

TURKEY
Industrial Design Law

Decree-law No. 554 of June 24, 1995 as amended by Law No. 5194 of
June 26, 2004

TABLE OF CONTENTS

PART I GENERAL PROVISIONS

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

Art. 1 Aim and Scope

Art. 2 Persons Entitled to Protection

Art. 3 Definitions

Art. 4 Priority of International Agreements

Section II Conditions of Protection

Art. 5 General Conditions

Art. 6 Novelty

Art. 7 Individual Character

Art. 8 Disclosures Not Prejudicial to Novelty or Individuality

Art. 9 Designs Contrary to Public Policy and Morality

Art. 10 Other Situations Outside the Scope of Protection

Section III Scope and Term of Protection

Art. 11 Scope of Protection

Art. 12 Term of Protection of the Registered Design

PART II ENTITLEMENT, CLAIMS AND LIMITATIONS

Section I Entitlement, Rights, Infringement

Art. 13 Right to the Design

Art. 14 Entitlement in Employment Relations

Art. 15 Designs Created by University Staff

Art. 16 Entitlement Under Contracts Other Than Employment Contracts

Art. 17 Scope of Design Rights

Art. 18 Right to Be Recognized as Designer

Art. 19 Claims to Entitlement

Art. 20 Effects of a Judgment on Entitlement

Section II Limitations on Design Rights

Art. 21 Limitations on Design Rights

Art. 22 Use for Repair Purposes
Art. 23 Rights of Prior Use
Art. 24 Exhaustion

PART III REGISTRATION, RENEWAL, OPPOSITION

Section I Applications and Conditions

Art. 25 Registration Authority
Art. 26 Filing of Applications
Art. 27 Classification
Art. 28 Multiple Applications
Art. 29 Right of Priority
Art. 30 Exhibition Priority
Art. 31 Claiming and Evidencing Priority, Effect of Priority Rights

Section II Registration Procedure, Renewal, Opposition

Art. 32 Examination
Art. 33 Remedying Deficiencies
Art. 34 Registration and Publication
Art. 35 Deferment of Publication
Art. 36 Renewal
Art. 37 Opposition
Art. 38 Examination of the OPPOSITION

PART IV TRANSFER OF APPLICATION AND DESIGN RIGHTS; LICENSE AGREEMENTS

Section I Transfer, Security, and Attachment

Art. 39 Transfer, Attachment
Art. 40 Non-Divisibility

Section II Licensing

Art. 41 Licensing
Art. 42 Unlawful Transfer of Rights and Licensing

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

Section I Invalidity of the Design Registration

Art. 43 Invalidity
Art. 44 Request for a Declaration of Invalidity
Art. 45 Effects of Invalidity

Section II Termination of Design Rights

Art. 46 Reasons for Termination

Art. 47 Surrender of Design Rights

PART VI INFRINGEMENT OF DESIGN RIGHTS AND CIVIL PROCEDURES FOR INFRINGEMENT

Section I Infringement of Design Rights

Art. 48 Infringement

Art. 48A

Section II Civil Proceedings

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

Art. 50 Compensation

Art. 51 Documents Evidencing Infringement

Art. 52 Non-Realization of Profits

Art. 53 Increasing the Amount of the Profits Not Realized

Art. 54 Reputation of the Design

Art. 55 Reduction of Compensation

Art. 56 Persons Against Whom Action May Not Be Brought

Art. 57 Time Limit

Section III Special Courts

Art. 58 Competent Courts

Art. 59 Publication of the Court's Decision

Section IV Special Provisions

Art. 60 Action by the Licensee

Art. 61 Claims of Non-Infringement

Art. 62 Action to Secure Evidence

Art. 63 Preliminary Injunction Request

Art. 64 Nature of the Preliminary Injunction

Art. 65 Civil Procedure Code

Art. 66 Seizure at Customs

PART VII REPRESENTATION AND AGENTS

Art. 67 Representation Before the Institute

PART VIII PAYMENT OF FEES AND LEGAL EFFECTS

Art. 68 Conditions of Payment of Fees and Effects

TRANSITIONAL PROVISION

Transitional Article 1 Jurisdiction Pending Appointment of the Special
Courts

Art. 69 Entry Into Force

Art. 70 Execution

PART I GENERAL PROVISIONS

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

Art. 1 Aim and Scope

This Decree-Law aims hereby, to protect the designs conforming to the provisions of this Decree Law, and to facilitate the formation and development of the industry and of the competitive environment.

This Decree Law encompasses the principles, rules and conditions for the protection of registered designs. The general provisions shall prevail for non-registered designs.

The protection conferred by this Decree Law shall not in any way prejudice the protection conferred by the Law on Intellectual and Artistic Works being conditional upon fulfillment of the stipulated conditions.

Art. 2 Persons Entitled to Protection

The protection conferred by this Decree Law is available to natural and legal persons who are nationals of the Turkish Republic, or to the persons who are domiciled or have industrial or commercial establishments within the boundaries of the Turkish Republic, or to the persons who have application rights arising from the terms of Paris or Bern Conventions, or the Agreement Establishing World Trade Organization.

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

Art. 3 Definitions

For the purposes of this Decree Law:

- a) "Design" means the entirety of the various features such as decoration, lines, color, texture, shape, sound, elasticity, material or other characteristics perceived by the human senses of the appearance of the whole or part of a product or its ornamentation;
- b) "Product" means any industrial or handicraft item, parts of a complex system, sets, compositions of items, packaging, get-ups, graphic symbols and typographic typefaces, excluding the computer programs and semi-conductor products;
- c) "Designer" means the creator of the design subject to protection;

- d) "Institute" means the Turkish Patent Institute established by the Decree Law No. 554 and assigned to implement and enforce the provisions of the present Decree Law;
- e) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883;
- f) "Bern Convention" means the Bern Convention of September 9, 1886, for the Protection of Literary and Artistic Works.
- g) "Agreement Establishing the World Trade Organization" means the international agreement of April 15, 1994 establishing the World Trade Organization.
- h) "Date of Reference" means the date of filing the application for registration or, if a priority is claimed, the date of priority.

