, and in the case of free inventions and technical improvement proposals after notification to the employer.

Art. 35. Requirement of Compliance with Equity

Agreements between the employer and employee concerning service inventions, free inventions or technical improvement proposals shall be null and void where they are manifestly inequitable, even if they do not violate the mandatory provisions pertaining to employee inventions. This rule shall apply also to the amount of compensation. Where objections regarding the equity of an agreement or the amount of compensation are not raised in writing within six months following the termination of the employment contract, no such obligations may be raised thereafter.

Art. 36. Obligation to Respect Secrecy

An employer shall keep in confidence the information concerning an employee's invention that has been reported or notified to him for as long as the legitimate interests of the employee so require. An employee shall keep a service invention secret for as long as it has not become free. Persons other than the employer or employee who have knowledge of an invention governed by this Decree-Law may neither use the invention nor disclose it to others.

Art. 37. Effects of Obligations

General obligations arising from the employment relations between the employer and employee shall not be affected by the provisions concerning employee inventions or technical improvement proposals unless further effects arise other than the invention becoming free.

The rights and obligations arising from the provisions on employee inventions and technical improvement proposals shall not be affected by the termination of employment relations.

Art. 38. Employee's Right of Preemption

Where the employer becomes insolvent and the receiver wishes to dispose of the invention independently of the enterprise, the employee shall have a right of preemption to acquire his own service inventions in respect of which the employer has claimed full ownership.

Amounts of compensation due on account of employee inventions or technical improvement proposals shall be considered privileged claims. Where there are two or more such privileged claims, the receiver shall allocate such amounts pro rata.

Section III Inventions Made by Employees in Public Service

Art. 39. Inventions and Technical Improvement Proposals of Employees in Public Service

The provisions applying to the inventions and technical improvement proposals of employees subject to private contractual relations shall also apply, without prejudice to the privately agreed terms, to the inventions and technical improvement proposals of those employed in State-owned enterprises and other public establishments and their affiliates, whether with general, additional or special budgets.

Art. 40. Inventions of Armed Forces Personnel

The provisions relating to employees in public service shall apply likewise to inventions and technical improvement proposals made by members of the armed forces.

Art. 41. Inventions of University Staff

Notwithstanding the provisions of Articles 39 and 40, inventions made by the teaching staff of universities in the course of their scientific studies at universities or schools of higher education shall be free inventions.

The provisions of Articles 31, 32 and 34 shall not apply to such inventions.

The notion of university teaching staff shall be determined according to the provisions of the Law on Higher Education.

Where the relevant educational body has made specific equipment and means available for the research work that has led to the invention, the university teaching staff shall notify the educational body, in writing, of the exploitation of the invention and shall, at the request of the body, specify the manner of exploitation and the amount of proceeds realized. Within three months of such written notification, the educational body may demand a reasonable share of the proceeds from the invention. The amount of such share shall not however exceed the expenses borne by the body.

PART IV GRANT OF PATENTS

Section I Application for a Patent and Application Requirements

Art. 42. Application for a Patent and Enclosures

In order to obtain a patent, it is necessary to file an application, the form and content of which shall be determined by the Regulations and which shall comprise the following:

- (a) the written application;
- (b) a description of the subject matter of the invention;
- (c) a claim or claims covering the elements of the invention for which protection is sought;
- (d) the drawings referred to in the description, claim or claims;
- (e) an abstract;
- (f) a receipt attesting payment of the application fee.

Where a patent of addition is applied for under Article 121, the number of the main patent or patent application to which the addition refers shall be given.

The validity of a patent application shall be subject to payment of the application fee prescribed in this Decree-Law within seven days, at the latest, from the filing date of the application, without it being necessary to give the applicant any further notice to that end. The application shall be deemed withdrawn where the application fee is not paid by the said time limit.

Any documents submitted to the Institute on the filing of the application or thereafter shall conform to the provisions of the Regulations under this Decree-Law.

The description and claims may be filed in English, French or German at the same time as the application. A term of one month shall be allowed for their translation into Turkish and the filing of the Turkish translation with the Institute or an authority designated by it, without it being necessary to give the applicant any further notice to that end. The fee specified in the Regulations shall be paid for the filing of the Turkish translation.

Art. 43. Determination of the Filing Date

The filing date of the patent application shall be the date, hour and minute when the applicant files with the Turkish Patent Institute, or the authority designated by it, the following documents, drawn up in the

form specified in the Regulations:

(a) an application, a description and one or more claims in Turkish or in one of the foreign languages specified in Article 42, even where they do not meet the formal requirements set forth in this Decree-Law and in the Regulations;

(b) drawings referred to in the description, claim or claims.

Where, in the course of the examination of the patent application, the subject matter of the invention for which a patent is sought is changed, either entirely or in part, in such a way that the contents of the application as initially filed are broadened, the date on which the request for the said change is filed shall be deemed the application date.

Art. 44. Obligation to Name the Inventor in the Application

The inventor shall be named in the application. Where the applicant is not the inventor or not the sole inventor, the applicant shall state in the application how he acquired the right to apply for a patent from the inventor or inventors.

Where the inventor is not named or no statement is made on the way in which the applicant acquired the right to apply for a patent, examination of the application shall not start.

Art. 45. Unity of Invention

The patent application shall relate to a single invention or a number of inventions that share a principal inventive idea of general character and are connected by that principal inventive idea.

Applications not conforming to the first paragraph of this Article shall be divided into divisional applications in accordance with the provisions set forth in the Regulations.

Each divisional application shall have the same filing date as the initial application, provided that its subject matter remains within the scope thereof. Where priority is claimed for the initial application, each divisional application shall benefit from the priority right or rights so claimed.

Art. 46. Explicitness of the Description

The description shall be written in sufficiently explicit and comprehensive terms for a person skilled in the technical field concerned to carry out the invention.

Where the invention relates to a microbiological process and the related

microorganism is not accessible to interested parties, the description shall be deemed to meet the requirements specified in the first paragraph of this Article if the following conditions are fulfilled:

(a) the description contains information regarding the characteristics of the microorganism;

(b) the applicant has deposited, no later than on the filing date of the application, a culture of the microorganism with an authorized institution established in accordance with international conventions.

The said institution shall be mentioned in the publication provided for in the second paragraph of Article 55.

Art. 47. Patent Claims

The application shall contain one or more claims.

The claims shall define the features of the invention for which protection is sought. Each claim shall be explicit, concise to the point. The claims shall be based on the application. The claims may not extend beyond the subject matter of the invention as specified in the description. The claims shall be drawn up according to the provisions of the Regulations. The applicant may, however, write the claims either in compliance with the provisions of the Regulations or in another form.

Art. 48. Abstract

The abstract shall serve solely to provide technical information, and may not be used for other purposes.

In particular, the abstract may not be used to define the scope of protection or to demarcate the boundaries of the state of the art. The Institute may amend the abstract where it considers amendment necessary for the better information of third parties. The amendment shall be notified to the applicant.

Art. 49. Priority Rights Arising from Applications Filed under International Conventions

Natural or legal persons 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 12 months from the filing date of an application for the grant of a patent or utility model certificate with the authorized bodies of that State for the filing of an application for a patent or utility model certificate in Turkey. Priority rights not exercised within the 12-month time limit prescribed

in the first paragraph of this Article shall be considered void. Where an application claiming priority is filed within the time limit prescribed in the first paragraph of this Article, all applications filed by third parties and patents and utility model certificates granted thereon shall be declared invalid as from the date of priority.

Natural or legal persons who are nationals of countries benefiting from the reciprocity principle provided for in the second paragraph of Article 2 shall enjoy the right of priority according to the provisions of this Article.

Where 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 right of priority under the provisions of this Article in respect of that application.

The right of priority shall have effect as from the filing date of the application for a patent or utility model certificate.

Art. 50. Priority Rights Arising from Display at Exhibitions

Natural or legal persons within the meaning of the first paragraph of Article 49 who have displayed products covered by a patent or a utility model certificate at national or international exhibitions held in Turkey, or at official or officially recognized national or international exhibitions held in States party to the Paris Convention are entitled to claim a right of priority provided that the application for a patent or utility model certificate is filed within a period of 12 months from the date of display at the exhibition.

Where the product forming the subject matter of a patent or utility model certificate has been displayed at the exhibition before the official opening date, the right of priority shall run from the date when the product was first so displayed. The second and third paragraphs of Article 49 shall apply by analogy.

The organizers of exhibitions held in Turkey within the meaning of the first paragraph of this Article shall issue a document to exhibitors identifying their products clearly and in full detail, including at least four photographs showing them from the side, the front, behind and below, and specifying the type of product and the date on which it was first displayed at the exhibition, and the official opening date of the exhibition.

In order to enjoy the right of priority in relation to a product exhibited in foreign countries, it shall be necessary to submit the evidence specified in the third paragraph, above, which shall have been obtained from the relevant authorities of the country in which the exhibition was held.

A product for which a patent or utility model application has been filed or a patent or a utility model certificate granted may not be prevented from being displayed at an exhibition held in Turkey and returned to its country of origin after the close of the exhibition.

Where more than one application has been filed for a patent or a utility model certificate for subject matter identical or similar to a product displayed in an exhibition, the applicant who first displayed the product or, if both or all of the exhibitors displayed it at the same time, the one who filed his application first, shall enjoy the right of priority.

Art. 51. Effect of Priority Rights

The priority rights under Articles 49 and 50 shall have effect as from the filing date of the application in which priority is claimed.

Art. 52. Claiming and Evidencing of Priority

An applicant wishing to avail himself of a right of priority shall file a claim of priority together with his application or within two months from the filing date of his application. Where the priority claim is not substantiated within three months of the filing date of the application, it shall be deemed not to have been made.

Multiple priorities may be claimed for a patent application filed in a foreign country regardless of the fact that the same application has been filed in several such countries.

Multiple priorities may be claimed for one and the same patent application. Where multiple priorities are claimed, the time limit shall run from the earliest priority date. Where one or more than one priority is claimed, the scope of the rights of priority shall be determined by the application or applications the priority of which is claimed.

Even where the claims of the application on which the priority claim is based do not include certain features of the invention covered by the application claiming the priority thereof, the priority right may still be granted for those claims provided that the said features are expressly and unequivocally included in the description of the application on which the priority claim is based.

Section II Examination of the Application

Art. 53. Rejection of an Application

The filing date of an application shall become definite provided that the application complies with the conditions set forth in Article 43, and provided also that the application fee is paid. The Institute shall

reject an application and notify the interested party accordingly where the application does not meet the conditions set forth in Article 43, where the application fee is not paid within seven days or where Turkish translations of the description and claims submitted in one of the foreign languages mentioned in Article 42 are not filed within the following month.

Art. 54. Examination as to Form

When the filing date of an application has become definite, the Institute shall examine the application for compliance with the requirements of form set forth in Articles 42 to 52 and in the Regulations.

The compliance of the specification, claims and drawing with the patentability requirements shall not fall within the scope of this examination. The Institute shall examine the subject matter of the application, in the light of Articles 6 and 10 of this Decree-Law, to determine whether or not it constitutes a patentable invention and is applicable in industry. The Institute shall, after having heard the applicant, reject the application, stating the reasons for its decision, when the invention in respect of which it is filed obviously and indisputably lacks novelty and industrial applicability.

Where the examination finding is that the application has defects of form within the meaning of Article 53, or that its subject matter is not a patentable invention, the examination procedure shall be suspended and the applicant requested to remedy the defects or communicate his objections to the Institute within the period prescribed by the Regulations.

In the course of this procedure, the applicant may amend the claims or divide the application into two or more divisional applications.

The Institute shall reject the application entirely or in part when it does not find acceptable the objections raised against its decision that the subject matter of the application is not a patentable invention, or when a reported deficiency has not been remedied pursuant to the conditions and requirements of form laid down in the Regulations.