Art. 4 Priority of International Agreements

Where the provisions of the International Agreements which have entered into force as provided by the Laws of the Turkish Republic afford preferable provisions than this Decree Law, persons referred in Article 2 may request treatment according the preferable provisions.

Section II Conditions of Protection

Art. 5 General Conditions

Protection shall be granted to a design which is new and has distinctive character. Designs of products which are parts of complex items shall be protected if and when the design of the part itself is new and has distinctive character.

Art. 6 Novelty

A design shall be deemed novel if before the date of application or priority no identical design has been made available to the public anywhere around the world. Designs differing only in minor details shall be deemed identical.

Making available to the public shall involve all activities of exhibition, sales, use, definition, publication, advertisement or such similar activities. Disclosures to third parties and disclosures that are implicitly or explicitly understood to be confidential shall lie outside the scope of making available to the public.

Art. 7 Individual Character

A design shall be understood to have an distinctive character if the overall impression it creates on the informed user is significantly

different from the overall impression created on the same user by any design referred to in the second paragraph of this Article.

For any other design to be compared for the purposes of determining the distinctive character of a design:

a) It must have already been made public in Turkey or anywhere around the world before the application or priority date;

b) It must have been published by the Institute as a registered design, and that the protection period has not expired at the application or priority date of the design with which it shall be compared.

In the assessment of the distinctive character, the emphasis shall be on the common features of the designs rather than their differences and the degree of freedom of the designer in developing the design shall be taken into consideration.

Art. 8 Disclosures Not Prejudicial to Novelty or Individuality

If a design for which protection is claimed has been made available to the public during the twelve-month period preceding the date of the filing of the application or if a priority is claimed (Amended phrase: 4128-3.11.1995) "during the twelve-month period preceding the date of priority", by the designer or his/her successor in title or by a third person having their approval or in abuse of the relation with the designer or his/her successor in title, such disclosure shall not affect the novelty and distinctive character as specified in Articles 6 and 7.

Art. 9 Designs Contrary to Public Policy and Morality

Designs contrary to the principles of public order and morality shall not be protected.

Art. 10 Other Situations Outside the Scope of Protection

Designs resulting from a technical function which does not leave to the designer any freedom in the design characteristics and elements shall fall outside the scope of protection.

Designs that must necessarily be produced in its exact form and dimensions in order to enable the product in which the design is incorporated or to which it is applied to be mechanically assembled or connected with other products, shall fall outside the scope of protection.

However, designs serving the purpose of allowing simultaneous and infinite or multiple assembly or connection of identical or mutually interchangeable products within a modular system, conditional to

conforming to the provisions of Articles 6 and 7, are to be included in the scope of protection.

Section III Scope and Term of Protection

Art. 11 Scope of Protection

In determining the scope of protection, all designs which produce on the informed user a significantly similar overall impression in conformity with Article 7 shall be taken into consideration.

In determining the scope of protection, common features shall be given more weight than differences and the degree of freedom of the designer in the development of the design shall be taken into consideration.

Art. 12 Term of Protection of the Registered Design

The term of protection of registered designs shall be five years beginning from the date of application.

The term of protection may be renewed for periods of five years each, up to a total term of 25 years.

PART II ENTITLEMENT, CLAIMS AND LIMITATIONS

Section I Entitlement, Rights, Infringement

Art. 13 Right to the Design

The right to a design shall be vested in the designer or his/her legal successor in title.

If there is more than one designer, unless a contrary agreement exists among the parties; the provisions of joint proprietorship shall apply. Each person entitled to a design right, can execute the following in his/her own name independently of the other joint proprietors:

a) He/she is free to dispose of this share of the design right. share holders have priority purchase right in case of transfers to third parties.

Transfer of the share shall be made in writing and recorded in the Register. The Institute shall inform, within two months, the other share holders of the situation to enable them to exercise their priority purchase right. Priority purchase right is to be used within one month beginning from the receipt of the notice.

b) He/she can make use of the design after having notifying the other proprietors of the right.

c) He/she can undertake necessary measures to protect the design.

Licensing of the design to third parties shall be possible with the approval of all of the proprietors of the design right. However, the court may under justifiable circumstances grant this right to a single proprietor.

d) He/she can institute legal proceedings against third parties in the case of infringement of the joint design right. The other shareholders shall be informed within month of the instituting of the proceedings to enable them to attend the proceedings.

Art. 14 Entitlement in Employment Relations

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

Where the officers, employees or workers create a design by making use of the information and equipment which is made available to them at the workplace, despite the absence of any such requirement in their contract of employment; the design rights shall be vested in the employers thereof.

In this case; the officer, employee or worker shall be awarded a compensation to be determined based on the merits and importance of the design created.

Where the parties cannot agree on the amount, the court shall determine the amount of the relevant reward.

Art. 15 Designs Created by University Staff

As an exception to Article 14, for the designs developed by the academicians conducting scientific studies at the university faculties and colleges, the design right shall be vested in such academicians. The term 'academician' shall be defined as per the provisions of the Higher Education Law.

In cases where the educational institution has met the expenses of certain equipment and supplies for the research activities which has resulted in creation of a design; academicians shall be liable to inform such educational institution in writing that the design has been used, and to inform upon request how it has been used and the revenue generated therefrom. The educational institution shall request, within three months of the written notice received, a reasonable portion of the revenue. However, the amount requested cannot in any way be more than the expenses incurred by the institution.

Art. 16 Entitlement Under Contracts Other Than Employment Contracts

For the designs developed within the framework of service agreements other than of transaction contracts, the design right shall be vested in the client, unless otherwise provided by an agreement.

Art. 17 Scope of Design Rights

The holder of the design right has exclusive rights with respect to the use of the design. Third parties, without the consent of the design right holder, cannot produce, put on the market, sell, offer, and import, put to commercial use or keep for these purposes the product in which such a design is incorporated or to which it is applied.

Art. 18 Right to Be Recognized as Designer

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

Where the design is the result of team work, this issue shall be clearly indicated. Transfer and waiver of this right shall be without legal effect.

Implementation procedures of the second paragraph shall be laid down in the Implementing Regulations by the Turkish Patent Institute.

Art. 19 Claims to Entitlement

If an application has been made for a design right by a person other than the actual right owner as per the first paragraph of Article 13 or the design right has been registered in the name of a person different than the actual right owner; the person claiming to be the actual right owner, shall be entitled to request and claim transfer of the design right to him/her, yet without prejudice to any other rights and claims arising from his/her design right.

Where partial right is claimed on a design, a claim can be made to be a joint holder in accordance with the first paragraph of this Article. Requests and rights of action set forth in the first and second paragraph of this Article may be exercised within two years beginning from the date of publication of the registered design rights or until expiry of the protection term of the registered design rights if there exists bad faith in such seizure.

Legal proceedings for claims specified in paragraphs one and two of this Article may be instituted within the two years from the date of publication of the registration, and until the end of the term of protection if there exists bad faith in such claim.

Any action to be filed under the present Article and claims filed within the scope of such action, the final decision to be rendered at the end of the legal proceedings, or all other circumstances which terminate the proceedings, shall be entered into the Design Register upon the related party's request, to be effective against third parties.

Art. 20 Effects of a Judgment on Entitlement

In the event of any change in the design ownership under the provisions of Article 19, the licenses and other rights of the third parties on the relevant design shall become void upon entering such change into the Design Register.

If, before the rightful owner has been registered, the holder of the design right or licensee has exploited the design or made serious and effective preparations to do so; he/she can request a non-exclusive license from the new holder. The license shall be granted for a reasonable period and subject to reasonable conditions.

The period prescribed for the request referred in the second paragraph of this Article to be made, shall be two months for those who were previously registered as the design right holders, and four months for

the licensee. These periods shall start on the date of notification by the Institute to the related parties that the actual owner of the design right has been entered into the register.

The second and third paragraphs of this Article shall not be applied if the previous holder of the design right or licensee was acting in bad faith when he/she began to use or made serious preparations aimed at using the relevant design.

Section II Limitations on Design Rights

Art. 21 Limitations on Design Rights

The acts listed herein below shall fall outside the scope of the design right:

- a) Acts being limited to special purposes and performed without any commercial purposes;
- b) Acts performed for trial purposes;
- c) Acts of reproduction for training or reference purposes provided that such acts are compatible with the principles of good faith, do not unnecessarily endanger the ordinary use of the design and the source of the design is referred;
- d) The equipment on vessels and aircraft registered in foreign countries and being within the boundaries of the Turkish Republic temporarily, as well as the spare parts and accessories imported to be used for repairing such crafts and performance of repair works.

Art. 22 Use for Repair Purposes

Use of the design, after three years from the first release of the designed product or the product incorporating the design, by third parties under the provisions of Article 17 shall not constitute infringement of the rights provided that the following conditions are met all at once:

- a) The product designed is part of a complex product upon whose appearance the design is dependent;
- b) The use for repair purposes so as to restore the complex product to its original appearance; and
- c) The public is not misled as to the origin of the product used for repair purposes.

Art. 23 Rights of Prior Use

The design right holder cannot invoke his/her rights to prevent the use of a design by third parties who have, provided done in good faith,

commenced use or has made serious and real preparations to that end, before the date of the registration application or if a priority is claimed before the date of priority, and which has been developed independently of the registered design and which at such a date had not yet been made available to the public. This situation shall be recorded in the Register. However, exploitation of a design by third parties under the present Article shall not go beyond the scope and requirements of the measures previously introduced at the beginning or planned to be put into effect. This right of use cannot be transferred or inherited separately from the relevant undertaking. This right cannot be transferred separately from the undertaking.

Art. 24 Exhaustion

The acts relating to the design product or a product incorporating the design shall fall outside the scope of protection of the design; after the product has been introduced into the market in Turkey by the holder of the relevant design or with his/her consent.

PART III REGISTRATION, RENEWAL, OPPOSITION

Section I Applications and Conditions

Art. 25 Registration Authority

The body authorized for the registration of designs is the Turkish Patent Institute. All applications are to be filed at the Turkish Patent Institute or at the body it may authorize as such from domestic or foreign.

Art. 26 Filing of Applications

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

- a) A petition, the form and contents of which are as specified in the Implementing Regulations, including information identifying the applicant;
- b) A drawing, painting, graphic, photograph or similar representation of the design suitable for reproduction and reflecting all of its specific features;

The application shall contain a written description of the design and the list of the products in which the design is intended to be incorporated or to which it is intended to be applied.

If the subject matter of the application is a two-dimensional design, the publication may be requested to be postponed as per Article 35. In the event of a "request for postponement" of publication of the design, and if the inner characteristics of the relevant design do not permit enforcement of paragraph 1(b); instead of the visual representation specified in subparagraph (b), a sample of the product which is designed or which incorporates the design shall be provided. An application fee shall be paid and the receipt of payment shall be enclosed with the application petition to validate an application for registration of a design.

The identity of the designer shall be cited in the application. If the applicant is not the designer or there is more than one designer, an explanation shall be provided on the means whereby the right to apply for registration has been obtained.

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

The application procedures for designs of the products of the industries subject to frequent fashion changes shall be simplified by

the Institute and regulated in the Implementing Regulations to be issued on that specific matter.

Art. 27 Classification

Principles as to Industrial Classification of Industrial Designs shall be taken as basis for classification of the designed products or the products incorporating the design, during enforcement of the present Decree Law.

Art. 28 Multiple Applications

Application of several designs may be combined in one application. However, this possibility is subject to the condition, except in cases of ornamentation, that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same sub-class or to the same set or composition of items.

Multiple applications shall be subject to payment of an additional application fee to be specified in the Implementing Regulations, besides the fees referred in Article 26.