Where the examination conducted by the Institute under this Article shows that there is no deficiency as to form, or when any such deficiency has been duly remedied and completed pursuant to the requirements of this Decree-Law, the Institute shall inform the applicant that the request for the conduct of a state-of-the-art search, if not filed earlier, is to be filed within the time limit specified in Article 56.

Art. 55. Publication of the Application

The application shall be open to public inspection on publication as provided in the Regulations after 18 months have elapsed from the filing

date of the application, or from the date of any priority claimed. The application shall be published after the completion by the Institute of the examination for compliance with formal requirements under Article 54 and after the filing under Article 56 of the request for the conduct of a state-of-the-art search.

Applications shall be published periodically in the relevant Bulletin, with all their particulars, in the form and subject to the conditions laid down in the Regulations.

At the request of the applicant, the application shall be published as provided in this Article even when the period of 18 months mentioned in the first paragraph thereof has not expired.

Art. 56. Request for the Conduct of the State-of-the-Art Search and Payment of the Search Fee

Within 15 months from the filing date of the application, the applicant shall file a request with the Institute for the conduct of a search of the state of the art and shall pay the appropriate fee.

Where priority is claimed, the said period shall be calculated from the date of priority.

Where the period prescribed in the first paragraph of this Article has already expired when the notification under the sixth paragraph of Article 54 is made, the applicant shall file the request for the conduct of the state-of-the-art search within the month following such notification. Where the applicant does not file the request for the conduct of the state-of-the-art search as provided in this Article, the application shall be deemed withdrawn.

The conduct of the state-of-the-art search in respect of an application for a patent of addition may only be requested when the request is filed together with the application for the main patent, or when a search has already been conducted or requested in relation to previous applications for patents of addition. The provisions of the first and fourth paragraphs of this Article shall apply also to patents of addition.

Art. 57. Drawing up, Notification and Publication of the State-of-the-Art Search Report

The Institute shall conduct the state-of-the-art search after having examined the application in accordance with the provisions of Article 54, and on receipt of the request, filed by the applicant under Article 56, for the conduct of the state-of-the-art search.

The search report shall include the elements of the state of the art to be considered in the assessment of the novelty and inventive step

characteristics of the invention forming the subject matter of the application.

The search report shall be drawn up, in the light of the specification, the drawings if any and the claims by the Institute or by the search authority designated by the Institute from among internationally recognized search authorities.

The search report shall be notified to the applicant after it has been drawn up. The copies of the reference patents and publications cited in the search report shall be sent to the applicant together with the report.

Following its notification to the applicant, the search report shall be published by the Institute after the three-month period accorded to the applicant under Article 59 has elapsed.

Of the systems for the grant of patents with or without substantive examination, the one that the applicant has chosen shall be published in the Bulletin in which the state-of-the-art search report is published. If, when the search report is drawn up, the patent application has not yet been published, the search report shall be published together with the patent application.

Art. 58. Impossibility of Drawing up Search Report for Reasons of Deficiency

Where lack of sufficient explicitness in the description or claims prevents the drawing up of the search report on the state of the art either in full or in part, the Institute shall ask the applicant to remedy the deficiency. Where the deficiency is not remedied by the applicant by the time limit laid down in the Regulations, the Institute shall notify the applicant of its decision that the search report cannot be drawn up, and shall inform him of his right to object. In the case of partial deficiency, the search report shall be drawn up for those claims that are sufficiently explicit.

Art. 59. Choice of the Substantive Examination System

The applicant shall declare to the Institute, within three months following the notification to him of the search report, that he has opted for the system of patent grant with substantive examination, in order that the Institute may examine the application in relation to the patentability requirements pursuant to the provisions of Article 62. Where no such declaration is made by the said time limit, the system of patent grant without substantive examination shall be deemed to have been chosen.

Section III System of Patent Grant without Substantive Examination

Art. 60. Patent Grant without Substantive Examination

Third parties may submit observations on the contents of the search report to the Institute within six months from the date of publication thereof in the form prescribed in the Regulations, enclosing the relevant documents. On expiry of the period during which third parties may submit their observations on the search report, the Institute shall communicate to the applicant such written observations on the search report as it has received, together with the substantiating documents submitted by third parties.

The applicant may, within three months of the date of communication to him of the observations made by third parties under the second paragraph of this Article, make such observations on the search report as he deems relevant in response to the observations of third parties, and may, if he deems it necessary, amend the claims.

The Institute may, on expiry of the period within which the applicant may submit his observations on the state-of-the-art search report drawn up under Article 57, decide to grant the patent without substantive examination and without taking into consideration the state-of-the-art search report or any third-Party observations thereon.

On payment of the prescribed fees according to the decision reached, the Institute shall issue the patent for a term of seven years and shall publish the issue thereof in the relevant Bulletin.

The documents pertaining to the patent and the state-of-the-art search report, and also the observations submitted by third parties on the said report, shall be open to public inspection. Any amendments to the claim shall likewise be open to public inspection, with the date of the amendment mentioned.

The State shall not guarantee the validity and usefulness of the subject matter of a patent that has been granted without substantive examination. Later substantive examination of a patent granted without substantive examination shall require the filing of a request to that effect. Such a request shall be filed by the patentee or by third parties within not more than seven years from the filing date of the application. The substantive examination fee shall be paid by the party who filed the request for the examination.

Where the request for substantive examination is not filed within seven years from the date of filing, the right to a patent shall lapse. No request for substantive examination may be filed after the seven-year period has expired.

The provisions of Article 62 on the grant of a patent with substantive examination shall apply where a request for such examination is filed within not more than seven years from the filing date of the application. In order to permit third-party objections regarding compliance with patentability requirements as provided in the second paragraph of Article 62, the request for substantive examination filed in relation to a patent granted without substantive examination shall be published in the relevant Bulletin.

Art. 61. Publication and Printing of a Patent Granted Without Substantive Examination

The grant of a patent shall be published in the relevant Bulletin. The publication shall include the following particulars:

- (a) the patent number;
- (b) the classification code or codes of the invention;
- (c) the title describing the subject matter of the invention;
- (d) the name, nationality and domicile of the patentee;
- (e) the abstract;
- (f) the number and date of the issue or issues of the Bulletin in which the patent application and any amendments to the application were published;
- (g) the date of issue of the patent;
- (h) a mention of the possibility of inspecting the documentation concerning the patent, the search report and the observations thereon submitted by third parties, and any rebuttals made by the applicant;
- (i) a mention that the patent has been granted without substantive examination.

Every patent shall be printed by the Institute in the form of a pamphlet and distributed on request. Printing may be carried out by reprographic means where necessary.

In addition to the particulars mentioned in the first paragraph of this Article, every pamphlet shall contain the description, the claims and the drawings in their entirety, and also the full text of the state-of-the-art search report and the issue number of the Bulletin in which the decision to grant the patent without substantive examination was published.

Section IV System of Patent Grant with Substantive Examination

Art. 62. Patent Grant with Substantive Examination

The provisions of Articles 42 to 58 on the filing of the patent application and the requirements therefor and on the examination of the application as to form shall apply also to the system of patent grant with substantive examination.

Within six months following the publication of the state-of-the-art search report, third parties may, in the form laid down in the Regulations, file objections to the grant of the patent, alleging non-compliance with the patentability requirements, including lack of novelty or inventive step, or the inadequacy of the description. Documentary evidence in support of the allegation shall be enclosed with the objections, which shall be made in writing.

Within six months following the publication of the state-of-the-art search report, the applicant wishing to obtain a patent with substantive examination shall request the Institute to conduct the examination to determine whether the subject matter of the invention is comprehensively described and whether the invention is novel and involves an inventive step. The conduct of the examination shall be subject to prior expiry of the period of six months for third-party objections and payment of the examination fee provided for in the Regulations. The examination fee may be paid at any time during the period specified in the second paragraph of this Article.

When objections are raised by third parties under the second paragraph of this Article, all such objections and the evidence in support of them shall be immediately notified to the applicant. The applicant may respond to the objections raised within three months following the expiry of the period allowed for raising objections, or within the period extending such term for three additional months if requested, or may submit reasons in support of his response with a view to removing the objections raised, or again if he deems it necessary, may amend the description, the drawings and the claims.

The Institute shall initiate the examination for compliance with the patentability requirements after the expiry of the time limit specified in the fourth paragraph of this Article. Failure by the applicant to respond to the objections raised within the prescribed time limit shall not delay the initiation of the examination.

After having examined the application, the Institute shall decide on whether the application has deficiencies or meets the patentability requirements. It shall substantiate its decision by citing the grounds therefor. The

Institute shall confine its examination to the content of the claims. The Institute shall communicate to the applicant the examination report that it has drawn up on whether the application has deficiencies or does not meet the patentability requirements, citing the grounds on which it is based, and shall allow the applicant six months within which to rectify the deficiency, amend the claims or object to the report.

The applicant may submit substantiated observations with a view to removing the unfavorable opinions expressed by the Institute in its examination report, and may amend the application if he deems it necessary.

The Institute shall examine the observations made by the applicant and any amendments made to the application. Where the Institute decides that the adverse findings of the examination report are to be upheld, it shall notify the applicant accordingly, stating the grounds therefor, and shall allow the applicant a period of three months within which to submit his opinions to the contrary.

The applicant may, at that stage of the examination, submit his observations with a view to overcoming the adverse findings, and may amend the application if he deems it necessary.

The Institute shall reach its final decision after examining the applicant's observations and amendments made to the application. The decision of the Institute may be to grant the patent for all or part of the claims. Where, on examination, the Institute finds that the application meets the patentability requirements and that no objections have been raised, it shall decide to grant the patent and shall notify the applicant accordingly.

On payment of the prescribed fees according to the decision reached, the Institute shall issue the patent applied for.

Under the system of patent grant with substantive examination, the State shall not guarantee the validity and usefulness of the subject matter of the patent granted.

Art. 63. Publication and Printing of a Patent Granted with Substantive Examination

The grant of a patent shall be published in the relevant Bulletin. This publication shall include the following particulars.

- (a) the patent number;
- (b) the classification code or codes of the invention;
- (c) the title describing the subject matter of the invention;
- (d) the name, nationality and domicile of the patentee;
- (e) the abstract;

- (f) the number and date of the issue or issues of the Bulletin in which the patent application and any amendments to the application were published;
- (g) the date of issue of the patent;
- (h) the possibility of inspecting the documentation concerning the patent, the search report and the decision of the Institute on the substantive examination, showing its findings on the novelty and inventive step characteristics and on the adequacy of the description and any objections raised in the course of the examination;
- (i) a mention that the patent has been granted following a substantive examination of novelty and inventive step.

Every patent shall be printed by the Institute in the form of a pamphlet and distributed on request. Printing may be carried out by reprographic means where necessary.

In addition to the particulars mentioned in the first paragraph of this Article, every pamphlet shall contain the description, the claims and drawings in their entirety, and also the full text of the state-of-the-art search report and the issue number of the Bulletin in which the decision to grant the patent was published.

Section V Formal Patent Application Procedure

Art. 64. Amendment of Claims

With the exception of the rectification of obvious errors such as spelling errors, or the submission of the wrong documents, the claims may be amended only in the course of the grant procedure and only where this Decree-Law specifically permits such amendment.

The applicant may amend the claims as provided in the preceding paragraph without having to obtain the consent of persons holding rights in the application that are entered in the Patent Register.

The scope of the application may not be broadened by amendment of the claims.

Art. 65. Converting a Patent Application into a Utility Model Application

The applicant may request that the subject matter of the application be protected by the grant of a utility model certificate, provided that he complies with the conditions set forth in the following subparagraphs:

- (a) where a patent is to be granted without substantive examination, the request may be filed up to the expiry of the period allowed under the first paragraph of Article 60 for submitting observations on the search

report;

(b) where a patent is to be granted with substantive examination, the request may be filed up to the expiry of the period allowed under the fourth paragraph of Article 62 for filing observations and objections in response to the substantive examination conducted by the Institute.

Protection of the subject matter of the patent application by the grant of a utility model certificate, following a request for conversion, shall take effect on the filing date of the original patent application, with the benefit of any priority that may have been claimed in the said original application.

Following the examination as to form conducted under Article 54, the Institute may propose to the applicant that the application be converted with a view to the issue of a utility model certificate. The applicant shall be free to accept or reject such proposal. Where, in response to the said proposal by the Institute, the applicant does not specifically request conversion, the proposal shall be deemed to have been rejected, in which case, the procedure for the grant of a patent in respect of the subject matter of the application shall continue.

Where the application does file a conversion request for the grant of a utility model certificate instead of a patent, the Institute shall notify the applicant that the application will be further prosecuted as an application for a utility model certificate and shall inform him of the documents that have to be submitted to that end within the period laid down in the Regulations.

Where the applicant fails to submit the documents requested within the said period, the request for conversion shall be deemed not to have been made and the application shall be further prosecuted as a patent.

A decision of the Institute agreeing to convert the application that is reached after the publication of the patent application shall be published in the relevant Bulletin.

Art. 66. Withdrawal of an Application

A patent application may be withdrawn by the applicant at any time before the patent is granted.

Where third parties have rights in a patent application that are entered in the Patent Register, the application may not be withdrawn without the consent of the holders of such rights.

Art. 67. Conditions Governing Inspection of Patent Application Files

The files of patent applications that have not yet been published may

not be inspected by third parties without the written consent of the applicant.

Third parties who can prove that the applicant intends to enforce the rights deriving from his patent application against them may inspect the file of the patent application that has not yet been published without the consent of the applicant.

Where a divisional application filed under Article 45, an application filed for a second time under Article 12 or an application converted under Article 65 is published, the file of the original application may be inspected by third parties before publication without the applicant's consent.

After publication of a patent application, the file concerning the application or the patent may be inspected subject to the limitations set forth in the Regulations.

The files concerning patent applications that have been refused or withdrawn before publication may not be inspected by third parties.

Art. 68. Filing a Withdrawn Application for a Second Time

Where a patent application published under Article 55 is withdrawn, a new patent application may not be filed for the same invention.

Where a patent that has not been published under Article 55 is withdrawn, the original applicant may file a new patent application for the same invention, provided that the protection shall run from the latest filing date of the application.

Art. 69. Obligation to Specify the Number of a Patent Application or Patent

Any person who wishes to enforce his rights under a patent application or patent against third parties is obliged to communicate the number of the patent application or patent concerned to those third parties.

Where statements appearing on a product, its labels or its packaging or in any kind of promotional material, advertisement or printed matter give the impression that protection under a patent application or patent exists, the person making such statements is obliged to give the number of the patent application or patent.

Section VI Objections to Deficiencies of Form during the Patent Grant Procedure Raised After the Grant of the Patent

Art. 70. Objections to Deficiencies of Form

With the exception of the provisions of Article 45 on unity of invention,

third parties shall be entitled to raise objections to the grant of a patent on grounds of deficiencies of form in the procedural requirements under Articles 42 to 63. Third parties wishing to raise such objections need not previously have filed observations on the state-of-the-art search report or raised objections under the system of patent grant with substantive examination.

Lack of novelty or inventive step of a patent granted without substantive examination may not be the subject of such objections.

Art. 71. Effect of the Objection to Deficiencies of Form

With the exception of the matter of unity of invention, where the Institute has failed, in the course of the examination, to observe one of the requirements of form of the patent grant procedure, or where it has omitted to perform an essential act in the course of the grant procedure, the Institute's decision to rectify such deficiency in response to the objection raised shall have the effect of retroactively cancelling administrative acts associated with the patent grant to the procedural stage at which the omission concerned occurred, and to resume the procedure as from that stage so that all subsequent acts are performed again.

PART V PROVISIONS ON RIGHTS UNDER A PATENT

Art. 72. Term of the Patent

The term of a patent granted with substantive examination shall be a non-renewable period of 20 years from the filing date of the application. The term of a patent granted without substantive examination shall be seven years. Where the substantive examination request is made within the said period of seven years and the patent is granted after such substantive examination has been conducted, the term of the patent shall be extended to 20 years from the filing date of the application.

Art. 73. Scope of Rights under a Patent

The holder of a patent shall benefit from the rights under it regardless of the place of the invention, the field of technology concerned and whether the products covered are imported or produced within the country. The holder of a patent is entitled to prevent the following acts performed by third parties without his permission:

- (a) production, sale, use or importation of patented products, or stocking for purposes other than personal needs;
- (b) use of the process to which the patent relates;
- (c) offers made to others for the use of a patented process where such use is known or should be known to be prohibited;
- (d) placing on sale, making use or importation, or stocking for any purpose other than personal needs, of products directly obtained by the patented process.

Art. 73A. Penalties and Fines

(a) Persons who make false statements under Article 44, or who remove without authority the notice of patent rights properly placed on a product or on its packaging, or who falsely present themselves as the owners of the rights in a patent application or patent 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 improperly and without authority, including those who should have known that they had no right to perform such acts, transfer the patent, deposit it as security or take any other such action in relation to it with a view to exercising any one of the rights of transfer, use as security and attachment, and other such rights provided for in Article 86, who transfer to another person a license relating to such rights, and who affix signs on a product produced or placed on sale by themselves

or by others, or on its packaging or in business documents or advertising material in such a way as to convey the impression that a relationship exists with a protected patent, or who to the same end use written matter, signs or expressions in newspapers, advertisements and commercials without being the rightful owners of the patented inventions, or who do the foregoing after the expiry of the term of protection of the patent or after invalidation or termination of the patent on grounds specified in Article 129 or 133 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 136 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 who in effect manages the undertaking, in whatever capacity and on whatever authority, who have not prevented the offense shall be punished in the same manner. Where the offenses specified in Article 136 have been committed in the performance of tasks on behalf of a legal entity, the legal entity shall be jointly liable for the expenses and for the fine. For accomplices, depending on the nature of the act, the provisions of Articles 64, 65, 66 and 67 of the Turkish Penal Code shall apply. Prosecution for the offenses specified above shall take place on a complaint. Subparagraph 8 of paragraph 1 of Article 344 of the Criminal Procedure Code No. 1412 shall not apply to the implementation of the provisions of this Article. The right of complaint shall belong to the person whose patent rights have been infringed, and also to the Institute, for all offenses with the exception of those provided for in Article 136; it shall belong to consumer associations and to establishments governed by Laws Nos. 5590 or 507 for false statements under Article 44 as to the true identity of the holder of the patent rights, and for the affixing of signs on a product produced and placed on sale, by oneself or by others, or on its packaging or in business documents or promotional material in such a way as to convey the impression that a relationship exists with a protected patent, 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 the person concerned being the rightful owner of the patent, or for such acts performed after

the expiry of the term of protection of the patent or after invalidation or termination of the patent. Proceedings against such offending acts shall be made 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 deriving from a patent application or patent in accordance with the provisions of this Decree-Law.

Art. 74. Use of Elements of the Patent by Third Parties

The holder of the rights in a patent is entitled to prevent third parties from handing over to persons unauthorized to work the patented invention elements and means relating to an essential part of the patented invention that enable the said invention to be carried out. For this provision to apply, the third parties concerned have to know that the said elements and means are sufficient for carrying out the invention, that they will be used to that end or that the circumstances make such an outcome sufficiently obvious.

The provisions of the first paragraph of this Article shall not apply when the elements or means referred to in the said paragraph are products commonly to be found on the market, unless the persons concerned are induced by third parties to commit such prohibited acts.

Persons committing the acts specified in subparagraphs (a), (b) and (c) of Article 75 shall not be deemed persons unauthorized to work a patent within the meaning of the first paragraph of this Article.

Art. 75. Limits of the Scope of the Rights under the Patent

The following acts shall remain outside the scope of the rights conferred by the patent:

- (a) acts devoid of any industrial or commercial purpose and limited to serving solely private ends;
- (b) acts involving the use of the patented invention for experimental purposes;
- (c) the making up of individual medicines on prescription in pharmacies where no mass production is involved, and acts relating to the medicines thus made up;

(d) use of the patented invention in the manufacture or operation of seaborne vessels, spacecraft, aircraft or land vehicles of signatory countries of the Paris Convention, or for meeting the needs thereof, where the said vessels, craft or vehicles temporarily or accidentally enter the territory of the Republic of Turkey;

(e) where acts provided for in Article 27 of the Convention on International Civil Aviation of December 7, 1944, relate to an aircraft of a State, the provisions of this Article shall likewise apply to that aircraft.

Art. 76. Exhaustion of the Rights under the Patent

The rights under the patent shall not extend to acts committed in relation to a product enjoying patent protection after that product has been placed on sale in Turkey by the holder of the patent rights or with his consent.

Art. 77. Rights Conferred by Prior Use

The owner of a patented invention shall not have the right to prevent a person or persons who in good faith, between the filing date of the application and the priority date, have worked the invention in Turkey, or made genuine and effective preparations for working it, from continuing to do so in the same manner as before, or from commencing such working on the basis of preparations made to that end. However, third parties may continue to work the subject matter of the patent in the same manner as before, or commence such working on the basis of preparations made to that end, only to the extent necessary to meet the reasonable needs of their enterprise. This right to work the invention shall only be transferable with the enterprise itself.

The rights under the patent as referred to in Article 76 shall not extend to acts relating to products placed on sale by the persons mentioned in the first paragraph of this Article.

Art. 78. Effect on Patents of Earlier Date

The owner of a patent may not invoke that patent in his defense in actions brought against him for infringement of other patents of earlier date.

Art. 79. Dependency of Subject Matter of Patents

The fact that a patented invention cannot be worked without the use of an invention protected by an earlier patent shall not be an obstacle to its validity. In such cases, neither the owner of the rights in the earlier patent nor the owner of the rights in the later patent may use the other's patent without his consent during the term of validity thereof. However, the owner of the rights in the later patent may also use the earlier patent

where he has been authorized by the owner of the rights in the earlier patent to use that patent or has been granted a compulsory license to use it.

Art. 80. Restrictions on the Use of the Patent

The patented invention shall not be put to any use that is contrary to the law, morality, public policy or public health, and its working shall be subject to such prohibitions and restrictions, whether temporary or permanent, as may be imposed by law.

Art. 81. Legal Monopoly

Where a patent is granted for an invention that is covered by a legal monopoly, the monopolist may only use the invention with the consent of the patent owner. The monopolist is moreover obliged to obtain and exercise the right of use of those inventions that involve notable technical progress in the field of industry in which he is engaged.

The monopolist shall have the right to request authorization to work the patented invention. Where the monopolist makes such a request the patent owner may ask him to take over the patent. The amount to be paid by the monopolist for the right to work the patented invention or for acquisition of the patent shall be determined by agreement between the parties. In the absence of agreement, the said amount shall be determined by the court. Without prejudice to the provisions of the second paragraph of this Article, where a monopoly has been established after a patent has been granted, the patent owner shall also have the right to request the monopolist to acquire the enterprise or the equipment with which the patented invention is worked, on payment of an amount to be determined by the parties. In the absence of agreement on the amount of the compensation payable, the said amount shall be determined by the court.

No annual fees shall be payable for patented inventions that cannot be put to use because of the existence of a legal monopoly.

Art. 82. Effects of Publication of a Patent Application

The protection accorded to the owner of a patent granted under this Decree-Law shall likewise be accorded to the owner of a patent application as from the publication date of the patent application in the relevant Bulletin and for as long as the application remains in force.