RIGHTS OF PRIORITY ARISING FROM THE APPLICATIONS BASED ON

Art. 29 Right of Priority

Natural or legal persons or their legal successors in title who are nationals of any country being a party to the Paris Convention or if not, nationals who are domiciled or have an active business in these countries, shall enjoy a right of priority of six months from the date of filing a valid application before the competent authorities of these countries, for the purpose of filing an application for obtaining a registration certificate in Turkey in respect of the same design.

The priority rights not exercised within six months as stipulated in the first paragraph are considered to be void.

When an application is made within the period prescribed in the first paragraph hereof based on the priority right granted, the applications to be filed as from the date of origination of the priority right and falling into the scope of the registration application subject to this priority right, and the design certificates to be obtained by third parties for such applications shall be deemed invalid.

Natural and legal persons, who are nationals of the countries which are stated to enjoy the principle of reciprocity as specified in the second paragraph of Article 2, shall enjoy priority rights under this Article.

If a natural or a legal person who is a national of a country being party to the Paris Convention has filed a valid application in a country which is not a party to the Paris Convention, he/she shall enjoy priority rights in respect of that application within the provisions of this Article.

A subsequent application for a design which was the subject of a prior application, and which has been filed in the same country, shall be considered as the first application for the purpose of determining priority rights. However, for a subsequent application to be taken as basis for determination of priority; the previous application must not have been open for public inspection and it must have been withdrawn, abandoned and refused without any reserved rights. The previous application may not thereafter serve as a basis for claiming a right of priority.

Art. 30 Exhibition Priority

Natural or legal persons specified in the first paragraph of Article 29 who have displayed the design product or product of the designed in the application , at national or international exhibitions in Turkey or at the official or officially recognized exhibitions held in countries being a party to the Paris Convention, may claim a right of priority for the registration of the design in Turkey if the application for priority has been filed within a period of six months from the date of the first display of the products.

If the product which is the field subject of the design in application or the design is applied to, has been displayed at the exhibition before the official opening date; right of priority starts from the date when the product was first displayed at the exhibition.

The officials of the exhibition held in Turkey, shall supply evidence specifying the name of the product, first display date and the official opening date along with photographs showing the product clearly and at its entirety at display to those who intend to display the products incorporating the claimed design or to which the design is applied.

For the products displayed in foreign countries, the evidence as specified in the third paragraph shall be supplied by the relevant authorities of the state of the opened exhibition concerned.

A product in which a filed or registered design is incorporated or to which it is applied, cannot be prevented from being displayed at an exhibition in Turkey and from being sent back to its country of origin after the closing of the exhibition.

If there are two or more applications for the identical or similar

product in which a filed or registered design is incorporated or to which it is applied, the applicant who first displayed the product shall enjoy the right of priority. If the product is exhibited and displayed at the same time, the person who filed his/her application first shall enjoy the right of priority.

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

Effects and consequences of the priority right originating from Articles 29 and 30, shall arise as of the date of the application for which the priority is claimed.

An Applicant desiring to take advantage of his/her priority right shall claim priority along with his/her application for a registered design. If the right of priority is not documented within three months as of the application date, no priority claim shall be deemed to have been made.

A priority granted with respect to an exhibition priority right does not extend the period of priority laid down in Article 29.

Section II Registration Procedure, Renewal, Opposition

Art. 32 Examination

The Institute shall refuse a design registration application, the subject and scope of which do not comply with the provisions of Article 3.

The Institute shall examine whether the application complies with the conditions specified in Articles 26 and 28 and whether there are any deficiencies. If the Institute concludes that there are no deficiencies, the application is accorded the date of filing as the date, hour and minute on which the application was filed originally at the Institute or at the body authorized as such by the Institute. If priority has been claimed, the Institute shall carry out an examination in accordance with the provisions of Articles 29, 30 and 31.

In the event of any change in the notification address, such change of address must be notified to the Institute in writing. In the case of failure to make such notification, notifications to be sent to the current address available at the Institute shall be deemed valid.

Art. 33 Remedying Deficiencies

If it has been found out that the conditions stipulated in Articles 26 and 28 have not been fulfilled, the Institute shall request the

applicant to remedy these deficiencies within the period prescribed in the Implementing Regulations.

If the applicant complies with the Institute's request and remedies the deficiencies which fall within the scope of the first paragraph of Article 26, within the prescribed time as specified in the Implementing Regulation; the application for registration of the design shall become finalized as of the date on which the deficiencies are remedied.

If the deficiencies identified as per the first paragraph of this Article are not remedied within the prescribed period, in accordance with the provisions of this Decree Law; the Institute shall refuse the application.

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

Art. 34 Registration and Publication

An application which has become final in accordance with the provisions of Articles 32 and 33 shall be entered into the Design Register.

A design recorded in the Register shall be published in the relevant Bulletin with the following particulars:

- a) Registration and recording date and number of the design, the priority date, number and country if priority has been claimed;
- b) Identity of the design holder;
- c) Identity of the designer or the name of the team;
- d) A drawing, painting, graphic, photographic or similar representation of the design reflecting all of its specific features;
- e) Where a sample has been deposited, a reference to such deposit;
- f) Other particulars laid down in the Implementing Regulations.

The registration and publication procedure provisioned in this Article shall be executed as stipulated in the Implementing Regulations and in a manner to involve the elements referred herein.

Art. 35 Deferment of Publication

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

An application containing a request for deferment of the publication and with a final date of application shall be entered into the register. However, neither the representation of the design nor the contents of the application file shall be closed to public inspection.

The Institute shall publish in the related bulletin a statement of the deferment of the publication of the registered design. The relevant statement shall include information on the identity of the proprietor of the registered design, the date of application, the period for which deferment has been requested, and any other particulars prescribed in the Implementing Regulations.

On the date of expiry of the deferment period, or at an earlier date on request by the right holder, the Institute shall make all the records and documents related to the application available for public examination and publish the same as stipulated in the Implementing Regulations. However, before publication, the design right holder must pay the publication fee and additional application fees in the case of a multiple application, and present a representation of the design suitable for reproduction if a sample of the product subject to the design or incorporating the design has been provided. Where these conditions have not been fulfilled within the period prescribed in the Implementing Regulations, the rights arising for the registered design out of this Decree Law shall be deemed not have existed from the very beginning.

In the case of multiple applications, provisions of this Article shall be applicable only to some of the designs included in the application. The institution of legal proceedings on the basis of a registered design during the period of deferment of publication shall be subject to the condition that the information contained in the register and in the file relating to the application has been notified to the defendant.

References in this Decree Law to the date of publication of the registered design shall mean the date on which the Institute performs the act addressed in the fourth paragraph hereof, if such date is related to the designs subject to deferment of publication.

Art. 36 Renewal

Registration period shall be extended upon payment of the renewal fee and at the request of the right holder or of the person authorized by him/her.

The Institute shall inform the right holder of the expiry of the registration within the time period as specified in the Implementing Regulations. Failure to give such information shall not involve any responsibility for the Institute.

The request for renewal shall be submitted and the renewal fee shall be paid within a period of six months before the last day of the month

in which the term of protection expires. If this deadline is missed, the request may be submitted within a further period of six months from the day referred to in the previous sentence upon payment of an additional fee.

Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be recorded in the Register.

The provisions of this Decree Law shall cease to produce effect for designs which have not been renewed within six months after the expiry of the protection period.

Art. 37 Opposition

Natural or legal persons and related professional organizations may file an opposition before the Institute against validity of a registered design after its publication, being subject to the condition that they have clearly stated their views and fulfilled the conditions stipulated in the relevant Regulations.

Oppositions before the Institute shall be filed in written form and within six months beginning from the publication date. Oppositions shall not be taken into consideration unless the fee prescribed in the Implementing Regulations has been paid. The Institute shall request the opposing party to supply further documents, evidences and grounds within a specified period of time.

The opposition and its grounds shall be notified to the holder of the design rights so that he/she can express his/her remarks.

Art. 38 Examination of the OPPOSITION

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

The Institute's decision to be rendered upon examination of the opposition, with respect to the procedural deficiencies and the remedies concerning such deficiencies shall have effect to nullify the administrative procedures pertaining to the awarding of the design certificate or to returning back to the stage where the deficiencies have occurred and of renewing the procedures from this stage.

The acceptance of an opposition filed within the provisions of subparagraphs (a) and (b) of Article 43/1 of this Decree Law, shall result in the invalidation of the Design Certificate and the entering

into force of the provisions of Article 45.
The decision for invalidation of the Design Certificate shall be published in the related Bulletin.

PART IV TRANSFER OF APPLICATION AND DESIGN RIGHTS; LICENSE AGREEMENTS

Section I Transfer, Security, and Attachment

Art. 39 Transfer, Attachment

The rights deriving from an application for a design and from a registered design right may be transferred to third parties, and is subject to inheritance. Testamentary disposition of these rights is possible.

Application and design right may be subject to a legal or contractual right of mortgage and sequestration. Under the circumstances; upon the request of one of the parties, respective rights shall be entered into the Register and published. Related provisions of the Turkish Civil Code, and the Bankruptcy and Execution Law shall be applied with respect to the right of mortgage and sequestration.

The transactions between the living over the application and design rights shall be entered into in writing.

The transfer or inheritance of an application or a design right shall be recorded in the Register and published upon payment of the fee prescribed in the Implementing Regulations. The effects shall enter into force vis-à-vis third parties as of the publication date.

Art. 40 Non-Divisibility

An application or a design right cannot be divided for the purposes of transfer or for establishing rights over them as such, even where there are multiple proprietors of the right.

Section II Licensing

Art. 41 Licensing

The right to use arising from a design application or registered design rights, may be subject to a license agreement to be effective within the whole or a part of the territory of national boundaries. A license may be exclusive or non-exclusive.

The application or the design right holder may institute legal action against the licensee in the event of breach of the terms of the contract, by the licensee.

Unless otherwise provided in the contract, the license shall understand to be non-exclusive. Licenser may make use of his/her design rights personally, and may grant licenses to third parties on the same design right.

In the case of an exclusive license, licensor may not grant licenses to other parties and cannot make use of the design right by himself/herself unless such is explicitly reserved by the contract. Unless otherwise agreed in the contract, contractual license holders shall not transfer the rights arising from the license or cannot grant a sub-license.

Unless otherwise provided in the contract, licensee shall have exclusive rights with respect to the use of the design within the whole of the national boundaries during the term of protection.

License contracts shall be in writing and shall be entered in the register and published upon the request of one of the parties.

Unless provided otherwise by the contract, the holder of an exclusive license may institute all the legal proceedings made available to the proprietor of the design right under this Decree Law, in his/her own name in the event of an infringement of the design rights.

Holders of non-exclusive licenses do not have the right to institute legal proceedings.

A licensee who does not have the right to institute legal proceedings in the face of infringement of a design as per the first paragraph of this Article, may give notice through a notary public, requesting the proprietor of the design to institute such proceedings as required. In the event that the proprietor of a design refuses to initiate or fails to institute legal proceedings within three months of the receipt of such notice, the non-exclusive license holder shall have the right to institute proceedings in his/her own name by enclosing the relevant notice therewith.

The licensee may, in the face of the risk of serious damage where elapsing of time cannot be remedied, request the court to issue a preliminary injunction.

The licensee who has instituted proceedings as per paragraph 10 of this Article, shall notify the proprietor of the design right that the proceedings have been instituted.

Art. 42 Unlawful Transfer of Rights and Licensing

Where a person who has transferred or licensed a design application or a registered design right against a remuneration or free of charge, is found later to be unauthorized to perform these transactions; the subject matter person shall be liable for his/her acts against those concerned.

In the event of withdrawal of a design application or refusal of the application or declaration of invalidity of the design right by the

court, unless the parties have provided by contract further liabilities with respect to the transferee of the right or the licensor, provisions of the Article 45 of this Decree Law shall be applied.

The period of claim for the damages arising from the provisions of this Article starts from the date of the final court ruling with respect to the liabilities. Related provisions of Code of Obligations shall be applicable to statute of limitation.