Where a person making use, without the permission of the patent applicant, of an invention for which a patent application has been filed is informed of the existence of the patent application or of the scope thereof, the protection mentioned above shall likewise be valid for the period prior

to the publication date of the patent application.

Where the subject matter of a patent application refers to a process involving a microorganism, protection shall commence only when the microorganism has been made accessible to interested parties.

A patent application shall produce none of the effects mentioned in the first to third paragraphs of this Article when it is withdrawn or deemed withdrawn or has been rejected in a final decision.

Art. 83. Scope of Protection Conferred by a Patent Application or Patent and Interpretation of Claims

The scope of the protection conferred by a patent application or patent shall be determined by the claims. The claims shall be interpreted in the light of the description and drawings.

The claims shall be interpreted in such a manner as to permit fair protection for the owner of the rights in a patent application or patent on the one hand, and afford third parties a reasonable degree of certainty regarding the scope of protection on the other.

Where a patent application has been filed for pharmaceutical or veterinary products or for chemicals destined for agriculture, the authorities issuing licenses for the manufacture and sale of such products and chemicals, which for that purpose request information and test results that have not been disclosed to the public, and the production and accumulation of which has involved considerable expense and effort, shall keep such information and test results secret. The authority requesting such information and test results shall take the necessary measures to prevent the improper use thereof.

Claims shall not be interpreted according to their strict literal wording alone. However, when the scope of protection of the relevant patent application or patent is determined, where characteristics, although contemplated by the inventor, are not expressed in the claim and can only be deduced from the description and drawings by a person skilled in that technical field, the claims shall not be deemed to cover those characteristics.

When an infringement is alleged and the scope of protection conferred by a patent application or patent is determined, all elements equivalent to those included in the claims shall be also considered.

When an infringement is alleged and an element is found to perform substantially the same function, to perform it in a substantially similar manner and to produce the same result as an element included in the claims, that element shall generally be deemed equivalent to the element included in the claims.

When the extent of protection is determined, due account shall be taken of any statement made by the applicant during the patent grant procedure or by the owner of the patent during the term of validity thereof.

Where a patent gives examples of the embodiment of the invention or of the functions or results thereof, the claims shall not be interpreted as being confined to those examples. In particular, the fact that a product or process includes additional features not found in the examples given in the patent, lacks features shown in such examples or does not achieve every objective or does not possess every characteristic illustrated in such examples shall not deprive the product or process of any of the protection conferred by the claims.

Art. 84. Rights Deriving from Process Patents

Where the manufacturing process of a product is patented and the product is imported into Turkey, the patentee shall enjoy the same rights in respect of the imported products as are accorded him under this Decree-Law for the manufacture of the said product in Turkey.

Where a patent concerns a process for the manufacture of new products or substances, it shall be presumed in the absence of proof to the contrary that any product or substance having the same properties has been manufactured by means of the patented process. The burden of proof shall be on parties alleging the contrary.

In legal proceedings over an allegation to the contrary under the second paragraph of this Article, due regard shall be had to the legitimate interest of the defendant in the non-disclosure of his manufacturing and trade secrets.

PART VI LEGAL TRANSACTIONS IN RELATION TO A PATENT APPLICATION OR PATENT

Section I Joint Ownership Relations

Art. 85. Joint Ownership Relations

Where a patent application or patent is owned indivisibly by more than one person, the resulting joint ownership shall be governed by agreement between the parties or, in the absence of such agreement, by the joint ownership provisions of the Civil Code.

Any one of the joint owners may do the following, in his own name, independently of the others:

(a) dispose freely of the part belonging to him; where the part is transferred to a third party, the Institute shall notify the other joint owners within two months, in order that they may exercise their right of preemption; the right of preemption shall be exercised within one month of the date of notification by the Institute;

(b) work the invention subject to notification of the other joint owners;

(c) take the necessary steps for the protection of the patent application or patent;

(d) institute civil or criminal proceedings against third parties who in any way violate the rights under the jointly filed patent application or jointly owned patent. The party instituting such legal proceedings shall notify the other owners of rights accordingly within one month of the date of institution thereof, to enable them to participate in the action.

A third party may be granted a license to work the invention on a decision taken jointly by all the owners of rights. However, for reasons of equity, the court may decide, in the light of particular circumstances, that one of the parties alone should be authorized to grant such license.

Section II Transfer and Licensing of Patent Applications and Patents

Art. 86. Transfer and Licensing of Patent Applications and Patents

A patent application or patent may be transferred to some other party or inherited, or its use licensed. A patent application or patent may be pledged, in which case the provisions of the Civil Code on pledging shall apply.

Transactions between living persons in relation to a patent application or patent shall be evidenced in writing.

Art. 87. Indivisibility

For the purposes of transfer or licensing, a patent application or patent shall be indivisible, even when jointly owned by two or more persons.

Art. 88. Contractual License

The right to use a patent application or patent may be the subject of a license agreement effective on the entire national territory or a part thereof. Licenses may be exclusive or non-exclusive.

The rights under a patent or patent application may be enforced in a court action instituted by the owner of the patent rights against a licensee who violates the terms of the license agreement provided for in the first paragraph of this Article.

Unless the agreement provides otherwise, the license shall be non-exclusive. The licensor may license the same invention to other persons and may work the patented invention himself.

Exclusive licenses shall preclude the grant of licenses to others and the licensor may make use of the patented invention only when he has specifically reserved such right in the license agreement.

Unless the agreement provides otherwise, the holders of contractual licenses may not transfer their licensed rights to other parties or grant sublicenses.

Unless the agreement provides otherwise, the holders of contractual licenses shall have the right to perform all acts associated with the use of the patented invention on the entire national territory throughout the term of the patent.

Art. 89. Obligation to Provide Information

Unless the agreement provides otherwise, the transferor or licensor of a patent application or patent is obliged to provide the transferee or licensee with the technical information necessary for satisfactory working of the invention.

The transferee or the licensee to whom confidential information has been entrusted is obliged to take the necessary measures to prevent the disclosure thereof.

Art. 90. Obligations Arising from the Transfer and Licensing of Rights

A person who has transferred or licensed rights under a patent application or patent, either for a consideration or free of charge, and is subsequently found to have no authority to perform such acts shall be liable to the parties involved for the situation resulting therefrom.

Where a patent application is withdrawn or refused or a court orders the invalidation of a patent, the provisions of Article 131 of this Decree-Law shall apply, unless the parties agree on increased liability for the transferor or licensor.

The transferor or licensor shall be liable at all times for acts performed by them in bad faith. Bad faith shall be deemed to exist where the other party has not been informed of reports or decisions in Turkish or other languages that are available or known to the transferor or licensor concerning the patentability of the invention to which the patent application or patent to be transferred or licensed relates, or where documents that include information on such reports or decisions have not been expressly mentioned in the contract.

The period during which compensation may be claimed under this Article shall run from the date on which the court decision on which it is based becomes res judicata. The provisions of the Law on Contractual Obligations on statute-barring shall apply.

Art. 91. Joint Liability

Where third parties suffer prejudice owing to a defect in the invention to which a transferred or licensed patent or patent application relates, the transferor and the transferee or licensor and licensee shall be jointly liable.

Unless otherwise provided in the agreement, the transferor or licensor assuming liability under the preceding paragraph may attribute such liability to the assignee or licensee and claim accordingly. Such liability may be attributed to the assignee or licensee, and a claim made accordingly, where the transferor or licensor has not acted in bad faith and where, for reasons of equity, the assignee or licensee should assume all or part of the compensation due for damages.

Art. 92. Entry in the Patent Register and Effects Thereof

Patent applications and patents shall be entered in the Patent Register in accordance with the provisions of the Regulations.

With the exception of the provision in the first paragraph of Article 13 on unlawful appropriation of the patent, transfers and licenses relating to applications or patents, or other acts, whether voluntary or mandatory, affecting patent applications or patents shall be binding on bona fide third parties as from the date of their entry in the Patent Register. The rights under a patent application or patent may not be invoked against third parties unless and until they have been duly entered in the Patent Register.

The rights under a patent application or patent may not be mentioned on the products as being registered patent rights until they have been entered in the Patent Register. The Institute shall ensure that transactions recorded in the Patent Register and appearing on official documents have been carried out in due conformity with the law and are valid and effective. The Patent Register shall be open to the public.

Art. 93. Unfair Competition

Where a patent owner commits a breach of the general provisions on unfair competition in the working of the patented invention, the court may order him to offer his patent for licensing.

Section III Offer for Licensing

Art. 94. Offer for Licensing by Patentee

Where the patentee makes no use of the patented invention as required by Article 96, he may announce to the Institute, in writing, his willingness to authorize the working of the invention under license by any party interested in such working.

Where a legal action has brought about a change in the ownership of a patent, any offer for licensing made previously shall be deemed to have been withdrawn on the entry in the Patent Register of the new patent owner in accordance with Article 12 of this Decree-Law.

The Institute shall enter in the Patent Register and publish the offer for licensing. Offers for licensing shall be open to public inspection. The Institute shall take appropriate measures to permit such inspection. The patentee may at any time withdraw his offer for licensing insofar as no person has applied to him for the grant of a license to use the invention. Withdrawal of the offer shall take effect on the date of filing with the Institute of the request for withdrawal.

Where the license has been entered in the Patent Register as an exclusive license, the patentee may not offer additional licenses to others.

Any person entitled to use the invention under license in response to the offer for licensing shall be considered a non-exclusive licensee, and the license granted under this Article shall be deemed to be a contractual license.

When an offer for licensing has been made, no application to enter an exclusive license in the Patent Register shall be permitted unless the offer for licensing has been withdrawn or is deemed to have been withdrawn.

Art. 95. Acceptance of the Offer for Licensing

Any person who wishes to obtain a license by taking up the offer for licensing shall notify the Institute of his intention in writing, in triplicate, with a mention of the manner in which he intends to make use of the invention. The Institute shall send a copy of the notification to the patentee, while a second copy is to be returned to the prospective licensee. Both copies shall bear the seal of the Institute and the same date of dispatch. Should the parties fail to reach agreement on the remuneration for the license, the competent court shall determine the said remuneration at the request of either party and after both parties have been heard. The court may modify the amount of the remuneration when the amount on which the parties have originally agreed proves inappropriate. A request for a change of remuneration may be made only after at least one year has elapsed since the license fee was determined by the court. On the expiry of each quarter of the calendar year, the licensee is obliged to inform the patentee of the use that he has made of the invention and to pay the remuneration. Where the licensee does not fulfill that obligation, the licensor may call upon him to do so within the month. Should the court find that the licensee has failed to fulfill his obligations within that period, the license shall be cancelled.

Section IV Obligation to Work

Art. 96. Obligation to Work

The patentee or the person authorized by him is obliged to work the patented invention. The obligation to work shall be discharged within three years from the date of publication in the relevant Bulletin of the announcement relating to the grant of the patent. Market conditions shall be taken into consideration when working is assessed.

Art. 97. Evidence of Use

The patentee or the person authorized by him shall prove the working of the invention by an official certificate to be filed with the Institute. The official certificate attesting the working of the patent shall be drawn up according to the general criteria and rules laid down in the Regulations by the authority designated therein. The certificate of working shall be issued at the conclusion of an inspection of production in the industrial establishment in which the invention is being worked. The certificate of working shall confirm the working of the patented invention or the marketing of the subject matter of the

invention.

The certificate of working shall be issued within three months of the date of filing of the relevant application with the authority concerned. The certificate shall contain information substantiating the actual use of the patented invention.

The certificate of working shall be entered in the Patent Register.

Art. 98. Acknowledgment of Working

When the working of the patented invention has been attested to the satisfaction of the Turkish Patent Institute by documentary evidence, the patented invention shall be deemed to have been put to use in accordance with Article 97, unless the contrary is proved by court action.