Where the transferor or the licensor have acted in bad faith, they shall be liable without a time limit.

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

Section I Invalidity of the Design Registration

Art. 43 Invalidity

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

- a) Where proved that the design is not eligible for protection under the provisions of Articles 5 to 10 of this Decree Law;
- b) Where proved that the entitlement to the design right as provided in Articles 13, 14, 15 and 16 of this Decree Law, actually belongs to another person or persons;
- c) Where the filing date of an identical or similar design, which has been made available to the public at a later date, is prior to the filing date of the registered design;

A declaration of invalidity with respect to Articles 13, 14, 15 and 16 regarding non-entitlement can only be filed by the holders of right as specified in these articles. Under such circumstances, the provisions of Article 19 of this Decree Law shall prevail.

Where the grounds for invalidity involve only part of the application or of the registered design, partial invalidity shall be ruled in respect to the product or products effected by the part declared invalid. The protection shall remain valid for the product or products relating to the part which has not been affected by the partial invalidation.

Art. 44 Request for a Declaration of Invalidity

Invalidation of a design may be requested by anyone except in the cases listed in the second paragraph.

Declaration of invalidity according to paragraph (c) of Article 43 can be requested only by the previous right holder, and according to Articles 13, 14, 15 and 16 can be requested only by the holders of the design right.

Declaration of invalidity may be requested during the term of protection or within five years following termination of the right. Actions for invalidation of a design shall be filed against the design right holder registered in the Design Register at the time of filing of such action.

Art. 45 Effects of Invalidity

A final decision for the declaration of invalidity shall have retroactive effect. Therefore, the legal protection afforded by this Decree Law for an application or registered design shall be deemed not to have arisen from the outset when declared invalid.

Reserving the claims for the damages caused by negligence or bad faith of the holder of the design right and the claims with respect to unjust enrichment, the retroactive effects arising from invalidity shall not extend to the following:

- a) Any final decision for infringement of a design right reached and enforced prior to the decision of invalidity;
- b) Contracts concluded and executed prior to the decision of invalidity. However, partial or total reimbursement of sums paid under the contract may be claimed on grounds of equity to an extent justifiable by the circumstances;

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

Section II Termination of Design Rights

Art. 46 Reasons for Termination

The rights arising from a design under this Decree Law shall be considered to have terminated upon:

- a) Expiry of the term of protection; or
 - b) Surrender of his/her rights by the holder of the design certificate.
- The expiry of the term of protection foreseen by this Decree Law shall not have effect on the rights provided by other Laws where and when such conditions are valid.

Art. 47 Surrender of Design Rights

The proprietor of a design may partly or fully surrender his/her rights arising from the design or his/her application right.

The surrender must be notified to the Institute in writing. Surrender shall have effect as of the date of entry in the Design Register.

Holder of a design right cannot surrender his/her right without having the consent of the licensees or holders of rights recorded in the Design Register.

Where there is a claim by a third party for the design and a court injunction to this effect has been recorded in the Design Register,

surrender of design rights cannot be requested without the consent of the referred third party.

PART VI INFRINGEMENT OF DESIGN RIGHTS AND CIVIL PROCEDURES FOR INFRINGEMENT

Section I Infringement of Design Rights

Art. 48 Infringement

Following shall constitute infringement of a design right:

- a) Creating, producing, releasing into the market, selling, offering to make a contract, using, importing an identical or highly similar design or stocking the same for these purposes, possessing it without the consent of the design right holder(*);
- b) Expanding the rights granted by the holder of the design certificate, through a licensing contract, or transferring these rights to third parties without consent;
- c) Participating, assisting, encouraging, or facilitating in whatever form the acts referred in subparagraphs (a) and (b);
- d) Abstaining from explaining where and how an illegally produced and marketed product has been obtained when found in possession;
- e) Seizure of entitlement.

Where the application for a design has been published in accordance with Article 34 of this Decree Law, the applicant shall have the right to institute civil and criminal proceedings against the infringing party. Where the infringing party has been informed of the application and its scope, infringement shall be considered to exist before the publication when the court rules that the infringing party was acting in bad faith.

Lack of any indication on the product, its packaging or in the invoice that the design is registered shall not constitute a negation of the infringement.

Indications of registration shall be taken into consideration for assessment of the tortuous act.

Art. 48A

Within the scope of this Decree Law:

- a) Those making false declaration with respect to true identity of the design right holder, or those removing without authority the sign indicating a design right rightfully placed on a product or on its packaging, or those falsely presenting themselves as the proprietor of a design application or a design right shall be sentenced to an imprisonment term of one to two years and to pay a fine of between TRY fourteen billion and twenty-seven billion;

b) Having committed the acts without authority, those transferring or placing as security or undertaking any other such action for utilizing any one of the rights of transfer, placing of security, execution of levy and other rights provisioned in the related articles and the licenses thereof, and those affixing signs on a product produced or put to sale by themselves or by others, or on its packaging thereof or on commercial documents or on advertising material in such a way that would convey the impression as if a relationship exists with a legally protected design right, or of using to the same effect writings, signs or expressions in the advertisements and commercials at the published and visual media without being the rightful proprietor of the design right or after the expiry of the protection term or after the invalidation of the design right or after the termination of the design right shall be sentenced to an imprisonment term of two to three years and to pay a fine of between TRY twenty-seven billion and forty-six billion;

c) Those who have committed any one of the acts specified in Article 48 shall be sentenced to an imprisonment term of two to four years and to pay a fine between TRY twenty seven billion and forty-six billion. Furthermore, a judgment shall be ruled to close down the premises of their undertaking for a period not to be less than one year and they shall be prevented from practicing any commercial activity during the same period.

Where the offenses listed in subparagraphs (a), (b) and (c) are committed by the employees of an undertaking while performing their duties, irrespective of whether on their own initiative or upon instruction to do so; respective employees and the owner or manager or their representative and the person actually operating the undertaking not matter what his/her title is, who have not prevented such offense shall be punished in the same manner. Where the offenses listed in Article 48 are committed in the course of operation of the business, the legal person shall be severally held liable for the expenses and fines. The provisions of Articles 64, 65, 66 and 67 of the Turkish Penal Code shall be applied with respect to those assisting the relevant tortuous acts. Prosecution with respect to the offenses stated above shall be subject to complaint.