PART VII COMPULSORY LICENSES

Section I General Requirements for Compulsory Licenses

Art. 99. Requirements for Granting a Compulsory License

A compulsory license shall be granted where no licensing offer has been made and where any one of the following situations obtains:

1. failure to put to work the patented invention in accordance with Article 96;
2. dependency of the subject matter of patents as provided in Article 79;
3. public-interest considerations as mentioned in Article 103.

Art. 100. Request for Compulsory License

Any interested party may, on the expiry of the period provided for in Article 96, request the grant of a compulsory license on the grounds that, at the time of the request, the patent was not being worked, that the delay in the working thereof was not due to legitimate factors or that the use thereof had been suspended for an uninterrupted period of three years for no legitimate reason.

Technical, economic or legal reasons of an objective nature shall be deemed to constitute legitimate excuses for non-working of the patent. Reasons that are beyond the control and contrary to the will of the patentee shall be acknowledged as obstacles to the working of the patented invention.

Art. 101. Compulsory Licensing in the Case of Dependency between Patents

Where the patented invention cannot be worked without infringing the rights conferred by a prior patent, the owner of the later patent, by bringing evidence that his invention, as compared with the prior invention, serves a different industrial purpose or represents significant technical progress, may request the court to grant a license for the use of the earlier-dated patent.

Where patented inventions that are mutually dependent within the meaning of Article 79 serve the same industrial purpose and where a compulsory license has been granted for the purposes of one of the dependent patents, the owner of the dependent patent on which the compulsory license has been granted may apply to the court for the grant to him of a compulsory license on the other dependent patent.

Where a patent relates to a process for the production of an already patented chemical or substance relating to pharmacology, and the said process patent

represents significant technical progress in relation to the product patent of earlier date, both the owner of the process patent and the owner of the product patent may apply to the court for the grant of a compulsory license for the use of the other's patented invention.

A compulsory license granted for reasons of dependency between patents in terms of Article 79 shall be of such a scope as will permit the working of the patented invention concerned. Where one of the dependent patents is invalidated or expires, the grant of a compulsory license shall remain without effect.

Art. 102. Exportation as a Ground for a Compulsory License

The export status of the patented invention shall be acknowledged as a ground for a compulsory license.

Art. 103. Compulsory License on Grounds of Public Interest

The Council of Ministers may decide that the invention to which a patent or patent application relates is to be worked under a compulsory license on grounds of public interest. Where the working of the invention, or the increased, broadened or improved working thereof, is of great importance to public health or national defense, the public interest shall be deemed to be involved.

Situations where the non-working of the invention, or insufficient working thereof in terms of quality and quantity, does serious harm to the country's economic or technical development shall likewise be deemed to involve the public interest.

The Ministry concerned shall propose to the Council of Ministers the issue of a decree on the grant of a compulsory license. Where the use of the invention is important to national defense or public health, the proposal shall be submitted jointly by the Ministry concerned and the Ministry of National Defense or the Ministry of Health.

The decision to grant a compulsory license may restrict the working of the invention to one or more enterprises on the grounds of its importance to national defense.

Where the patentee is capable of working the invention in the public interest without the use thereof having to be broadened or entrusted to a person other than himself, the patented invention may be made conditionally subject to compulsory licensing. In such a situation, pursuant to the decree of the Council of Ministers, the court may allow the patentee to work the invention, or to broaden or improve the working thereof, for a period of not more than one year, set by itself, in such a manner as to satisfy the public interest.

The court shall decide on the appropriate period or subject the patented invention to immediate compulsory licensing after having heard the views of the patentee. The court shall rule on whether or not the public interest has been served by the working after the expiry of the prescribed period. Where the court rules that the public interest has not been served, it shall make the patented invention subject to compulsory licensing.

Art. 104. Request for Mediation

A person wishing to apply for a compulsory license may first address a request for mediation to the Institute with a view to obtaining a contractual license for the same patent.

The request for mediation addressed to the Institute shall provide the following particulars and the fee specified in the Regulations shall be paid:

- (a) information concerning the requester;
- (b) information concerning the patent to which the mediation request relates;
- (c) circumstances justifying the grant of a compulsory license;
- (d) the scope of the license requested, and the reasons for the request;
- (e) information sufficient for a decision to be taken on whether the requester is capable of working the invention efficiently and effectively, and whether he can provide the patentee with the guarantees reasonably required for the grant of the license.

The following documents shall in addition be submitted with the request for mediation by the Institute:

1. documents substantiating the grounds for the request;
2. documents guaranteeing that the requester will pay the cost of the procedure, the amount of which is specified in the Regulations;
3. copies of the request and of the documents submitted with it.

Art. 105. Mediation by the Institute

The Institute shall decide on the request for mediation within a month of the date thereof.

The Institute shall agree to mediate when it is satisfied, on the basis of the request for mediation and the documents submitted with it and after due investigation, that there is indeed a situation requiring the grant of a compulsory license and that the requester is solvent and has all the necessary means of working the invention.

The Institute shall notify its decision on mediation to the requester and also to the patentee, and shall enclose a copy of the mediation request.

Art. 106. Mediation Procedure of the Institute

When the Institute agrees to the mediation request, it shall immediately summon the parties to contractual license negotiations in which it shall act as mediator. The negotiations shall not last longer than two months. Where, on the expiry of the two-month period following the notification to the parties of its agreement to the mediation request, no agreement has been reached on the grant of a contractual license, the Institute shall declare its mediation and investigation concluded and notify the interested parties accordingly.

If the Institute is persuaded that agreement on the grant of a license can indeed be reached, it may agree to a request for an extension of the two-month period, filed jointly by the parties, even though the said period may have expired.

Until such time as a final decision is reached by the Institute, only the parties may have access to the documents relating to the mediation procedure and request copies thereof against payment of a fee. The parties and the staff of the Institute shall preserve the secrecy of the contents of the said documents.

Art. 107. Effects of Mediation by the Institute

Where negotiations in which the Institute has acted as mediator result in the parties reaching agreement on a license to work the invention to which the patent relates, the licensee shall be allowed a period within which to start putting the invention to use.

The period so allowed shall not exceed one year, and the following conditions shall be met before mediation is concluded:

1. the license agreed upon by the parties shall be exclusive and shall not constitute an obstacle to compulsory licensing;
2. documents shall be filed to attest that the person who requested mediation possesses the facilities and materials necessary for the working of the invention and that the period required for working to start is determined by the particular nature of the invention;
3. a monetary guarantee shall be provided, in an amount specified in the Regulations, to cover any liabilities that might arise should the person who requested mediation fail to start working the invention within the period allowed;
4. the fee specified in the Regulations shall be paid.

Where, on the basis of the documents submitted by the parties, the Institute is satisfied that the requirements set forth in the preceding paragraph have been met and that the parties are resolved to start working the patent immediately, it shall conclude the mediation procedure and enter the license granted as a result of the mediation in the Patent Register.

The person who requested mediation is obliged to notify the Institute of the current state of the preparations for starting to work the invention. The Institute is entitled to conduct such inspections as it may deem necessary.

A licensee who has obtained a license through mediation by the Institute may request the court to suspend the procedure for the grant of a compulsory license in respect of the patent in question during the period allowed for working the invention.

The court may reverse its decision to suspend the procedure for the grant of a compulsory license where evidence is submitted that the said decision was reached on the basis of a serious misconception or that the parties would not be in a position to initiate conscientious and continuous working of the invention within the period specified.

When, on the expiry of the said period, the licensee who obtained his license through mediation by the Institute fails to start working the invention, the Institute may rule that the licensee has to pay a fee to the licensor. The fee shall be calculated according to the license fee that the licensee would have to pay the patentee under a license agreement having a term equivalent to the period during which the invention was not used.

Art. 108. Request for Compulsory License

On expiry of a period of three months from the end of the period provided for in Article 106, or from the date of the Institute's refusal of the request for mediation, or where the parties fail to agree on the grant of a license before the end of the mediation activity carried on by the Institute, the court may be requested to grant a compulsory license. The party requesting a compulsory license may claim that, on the basis of the previously conducted mediation procedure and the documents submitted for that purpose, the conditions for the grant of a compulsory license are fulfilled. The party shall moreover specify the facilities and materials available to him for the effective working of the invention and provide a guarantee of his ability to work it if the license is granted. The following documents shall be filed with the request for a compulsory license:

- (a) documents in support of the request that were not available during the mediation procedure;
- (b) documents attesting the provision of a guarantee, in the amount specified in the Regulations, to cover the cost of the compulsory license procedure;
- (c) a document attesting payment of the fee specified in the Regulations;
- (d) copies of the request and of the documents submitted.

Art. 109. Initiation of the Compulsory Licensing Procedure

Where the conditions specified in Article 108 are fulfilled, the court shall initiate the procedure concerning the request for a compulsory license. Copies of the request and of the attached documents shall be sent to the patentee. The patentee may raise objections to the said documents within one month at the latest from the date of receipt thereof.

Where a request for a compulsory license has been filed as a consequence of the Institute's refusal of a request for mediation, the period allowed the patentee for raising objections shall not be shorter than two months. When an objection is raised by the patentee, the documents relating to the mediation procedure previously conducted by the Institute shall be taken into consideration and the evidence put forward in the course of that procedure that is not to be found in the said documents shall also be submitted. Copies of the evidence shall be sent to the requester by the court.

Art. 110. Compulsory License Decision

The court shall notify the objection raised by the patentee to the party requesting a compulsory license and shall rule within one month either on the rejection of the application or on the grant of the compulsory license. That period shall not be extended. Where the patentee has raised no objection to the request for a compulsory license, the court shall rule without any further delay on the grant of a compulsory license. The decision to grant the compulsory license shall include the following: The scope and term of the license, the fee payable, the guarantee provided by the licensee, the date on which working is to commence and the measures to ensure conscientious and effective working of the patent.

When the court ruling is appealed against and the evidence put forward by the patentee in support of suspending the implementation thereof is deemed sufficient by the court, the working of the invention shall be postponed until the decision on the license becomes final. The appeal shall not delay the implementation of the final decision.

Art. 111. Costs Relating to the Compulsory License Decision

The decision to grant a compulsory license shall specify the costs payable by each of the parties. Joint costs shall be shared equally between the parties.

Where either of the parties has acted in bad faith or committed a fault, he may be ordered to pay full costs.

Art. 112. Suspension of the Compulsory License Procedure

On the filing of a request for a compulsory license, the court shall initiate the necessary procedure for a decision on the grant of a license. The court may suspend the said procedure once, at any time, for a maximum of three months, on a duly reasoned request made jointly by the patentee and the requester.

On expiry of the said period, the court shall notify the parties accordingly and resume the procedure.

Art. 113. Notification of Patent Agents Representing Persons Domiciled Abroad

Where the patentee is not domiciled in Turkey, the correspondence and notifications referred to in this Section shall be addressed to the patent agent representing him.

Section II Compulsory License System

Art. 114. Legal Nature of the Compulsory License

A compulsory license shall not be exclusive. Only a compulsory license in the public interest under Article 103 may be granted as an exclusive license, provided that the exclusiveness shall not be at variance with the purpose of the compulsory license and must be essential to the economic exploitation of the patented invention.

Where a compulsory license is granted, the licensee shall in principle not have the right to import the subject matter of the patent. The subject matter of the patent may, however, be imported where the compulsory license has been granted in the public interest and where the licensee has been expressly authorized to do so. Such authorization to import shall be issued on a temporary basis and shall be limited to the satisfaction of the specific demand.

Under a compulsory license the patentee shall be paid equitable remuneration. The license fee shall be determined especially in relation to the economic importance of the invention.

Art. 115. Violation of Relations of Mutual Trust

Where the relations of mutual trust between the patentee and the licensee are violated by the patentee, the licensee may, depending on the role played by the violation in the economic exploitation of the invention, request a reduction in the remuneration payable to the patentee.