Subparagraph 8 of Article 344/1 of the Criminal Procedures Code No. 1412 shall not be applied for the implementation of the provisions of this Article. The right of complaint belongs to the person whose design right has been infringed, and additionally belongs also to the Institute for all offenses except the ones set forth in Article 48,

and to the Consumer Associations and to establishments under the jurisdiction of Laws No. 5590 of 8.3.1950 and the Law No. 507 of 17.7.1964 for acts of false declaration with respect to true identity of the design right holder, and for acts of affixing signs on a product produced and put to sale by own self or by others, or on its packaging or on commercial documents or on advertising material in such a way that would give the impression as if a relationship exists with a protected design right, or of using to the same effect writings, signs or expressions in the advertisements and commercials at the published and visual media without being the rightful proprietor of the design right or after the expiry of the protection term or after the invalidation of the design right or after the termination of the design right. The proceedings with respect to the felonious acts should be initiated within two years of the date of being informed of the act and the actor.

The complaints with respect to the acts falling within this scope shall be treated as urgent matters. The provisions of Article 36 of the Turkish Penal Code No. 765 and the related provisions of the Criminal Procedures Code No. 1412 shall apply for the seizure, the confiscation or the destruction of the goods and the equipment and machinery used to produce these goods which are subject to acts of felony having infringed the rights arising from a design right application or a protected design under the provisions of this Decree Law.

Section II Civil Proceedings

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

A design right holder whose rights have been infringed may in particular appeal for the following at the Court:

- a) Establishment of the existence of an infringement;
- b) Prohibition and prevention of the acts of infringement of the rights arising from a design;
- c) Remedies of infringement and compensation for the pecuniary and non-pecuniary damages incurred;
- d) Confiscation of products manufactured or imported through infringement of the rights arising from a design, and of the equipment used directly for manufacturing such products;
- e) Proprietorship over the products confiscated in accordance with subparagraph (d) of this Article. In this case, the value of the products shall be deducted from the compensation awarded. If the value

of the products turns out to be above the amount of compensation awarded, the design right holder shall repay the balance to the infringing party;

f) Enforcement of measures for the prevention of continued infringement of rights, changing the form of the products and equipment which has been confiscated as per subparagraph (d) of this Article, or destruction thereof if it is deemed inevitable for prevention of the infringement of design rights;

g) Notification of the court decision rendered against the party infringing the design rights, to the parties concerned at the infringing party's expense and announcement thereof to the public.

As regards the measures, the court shall rule in accordance with the related provisions of Civil Procedures Code on preliminary injunction. The competent court, for the institution of civil proceedings by the design right holder against third parties, is the court of the plaintiff's domicile or of the place where such offense has been committed or the place where the act of infringement had effects.

Where the plaintiff is not a citizen of the Republic of Turkey, the competent court is the court of the domicile of the authorized agent registered in the registry and if the agent's registry has been cancelled, the court of the domicile of the Institute.

The competent court for the proceedings to be instituted by third parties against the design right holder shall be the court of domicile of the defendant.

Where the applicant or design right holder does not reside in Turkey, the provisions of the third paragraph shall be applicable.

Where there is more than one competent court; the court at which the proceedings have been instituted first, shall be the competent court.

Art. 50 Compensation

Infringing parties who have committed the acts listed in Article 48 shall be liable for compensating the damages incurred by the design right holder.

Art. 51 Documents Evidencing Infringement

The design right holder may request the infringing party to submit the documents related to the use of the relevant design, for valuation of the damages arising out of counterfeiting the design without his/her consent

Art. 52 Non-Realization of Profits

The damages incurred by the design right holder include not only the value of the actual loss but also the income lost due to infringement of the design rights.

The loss of income shall be calculated by one of the following calculation methods, at the option of the design right holder who has suffered damages:

- a) Based on the possible income which the design right holder would have generated but for the unfair competition created by the infringing party;
- b) Based on the income generated by the infringing party through use of the design;
- c) Based on the license fee which would have been paid if the infringing party had rightfully used the design under a valid license agreement.

The economic value of the design in particular, the term of protection remaining at the time of infringement, the type and number of the licenses valid at the time of infringement, etc. shall be taken into consideration for calculation of the loss of profit.

Art. 53 Increasing the Amount of the Profits Not Realized

Where the holder of the design rights has selected one of the assessment options specified in subparagraphs in Article 52, the court shall decide for a reasonable additional amount to be added for calculation of the income if the court concludes that the design makes significant economic contribution to the sales of the relevant product. Assessment of the design's economic contribution to the relevant product shall be grounded on the conclusion that the demand for the product results substantially from the design.

Art. 54 Reputation of the Design

The design right holder may claim further damages for the harm incurred from the poor quality production of the design or improper marketing means utilized by the party infringing the design right which were detrimental to the reputation of the design.

Art. 55 Reduction of Compensation

Where the compensation awarded to the design right holder is more than the payment which the design holder has received from others for the use of the design, the compensation shall be fixed in conformity with the referred payment and the balance deducted from the payment.

Art. 56 Persons Against Whom Action May Not Be Brought

Design right holder cannot institute the legal proceedings specified in this section of the Decree Law, against those who use the products introduced into the market by the person who has paid compensation for the damages incurred due to his actions.

This provision shall not have effect if there is bad faith.

Art. 57 Time Limit

The provisions of the Code of Obligations on statute of limitation shall be applicable for calculation of the limitation period for the appeals related to infringement on design rights.

Section III SPECIAL COURTS

Art. 58 COMPETENT COURTS

The courts having jurisdiction over the actions set forth in this Decree Law are the specialized courts. These courts serve with one judge. The Supreme Council of Judges and Public Prosecutors shall determine, upon proposal of the Ministry of Justice, the civil and criminal courts of first instance to serve as specialized courts and the judicial locality thereof.