Art. 116. Scope of Compulsory Licenses under Patents of Addition

A compulsory license shall cover additions to an existing patent as of the date of the grant of the license. Where, after the grant of a compulsory license, a patent of addition is granted that serves the same industrial purpose as the main patent to which the license relates, the licensee may request the court that the patent of addition be also included within the scope of the compulsory license.

Where, in spite of mediation by the Institute, the parties cannot agree on the remuneration and other conditions of a license the scope of which has been enlarged by a patent of addition, they shall be fixed by the court.

Art. 117. Transfer of Compulsory License

A compulsory license may be validly transferred only together with the enterprise or part thereof in which it is being exploited. The Institute shall enter the transfer in the Register. Where the compulsory license is granted for reasons of dependency between patents, the license shall be transferred together with the dependent Patent.

The compulsory licensee is not permitted to sublicense. Any act performed to that end shall be deemed invalid.

Art. 118. Request for Amendment of Terms

The licensee or the patentee may apply to the court for amendment of the fee or terms of the compulsory license on account of events occurring later that justify such amendment. The subsequent grant by the patentee of a contractual license on conditions more favorable than those of the compulsory license shall especially confer the right to request such amendment.

Where the licensee seriously violates his obligations under the compulsory license or continually fails to fulfill them, the court may cancel the license at the request of the patentee, without prejudice to the latter's right to compensation for damages.

Art. 119. Applicability of the Provisions on Contractual Licenses

The provisions of Article 88 on contractual licenses shall apply also

to compulsory licenses insofar as they are not contrary to the provisions of Articles 114 and 118.

Section III Compulsory Licensing Incentives

Art. 120. Provision of Compulsory Licensing Incentives

The Institute shall provide for incentives to promote the filing of requests for the licensing of patents available for compulsory licensing. To that end, the Institute shall regularly publicize such patents.

Where the importance of working patented inventions dictates, the Council of Ministers shall provide for financial, economic and other inducements to encourage undertakings to file requests for the compulsory licensing of particular patents in the public interest.

PART VIII PATENTS OF ADDITION AND SECRET PATENTS

Section I Patents of Addition

Art. 121. Application for a Patent of Addition

The owner of the rights in a patent or patent application may apply for a patent of addition to protect inventions that share the overall inventive concept of the main patent in terms of the first paragraph of Article 45 and which improve or develop the invention to which the main patent relates.

Applications for patents of addition may be filed in connection with a patent application until such time as a decision thereon is taken, provided that they shall not be granted if the patent application is refused. The inventive step criterion referred to in Article 9 shall not apply to patents of addition.

Art. 122. Priority Date of Patents of Addition

The priority date of a patent of addition shall be determined by the filing date of the application.

Patents of addition shall have the same term as the main patent and shall not be subject to the payment of annual fees. Unless otherwise provided in this Decree-Law, the patent of addition shall be considered an integral part of the main patent.

Art. 123. Conversion of a Patent of Addition into a Main Patent

At the request of the applicant, the application for a patent of addition may at any time during its prosecution be converted into an application for a main patent. The same possibility shall be available, within a period of three months of the applicant for a patent of addition being informed that his application does not, on the basis of the examination conducted by the Institute, have the necessary connection with the main patent.

Granted patents of addition may be converted to main patents provided that the patentee surrenders his rights in the main patent.

Where a request for conversion of a patent of addition into a main patent is filed, subsequent patents of addition shall be deemed to constitute additions to the new main patent insofar as they possess the required unity and comprehensiveness.

Patents of addition converted into main patents shall be subject to the payment of annual fees as from the date of their conversion, while their term of protection shall be the same as that of the main patent.

Art. 124. Applicability of Patent Provisions to Patents of Addition

Unless expressly provided otherwise, and insofar as they are compatible with the characteristics of patents of addition, the patent provisions of this Decree-Law shall apply also to patents of addition.

Section II Secret Patents

Art. 125. Conditions of Secrecy

The contents of a patent application shall be kept secret for a period of two months from the filing date of the application, except where the Institute decides to disclose them earlier.

The Institute may extend the period during which the patent application is kept secret for up to five months from the filing date of the application if it subsequently considers that the invention to which the application relates is important to national defense. The Institute shall inform the applicant of the situation in writing and shall also immediately inform the Ministry of National Defense by forwarding a copy of the application to it.

For the purposes mentioned in the first and second paragraphs of this Article, the Institute and the Ministry of National Defense shall cooperate in identifying those inventions that are held to be important to national defense. The Ministry of National Defense shall be allowed to inspect all patent applications beforehand, provided that the condition of secrecy is respected.

When national defense interests are at stake, the Ministry of National Defense may request the Institute in writing, before the expiry of the said period of five months, to prosecute the patent application secretly and to keep the applicant informed of the situation.

Where the patent application or patent is kept secret, the patent applicant or owner shall abstain from such acts as might allow information on the contents of the invention to become known to unauthorized persons. The Ministry of National Defense may, at the request of the patent applicant or owner, allow the subject matter of the patent application or patent to be used, in its entirety or in part, under such conditions as may be laid down by the Ministry of National Defense.

Art. 126. Register of Secret Patents, Extension of Secrecy Period and Lifting of Secrecy

A patent issued under the secrecy rule shall be entered in a Register of Secret Patents and kept secret for one year following the date of grant. The secrecy period may be extended by periods of one year. The patentee

shall be kept informed of such extensions. The annual extension of the secrecy period shall not apply in time of war and until a year has elapsed after the cessation of hostilities.

The Institute may at any time, with the authorization of the Ministry of National Defense, lift the secrecy to which the patent application or patent is subject.

Art. 127. Annual Fees and Compensation for Secret Patents

Secret patents shall not be subject to the payment of annual fees.

The owner of the patent rights may claim compensation from the State for the whole period during which the patent is kept secret. Such compensation shall be claimed at the end of each calendar year during which or during part of which the patent has remained secret. If no agreement is reached on the amount of compensation, it shall be fixed by the court. The compensation shall be calculated according to the importance of the invention and the estimated income that the owner of the patent rights would have derived from free use thereof.

Where the invention to which the secret patent relates is disclosed through the fault of the patentee, he shall have no right to claim compensation.

Art. 128. Permission to File Applications in Foreign Countries for Secret Patents

Where an invention made in Turkey is subject to the provisions of Article 125, no patent application may be filed for the said invention in any foreign country without the Institute's permission and before the expiry of a period of two months from the date on which the patent application was filed with the Institute. Permission to file an application in a foreign country shall not be issued without specific authorization from the Ministry of National Defense.

Where the inventor is domiciled in Turkey, the invention shall be deemed to have been made in Turkey in the absence of proof to the contrary.

PART IX INVALIDATION OF THE PATENT AND TERMINATION OF PATENT RIGHTS

Section I Invalidation of the Patent

Art. 129. Invalidity

A patent shall be declared invalid by the court in the following situations:

(a) where it is established that the subject matter of the invention does not meet the patentability requirements laid down in Articles 5 to 10 of this Decree-Law;

(b) where it is established that the subject matter of the invention has not been described in a sufficiently explicit and comprehensive manner for a person skilled in the technical field concerned to carry it out;

(c) where it is established that the subject matter of the patent goes beyond the scope of the application or is based on a divisional application filed under Article 5 or on an application to which Article 12 applies and exceeds the scope thereof;

(d) where it is established that the holder of the patent does not have the right to a patent under Article 11.

Only the inventor or his successors in title shall have the right to claim that the owner of the patent does not have the right to a patent under Article 11. In such a case, Article 12 of this Decree-Law shall apply. Where the grounds for invalidity concern only part of a patent, partial invalidity of the patent shall be declared by cancellation of the claims pertaining to that part. A single claim may not be invalidated in part. Where, in the case of partial invalidation, the claims of the patented invention that have not been canceled conform to Articles 5 to 7 of this Decree-Law, the patent shall remain valid in respect of those claims.

Art. 130. Request for a Declaration of Invalidity

Injured parties or interested official authorities, acting through the Public Prosecutor, may apply to the court for invalidation of a patent. Invalidation of a patent in accordance with subparagraph (d) of the first paragraph of Article 129 may also be requested by persons entitled to claim the right to the patent.

The court action for the invalidation of a patent may be instituted during the term of protection thereof or within five years following the lapse of the patent rights.

The court action for invalidation of a patent shall be directed against the person who, at the time of the institution of proceedings, is entered

in the Patent Register as the owner of the patent. Notification shall be served on the persons entered in the Register as holders of rights in the patent, to enable them to take part in the court action.

Art. 131. Effects of Invalidity

A court decision ruling that a patent is invalid shall have retroactive effect. Consequently, where invalidity is declared, the legal protection afforded to the patent application or patent under this Decree-Law shall be deemed never to have existed.

Without prejudice to compensation claims for damage caused by acts of bad faith on the part of the owner of the patent, the retroactive effect of invalidity shall not extend to the following:

- (a) any decision on patent infringement that has become res judicata prior to the declaration of invalidity;
- (b) contracts executed and fulfilled prior to the declaration of invalidity; partial or full reimbursement of sums paid under the contract may, however, be claimed on grounds of equity to the extent justified by the circumstances.

A declaration that has become res judicata shall be binding on all persons.

Art. 132. Effects of Invalidity on Patents of Addition

A declaration of invalidity of a patent shall not necessarily entail invalidation of patents of addition. However, where no request is filed for conversion of the patents of addition into main patents within three months following the date of notification of the declaration of invalidity, the invalidation of the patent shall result in invalidation also of the patents of addition.

Section II Termination of Patent Rights

Art. 133. Causes of Termination

Patents rights shall terminate in any of the following circumstances:

- (a) expiry of the term of protection;
- (b) surrender of the patent rights by the owner thereof;
- (c) non-payment of annual and other fees by the prescribed time limits.

The subject matter of terminated patent rights shall become public property from the moment at which the reason for termination materializes. The fact shall be published by the Institute in the relevant Bulletin.

In the case of non-payment of annual fees, the reason for termination of patent rights shall be deemed to have materialized on the date on which the payment became due.

Art. 134. Non-Payment of Annual Fees for Reasons of Force Majeure

Where patent rights terminate for non-payment of annual fees and the owner of the patent produces evidence of the non-payment of the fee being attributable to force majeure, the patent shall be revalidated.

The claim of force majeure shall be made within six months of the publication, in the Bulletin, of the announcement of the termination of the patent rights.

The patentee's claim of force majeure shall be published in the Bulletin. Interested parties may submit comments on the matter within a month of the date of the publication.

The patent shall be revalidated by a decision of the Institute. The revalidation of a patent shall not affect rights acquired by third parties as a result of the termination of the patent rights. The rights of third parties and the scope thereof shall be determined by the court.

Where a patent is revalidated, the owner thereof shall be obliged to pay the fees that he failed to pay and a surcharge.

Art. 135. Surrender of Patent Rights

The owner of a patent may surrender his rights in the patent either fully or in respect of one or more patent claims.

Where the right to a patent is surrendered in part, the patent shall remain in force in respect of the claims that have not been surrendered, provided that such claims do not correspond to the subject matter of another patent and that the surrender of rights does not result in a broadening of the scope of the patent.

The surrender shall be declared in writing to the Institute, and shall have effect as of the date of entry in the Patent Register.

The holder of a patent may not surrender his patent rights without the consent of licensees or holders of rights entered in the Patent Register. Where a third party claims ownership of a patent, the patent rights may not be surrendered without the consent of the third party concerned.

PART X INFRINGEMENT OF PATENT RIGHTS AND LEGAL PROCEEDINGS IN INFRINGEMENT CASES

Section I Cases of Infringement

Art. 136. Acts Constituting Infringement of Patent Rights

The following acts shall be considered infringements of patent rights:

- (a) imitating the product to which the patent relates by manufacturing all or part of the said product without the consent of the patent owner;
- (b) selling, distributing or otherwise marketing products, or importing them for such purposes or stocking them for commercial purposes when it is known, or should be known, that the said products are complete or partial imitations;
- (c) using the patented process or selling, distributing or otherwise marketing, or offering or importing for such purposes, products directly obtained by means of the patented process without the consent of the patent owner;
- (d) broadening the scope of rights granted by the patent owner under a contractual or compulsory license, or transferring such rights to third parties, without the consent of the patent owner;
- (e) participating in acts provided for in subparagraphs (a) to (d) of this Article, or assisting or promoting them or in any way and in any circumstances facilitating the performance thereof;
- (f) failing to declare the source from which and the manner in which unlawfully manufactured or marketed products found in one's possession were obtained.

Where a patent has been obtained for a process for the manufacture of a product, all products possessing the same properties shall be deemed to have been manufactured using the patented process. The burden of proof of the contrary shall be on the defendant.

Where a patent application is published under Article 55 of this Decree-Law, the applicant is entitled to institute civil and criminal proceedings before the courts for infringement of the patent applied for. Where the infringer is notified of the existence of the application and of its scope, the requirement of publication of the application shall not apply. Where the court rules that the infringer has acted in bad faith, the infringement shall be deemed to have existed even prior to publication.

Section II Legal Proceedings

Art. 137. Claims of the Patent Owner and Competent Court

A patent owner whose rights are infringed may apply to the court for the following in particular:

- (a) cessation of the acts infringing the patent rights;
- (b) remedies for infringement and compensation for material and moral prejudice suffered;
- (c) confiscation of manufactured or imported products that infringe the patent rights, of means directly used for manufacturing such products and of means permitting the use of a patented process;
- (d) recognition of ownership of the products and means confiscated under the third subparagraph of this paragraph, in which case the value of the products shall be deducted from the amount of compensation awarded; where the value of the products exceeds the amount of compensation awarded, the patent owner shall repay the balance to the other party;
- (e) precautionary measures to prevent continuation of the infringement of patent rights, especially the alteration of the form of the products and means confiscated under the third subparagraph of this paragraph, or the destruction thereof where essential to preclude further acts of infringement;
- (f) publication of the court ruling against the infringer of the patent and notification thereof, both at the infringer's expense, to the public and persons concerned.

The competent court for the institution of legal proceedings by the patent owner against third parties shall be the court of the plaintiff's domicile, of the place in which the offense was committed or of the place in which the infringing act had effect.

Where the plaintiff is not domiciled in Turkey, the competent court shall be the court of the location of the registered agent's place of business or, where the agent's entry in the Register has been cancelled, the court of the place in which the Institute has its headquarters.

The competent court for the institution of proceedings by third parties against the patent applicant or owner shall be the court of the defendant's domicile. Where the patent applicant or owner is not domiciled in Turkey, the provisions of the third paragraph, above, shall apply.

Where several courts are potentially competent, the court before which the proceedings are initiated first shall be the competent court.

Art. 138. Compensation

A person who, without the consent of the proprietor of the patent, manufactures, sells, distributes or in any form markets a patented product, or imports it for those purposes, or stocks it for commercial purposes, or makes use of a patented process shall be liable to remedy the unlawful situation and to provide compensation for the prejudice caused.

A person who makes use of a patented invention in any other way shall be liable to provide compensation for the prejudice caused only if he has been informed by the patent owner of the existence of the patent and his infringement thereof, and has been requested to stop the said infringement, or if his action has been culpable or negligent.

Art. 139. Documents Evidencing Infringement

The owner of a patent may require the infringing party to hand over documents relating to the use of the patent without his consent, in order that he may assess the prejudice suffered on account of the patent infringement.

Art. 140. Income Not Realized

The prejudice suffered by the patent owner shall include not only the value of the actual loss, but also the income not realized owing to the infringement of the patent rights.

The income not realized shall be calculated according to one of the following criteria at the discretion of the patent owner who has suffered the prejudice:

- (a) the income that the patent owner might have been expected to realize if there had been no competition from the infringing party;
- (b) the income actually realized by the infringer through his use of the patent;
- (c) the license royalties that would have been paid if the infringer had used the patent lawfully under a license agreement.

When the income not realized is calculated, due account shall be taken in particular of the economic value of the patent, the term of protection remaining at the time of infringement and the type and number of any licenses granted in respect of the patent.

Where the court finds that the owner of the patent rights has not fulfilled his obligation to work the patent under the provisions of this Decree-Law, the income not realized shall be calculated according to subparagraph (c) of the second paragraph of this Article.

Art. 141. Increase on the Income Not Realized

Where the patent owner has selected either of the criteria specified in subparagraphs (a) or (b) of the second paragraph of Article 140 for the calculation of income not realized, the court may increase it by a reasonable additional amount when, in its opinion, the patent makes a substantial economic contribution to the manufacture of the product or use of the process.

The assessment of the patent's contribution to the economic value of the product shall be based on an examination of whether or not the patent is the determining factor in creating the demand for the product.

Art. 142. Reputation of the Invention

The owner of a patent may claim additional damages where the reputation of the invention to which the patent relates is harmed by the bad manufacture or improper marketing of the patented invention by the party violating the patent rights.

Art. 143. Reduction of Compensation

Where the amount of compensation to be paid to the owner of the patent rights is greater than that which he receives from other persons for their use of the invention in another manner, the compensation allowed shall be reduced in consideration of the latter amount.

Art. 144. Persons from Whom No Compensation May Be Claimed

The patent owner may not institute proceedings under this Section of this Decree-Law against persons using the products placed on the market by a person who has paid him compensation for damages.

Art. 145. Statute Barring

The provisions of the Code of Contractual Obligations on statute barring shall apply to the periods for filing claims under civil provisions for violations of patent rights.

Section III Special Courts

Art. 146. Competent Courts

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

as special courts and shall specify the jurisdiction of each. 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 been prejudiced by its decisions.

Art. 147. Publication of the Court's Decision

Where a court judgment has become *res judicata*, the successful party may, provided that he has a legitimate ground or interest, request the publication in full or in summary form of the final judgment in a daily paper or other 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 after the judgment has become *res judicata*.

Section IV Special Provisions

Art. 148. Action by the Licensee and Requirements Therefor

Unless otherwise provided in the contract, the holder of an exclusive license may, in the event of infringement of the patent rights, institute in his own name all legal proceedings that have been made available to the patent owner 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 patent owner to institute such proceedings as may be required.

In the event of the owner of the patent rights refusing or, within three months of the receipt of the notice, failing to institute proceedings, the non-exclusive license holder shall have the right to institute proceedings in his own name, in which case he shall enclose the notice served on the patent owner.

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 without waiting for the said three-month period to elapse.

A licensee who has instituted proceedings under the third paragraph, above, shall notify the patent owner that proceedings have been initiated.

Art. 149. Claim of Non-Infringement of a Patent and Requirements Therefor

Any interested party may institute proceedings against a patent owner to obtain a ruling of non-infringement of patent rights.

Prior to the institution of proceedings under the foregoing paragraph,

a notice shall be sent through a notary public for the attention of the patent owner to enable the said owner to express his views on whether industrial activities carried on in Turkey, or the genuine and effective preparations made to that end, by the party serving the notice infringe the patent rights.

Where the patent owner, 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 shall have the right to institute proceedings under the first paragraph, above. Persons against whom infringement actions have been brought in respect of patent rights may not institute proceedings under the first paragraph of this Article.

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

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

Art. 150. Action to Secure Evidence

Any person legally entitled to bring action for infringement of patent rights may request the court to determine and secure evidence of acts that may be regarded as infringing such rights.

Art. 151. Precautionary Measures

Persons who intend to institute or have instituted proceedings under this Decree-Law may, in order to ensure the effectiveness of the main action, request the court to order precautionary measures, provided that they bring evidence of actual use of the patent in Turkey, or of genuine and effective preparations for such use, that would constitute infringement of the plaintiff's patent rights.

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. 152. Nature of Precautionary Measures

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

- (a) cessation of the acts infringing the plaintiff's patent rights;
- (b) seizure within the borders of Turkey, wherever they are to be found, including at the customs or in free ports or free trade areas, and the

holding in custody, of produced or imported goods that infringe the patent rights, or of means used in the implementation of the patented process;
(c) provision of security for such damages as may have to be compensated.

Art. 153. Civil Procedure Code

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

PART XI UTILITY MODEL CERTIFICATES

Art. 154. Inventions Protected by the Grant of Utility Model Certificates

Inventions that are novel according to Article 156 of this Decree-Law and applicable in industry within the meaning of Article 10 of this Decree-Law shall be protected by the grant of utility model certificates.

Art. 155. Inventions and Subject Matter Not Eligible for Protection by the Grant of Utility Model Certificates

Utility model certificates shall not be granted for the subject matter mentioned in Article 6 of this Decree-Law, or for processes and products obtained by such processes, or for chemical compounds.

Art. 156. Novelty

The invention to which the application for a utility model certificate relates shall not be deemed novel where, prior to the filing date of the application, it has been made accessible to the public, either in Turkey or elsewhere in the world, by disclosure in writing or in any other way, or where it has been put to use within the country, either regionally or nationwide.

Disclosure, either by publication or in any other form, by the applicant for a utility model certificate or his predecessors, 12 months prior to the filing date of the application or to the priority date, if any, shall not be deemed destructive of the novelty of the invention to which the application relates.

Applications for patents or for utility model certificates filed in Turkey prior to the filing date of the application for a utility model certificate shall be deemed destructive of the novelty of the latter application even when they are themselves published after the filing date of the said application.

Art. 157. Right to Apply for a Utility Model Certificate

The right to apply for a utility model certificate shall belong to the inventor or his successor in title and shall be transferable. Where the invention to be protected by a utility model certificate has been made jointly by two or more persons, the right to apply for such a certificate shall belong to them jointly, unless they decide otherwise. The provisions of civil law on joint ownership shall apply in this connection.

Where the same invention to be protected by a utility model certificate has been made by two or more persons at the same time, but independently of each other, and one of them has filed an application, the provisions

of Articles 11 and 12 of this Decree-Law shall be applied to determine which of those persons is entitled to apply for a utility model certificate.

Art. 158. Rights Not Binding on Third Parties

Where the subject matter of the invention to which the utility model certificate relates has been copied from the description, drawings and models, equipment and installations of a third party without his authorization, the holder of the utility model certificate may not invoke the protection conferred by the utility model certificate granted under this Decree-Law against the said third party.

The owner of a utility model certificate against whom a court action for invalidation has been brought under Article 156 may not invoke the rights under that certificate against third parties until the conclusion of the said action. To that end the parties shall apply to the Institute for the recording in the Register of the institution of court proceedings and of the resulting decision, and for the publication thereof in the relevant Bulletin. The rights of the owner of the utility model certificate to claim compensation shall remain reserved.

Art. 159. Application for a Utility Model Certificate

In order to obtain a utility model certificate, the documents mentioned in Article 42 of this Decree-Law shall be filed with the Institute together with the application, which shall state clearly that protection by the grant of a utility model certificate is requested.

The provisions of Articles 43 and 53 of this Decree-Law shall govern the fixing of the filing date of the application for a utility model certificate.

Art. 160. Examination of the Application as to Form and Publication

When the filing date of the application has become definite, the Institute shall examine the compliance of the application with the requirements of form set forth in Articles 42 to 53 and in the Regulations.

Where the examination by the Institute shows that the application has deficiencies of form or that the subject matter thereof does not possess the characteristics permitting the grant of a utility model certificate as specified in Articles 154 and 155, the procedure shall be suspended. The Institute shall notify the applicant of its decision, giving him the reasons for it, and shall grant him a period of three months, as from the notification, within which to rectify the deficiencies, to amend the claims or to object to the decision.