The court competent and having jurisdiction over the actions to be filed against all decisions which have been rendered by the Institute under this Decree Law and the actions to be filed by the third parties incurred damages from the Institute's decisions, against the Institute are the specialized courts of Ankara, listed in the first paragraph of this Article.

Art. 59 PUBLICATION OF THE COURT'S DECISION

Where a court decision has become final; the prevailing party shall be entitled to request publication of the final decision in full or in summary, in a daily paper or by other means of media at the other party's expense.

The nature and extent of the publication shall be determined by the decision. Right of publication shall be void if not exercised within three months as of the finalization of the decision.

Section IV Special Provisions

Art. 60 Action by the Licensee

Unless otherwise provided under the agreement; the holder of an exclusive license may, in the case of an infringement of the trademark rights, institute in his own name all the legal proceedings which have been made available to the trademark proprietor by this Decree Law. Holders of non-exclusive licenses do not have the right to institute legal proceedings.

A licensee who is not entitled to file actions against infringement of trademark rights under paragraph one, may give notice via a notary public, requesting the proprietor of the trademark to institute such proceedings as required.

In the event that the proprietor of a design right refuses to initiate or fails to institute proceedings within three months beginning from the receipt of the notice, the licensee shall have the right to institute proceedings on his behalf.

In the face of serious damage and before elapse of the specified period, the licensee may request the court to impose a preliminary injunction. The licensee, who has filed an action as per the third paragraph, shall notify the proprietor of the design right that the proceedings have been instituted.

Art. 61 Claims of Non-Infringement

Any related person may institute proceedings against the proprietor of a design to obtain a decision ruling that the subject matter actions do not constitute infringement of the rights arising from the relevant design.

Prior to the institution of proceedings referred in the first paragraph, a notice shall be sent via a notary public to the attention of the proprietor of the design right to ask for the design right holder's observations on whether the industrial activities or related serious actions that are initiated in Turkey by the requesting party constitute infringement of the design rights.

Where the design right holder does not response within a month as of receiving such notice, or the content of the response is not found acceptable by the requesting party; the appealing party shall institute the proceedings as per paragraph one.

Those against whom an action of infringement has been brought in respect of design rights, cannot institute the proceedings stipulated in paragraph one.

Institution of proceedings shall be notified to all the parties having rights in the design and entered in the Design Register.

The actions referred herein, may be filed jointly with the claim for invalidation of the design certificate.

Art. 62 Action to Secure Evidence

Any person legally entitled to claim infringement of design rights, may request the court to determine the acts of infringement of these rights.

Art. 63 Preliminary Injunction Request

Those who has filed or will file the actions stipulated in this Decree Law shall be entitled to request the court to impose a preliminary injunction.

Preliminary injunction request may be filed before, simultaneously with or after the filing of the action. Preliminary injunction requests shall be examined separately.

Art. 64 Nature of the Preliminary Injunction

Preliminary injunctions shall be of a nature to fully ensure effectiveness of the judgment to be made, and shall comprise the following measures in particular:

- a) Cessation of the acts of infringement of the plaintiff's design rights;
- b) Confiscation of the goods manufactured or imported, infringing the design rights, within the boundaries of Turkey including the customs, free ports or free zones, and storage thereof;
- c) Placement of security for compensation of any damages.

Art. 65 Civil Procedure Code

Provisions of the Code of Civil Procedures shall have effect with respect to the matters regarding the "determination requests" and preliminary injunctions.

Art. 66 Seizure at Customs

As a precautionary measure, customs authorities may seize the goods bearing counterfeit trademarks, while being exported or imported, upon the proprietor's request on the grounds that they constitute infringement of the design proprietor's rights.

Seizure procedures shall be determined by the legislation to be enacted for this purpose.

The seizure measure employed by the customs authorities shall cease to have effect unless an action is filed before the special court or preliminary injunction is obtained from the court within ten days of such seizure.

PART VII REPRESENTATION AND AGENTS

Art. 67 Representation Before the Institute

Representation before the Institute for matters of trademark may only be undertaken by the following:

- a) Natural or legal persons who have filed the application;
- b) Qualified design attorneys. Qualified design attorneys are those who comply with the requirements of Article 30 of the Decree Law No. 544 and have been entered in the Design Agents Register after having successfully passed the design agents examination to be held by the Institute. Those who are entered into both the Trademark Attorneys Register and at the Patent Attorneys Register shall be recorded in the Design Attorneys Register without the need for any further examination. Legal persons may only be represented by those duly empowered by their respective authorized bodies.

Those who are domiciled abroad can only be represented by design attorneys.

Where an attorney has been appointed, all procedures shall be executed through the attorney. All notices made to the attorney shall be considered to have been made to the principal.

PART VIII PAYMENT OF FEES AND LEGAL EFFECTS

Art. 68 Conditions of Payment of Fees and Effects

The fees prescribed in the Implementing Regulations, with respect to the design applications and registered designs, shall be paid by the applicant or the design right holder or the registered design attorney, if any.

The payment dates of all the fees prescribed in the Implementing Regulations shall be notified by the Institute in advance to the applicant or to the design right holder or the design attorney.

Where the fee prescribed for an action has not been paid within the period set forth in the Implementing Regulations, the relevant action shall be considered not to have raised effect as of the date of notification by the Institute.

Where the fee prescribed for the actions with respect to design applications has not been paid within the period set forth in this Decree Law, the relevant design application shall be deemed to have been withdrawn.

TRANSITIONAL PROVISION

Transitional Article 1 Jurisdiction Pending Appointment of the Special Courts

For the purposes of this Decree Law; upon the request of the Ministry of Justice, the High Council of Judges and Prosecutors shall determine which commercial and criminal courts of first instance will be appointed as special courts and their respective jurisdictions with respect to enforcement of this Decree Law, until establishment of the actual special courts.

Art. 69 Entry Into Force

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

Art. 70 Execution

Provisions of this Decree Law shall be executed by the Council of Ministers.