After having considered the observations of the applicant and any amendments to the application, the Institute shall take its final decision. The

said final decision may be to grant the utility model certificate for all or part of the claims. Where the finding of the examination for compliance with requirements of form is that there is no deficiency preventing the grant of protection or that any such deficiency has been satisfactorily rectified, the Institute shall notify the applicant of its decision to proceed with publication of the description, claims and drawings, if any, in accordance with the provisions laid down in the Regulations. Applications shall be published in the relevant Bulletin in the form and according to the requirements specified in the Regulations. The state-of-the-art search report drawn up by the Institute for patents shall not be drawn up for utility model certificates. However, where the applicant for or owner of the utility model certificate makes a special request to the Institute for the drawing up of a state-of-the-art search report, such a report shall also be drawn up for the utility model certificate.

Art. 161. Opposition by Third Parties

Within three months following the publication of the application, any person or entity having an interest therein may oppose the application for the grant of a utility model certificate, stating the reasons therefor. The grounds for opposition shall be that the requirements for the grant of a utility model certificate are allegedly not fulfilled, and in particular that the subject matter lacks novelty in terms of Article 156 or that the description is inadequate, not being sufficiently explicit and comprehensive to permit the implementation of the invention.

Documentary evidence in support of the opposition shall be enclosed with the statement of opposition, which shall be made in writing.

On the expiry of the opposition period, the Institute shall notify the applicant of the oppositions filed.

The applicant may, within three months of being notified of the oppositions filed, submit a duly reasoned response to the said oppositions, or amend the claims if he sees fit or request the Institute to issue the certificate without taking the oppositions filed into consideration.

The courts shall have jurisdiction over allegations that the applicant is not entitled to request a utility model certificate. Oppositions filed with the Institute that make such allegations shall not be entertained.

Art. 162. Decision of the Institute, Grant of a Utility Model Certificate and Publication

Where the applicant has filed his response to the objections raised or made the amendments requested, or where the period allowed the applicant

to respond to such objections has lapsed, the Institute shall decide whether or not to grant the utility model certificate without taking third-party objections into consideration and shall notify the applicant of its decision, requesting payment within three months of the fee prescribed by the Regulations.

Where the prescribed fee is not paid within three months of the date of notification, or where no request for an extension of the said period is filed, the utility model certificate shall not be issued and the application shall be deemed withdrawn.

The description referred to in Article 61 of this Decree-Law shall not be published for a utility model certificate.

The State shall not guarantee the genuineness and usefulness of the subject matter of a utility model certificate.

The issue of a utility model certificate shall be published in the relevant Bulletin. The publication shall include the following particulars:

- (a) the number of the certificate;
- (b) the classification code or codes of the invention;
- (c) the title, which shall clearly describe the subject matter of the invention;
- (d) the name, nationality and domicile of the owner of the certificate;
- (e) the abstract;
- (f) the date and number of the issue of the Bulletin in which the application for a utility model certificate was published;
- (g) the date of issue of the certificate;
- (h) a statement announcing the possibility of inspecting the documentation concerning the utility model certificate, and objections raised and the response to those objections.

Art. 163. Objections Alleging Deficiencies of Form Filed After the Grant of a Utility Model Certificate

Third parties are entitled to file objections with the Institute against the grant of a utility model certificate on grounds of non-fulfillment of the requirements of forms specified in Articles 42 to 52, with the exception of Article 45 on unity of invention. It is not necessary to have filed an objection earlier, on publication of the application for a utility model certificate, in order to file an objection under this Article. Where the Institute finds on examination that one of the acts to be performed in the procedure for the grant of a utility model certificate as provided in Articles 42 to 52, with the exception of the provision on unity of invention, has not been performed, or where the Institute has itself omitted

to perform an essential procedural act, the Institute's decision to rectify the said deficiency in response to an objection raised shall have the effect of cancelling the administrative acts relating to the grant of a utility model certificate retrospectively to the stage in the procedure at which the deficiency arose and to resume the procedure from that stage onwards.

Art. 164. Form and Term of Protection

The owner of a utility model certificate shall enjoy the same protection as is conferred on the owner of a patent.

A utility model certificate is granted for a non-renewable term of 10 years from the filing date of the application.

Certificates of addition in terms of Article 121 of this Decree-Law shall not be granted in respect of utility model certificates.

Art. 165. Invalidation of a Utility Model Certificate

A utility model certificate shall be declared invalid by the competent court in the following circumstances:

(a) where it is established that the subject matter of the utility model certificate does not comply with the provisions of Articles 154, 155 and 156 of this Decree-Law;

(b) where it is established that the invention to which the utility model certificate relates has not been described in a sufficiently explicit and comprehensive manner for a person skilled in the field to carry it out;

(c) where it is established that the subject matter of the utility model certificate goes beyond the scope of the application filed, or goes beyond the scope of the application as originally filed where the utility model certificate is based on a divisional application filed under Article 45 or on an application filed under Article 12;

(d) where it is established that the owner of the utility model certificate does not have the right to such a certificate under Article 157.

Invalidation of the utility model certificate may be sought by third parties who have suffered prejudice, by interested official bodies acting through the Public Prosecutor or by persons entitled to apply for the utility model certificate under subparagraph (d) of the first paragraph of this Article.

In order to be eligible to seek invalidation of a utility model certificate, third parties who have suffered prejudice and interested official bodies

must have filed opposition under Article 161.

Invalidation of a utility model certificate may be sought at any time during its term of protection.

Only the inventor or his successors in title shall have the right to claim that the owner of the utility model certificate is not entitled to such a certificate under Article 157. In such a case, Article 12 of this Decree-Law shall apply.

Where the grounds for invalidity concern only part of the utility model certificate, it shall be decided that the said certificate is to be invalidated in part, by cancellation of the claim or claims relating to the part concerned. A single claim may not be invalidated in part.

Where partial invalidity has been declared, the utility model certificate shall remain in force with respect to the claims that have not been cancelled, provided that those claims comply with the provisions of Articles 5 to 7 of this Decree-Law.

Where the utility model certificate is issued without regard to reasoned third-party opposition and where, on grounds of a causal relation to the opposition filed, the court has decided to invalidate the utility model certificate under this Article, third parties who have filed oppositions and have suffered prejudice shall have the right to claim compensation from the owner of the invalidated utility model certificate.

Art. 166. Application of Patent Provisions

In the absence of provisions specifically applicable to utility model certificates, the provisions of this Decree-Law on patents shall apply also to utility model certificates insofar as they are not incompatible with the characteristics of utility model certificates.

Art. 167. Conversion of an Application for a Utility Model Certificate into a Patent Application

The applicant for a utility model certificate may request the Institute to convert the application concerned into a patent application prior to the Institute's decision to grant the utility model certificate.

The Institute shall notify the applicant, within a month of the application for a utility model certificate, that the said application will be further prosecuted as a patent application, and shall inform him of the documents to be submitted to that end. The applicant shall file the documents requested within a month of the date of notification by the Institute. Where the applicant fails to file the required documents within the said period, the request for conversion shall be deemed not to have been made and the application in question shall be further prosecuted as an

application for a utility model certificate.

When the application for a utility model certificate is converted into a patent application, the application for a utility model certificate shall become void.

When the application for a utility model certificate is converted into a patent application, any priority rights claimed under the application for a utility model certificate shall inure to the benefit of the patent application, which shall be effective as from the filing date of the application for a utility model certificate.

Following the filing by the applicant of the documents required under the fourth paragraph of this Article, the conversion of the application for a utility model certificate into a patent application shall be published in the Bulletin. The date and number of the issue of the Bulletin in which the application for a utility model certificate and its enclosures were published shall also be mentioned in the said publication.

Art. 168. Conversion of a Patent Application into an Application for a Utility Model Certificate

The provisions of Article 65 of this Decree-Law shall apply to the conversion of a patent application into an application for a utility model certificate.

Art. 169. Registration of the Subject Matter of a Utility Model Certificate as an Industrial Design

The subject matter of a utility model certificate may also be registered as an industrial design, in which case the provisions of the relevant Law shall apply.

Art. 170. Impossibility of Granting Both a Utility Model Certificate and a Patent for the Same Invention

A patent and a utility model certificate may not both be granted for an invention having the same subject matter. The conversion of a patent application into an application for a utility model certificate, or vice versa, may be carried out only in accordance with the provisions of Articles 65, 167 and 168.

PART XII PERSONS AUTHORIZED TO ACT AND AGENTS

Art. 171. Persons Authorized to Act

The following persons shall be authorized to act in dealings with the Institute:

- (a) natural persons or legal entities;
- (b) patent agents entered in the records of the Institute.

Legal entities shall be represented by the person or persons who have been duly empowered by their authorized bodies.

Persons domiciled abroad shall always be represented by patent agents. Where an agent has been appointed, all procedures shall be executed through the agent. All notices served on the agent shall be deemed served on the principal.

PART XIII PAYMENT OF FEES AND LEGAL EFFECTS THEREOF

Art. 172. Payment of Fees and Legal Effects Thereof

The fees set forth in the Regulations for a patent application and for a patent shall be paid by the patent applicant or owner or by the patent agent.

The Institute shall notify the patent applicant or owner or the patent agent of the period for the payment of all fees payable under the Regulations and specified therein.

Where a fee for a particular formality is not paid within the period specified in the Regulations, the said formality shall produce no effect or result as from the date on which the applicant is notified of the situation by the Institute.

Where the prescribed fees for the grant of a patent have not been paid within the period provided for in this Decree-Law, the patent application shall be deemed withdrawn.

Art. 173. Annual Fees

The annual fees specified in the Regulations for the maintenance of the validity of a patent application or patent shall be paid one year in advance throughout the term of protection of the patent. The said annual fees shall be payable every year on the month and day corresponding to the month and day of the filing date of the application.

Where the annual fees are not paid within the period specified in the first paragraph of this Article, they may be paid within a period of grace of six months thereafter, subject to payment of a surcharge.

Where the annual fees are not paid within the period specified in the first paragraph of this Article, the patent rights shall lapse on the last possible day for payment thereof.

PART XIV FINAL PROVISIONS

Art. 174. Provisions Repealed

Article 174 is repealed by virtue of the following provision of Law No. 4128, dated November 7, 1995:

"The Patent Act dated March 10, 1296 (March 23, 1879), and its additions and amendments, and also Article 174 of the Decree-Law are repealed."

Art. 175. Entry into Force

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

Art. 176. Implementation

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

TRANSITIONAL PROVISIONS

Transitional Art. 1. Application of Previous Provisions

The provisions of the legislation in force on the filing date of the applications concerned shall apply to patent applications filed prior to the entry into force of this Decree-Law.

Without prejudice to acquired rights in relation to all acts of transfer and inheritance and all license agreements concluded and registered prior to the entry into force of this Decree-Law, the provisions of this Decree-Law shall apply to any subsequent procedural acts and changes relating to such matters.

Transitional Art. 2. Production of State-of-the-Art Search Reports Prior to the Establishment by the Institute of the Necessary Organization for the Production of Such Reports

The state-of-the-art search report to be drawn up by the Institute under this Decree-Law shall be drawn up by internationally recognized search authorities until such time as the Institute has established an organization for the production of such reports.

Transitional Art. 3. Payment of Annual Fees

With regard to patent applications that have lapsed for non-payment of annual and other fees within the prescribed periods, patent rights shall be restored when the fees payable for previous years are paid, as provided in the Regulations, together with a surcharge amounting to twice the amount of the fees due, within six months following the date of notification by the Institute. This provision shall apply only when the term of

protection of the patent has not already expired.

Transitional Art. 4. Protection of Pharmaceutical Products and of Processes for the Production Thereof

The patent protection of pharmaceutical and veterinary products and of processes for the production thereof under this Decree-Law shall commence on January 1, 1999.