

**THE IMPLEMENTING REGULATIONS
UNDER THE DECREE-LAW NO 556 PERTAINING
TO THE PROTECTION OF TRADEMARKS**

**PART ONE
General Provisions**

Object

Article 1 - The object of this Regulation is to specify the procedures and the rules to be followed concerning the time and place of filing and the preparation of the application documents for registering a trademark and other matters related with trademarks as provisioned in The Decree-Law No 556 Pertaining to the Protection of Trademarks.

Scope

Article 2 - This Regulation encompasses the principles, the rules and the conditions for the protection of trademarks by registering such marks for appropriate goods and services.

Legal Foundation

Article 3 - This regulation has been prepared based on the provisions of The Decree-Law No 556 Pertaining to the Protection of Trademarks.

Definitions

Article 4 - For the purposes of this Regulation;

- a) "Institute" means the Turkish Patent Institute,
- b) "The Decree-Law" means The Decree-Law No 556 Pertaining to Protection of Trademarks dated 24.6.1995.
- c) "Trademark" means trademarks or service marks including guarantee marks and collective marks.
- d) "Official Trademark Gazette" means the Gazette in which the registered trademarks are published.

e) "Official Trademark Bulletin" means the Bulletin in which the trademark applications are published.

f) " Class" means the international classification of goods and services for the purposes of the registration of marks.

g) "Sign" means two dimensional signs or three dimensional signs that can be used as the packaging of the goods but that do not reveal the good which has the attributes of the mark and comply with the other provisions of the Decree-Law.

h) "Circular" means the Circular on the Schedule of Fees to be administered by the Turkish Patent Institute in accordance with Articles 6/f and 25 of the Decree-Law no 544.

Place and Time of Application

Article 5 - The natural or legal persons desiring to register a trademark shall file an application at the Institute or at the body it may authorize as such.

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

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

A separate application has to be filed for registering each trademark.

The same trademark shall be registered only once for the same goods or services.

PART TWO Characteristics of Marks and Persons Entitled to Protection

SECTION ONE Characteristics of Marks

Collective Mark

Article 6 - Collective mark serves the purpose of distinguishing the goods and services of the undertakings belonging to a group from the goods and services of the other undertakings.

Guarantee Marks

Article 7 - A guarantee mark, under the control of the proprietor of the mark, serves the purpose of guaranteeing the common characteristics of the undertakings, production methods, geographical origin and the quality of those undertakings.

Trade Marks

Article 8 - A trade mark is a sign which serves the purpose of distinguishing the goods produced or traded by an undertaking from the goods of other undertakings.

Service Marks

Article 9 - A service mark is a sign which serves the purpose of distinguishing the services of one undertaking from the services of other undertakings.

SECTION TWO Protection

Persons Entitled to Protection

Article 10 - The protection as conferred by the Article 3 of The Decree-Law No 556 Pertaining to the Protection of Trademarks shall be available to:

a) natural and legal persons who are domiciled or who have industrial or commercial establishments within the territory of the Turkish Republic, or to the persons who have application rights resulting from the terms of the Paris or Bern Conventions or the Agreement Establishing World Trade Organization.

b) natural or legal persons other than those referred in paragraph (a) above, who are nationals of states which accord legal and de facto protection to the

nationals of the Turkish Republic shall enjoy according to the reciprocity principle trademark protection in Turkey.

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

PART THREE

Application

SECTION ONE

The Application Petition and the Annexes

The Application Petition

Article 11 - A petition, conforming to the sample form attached to this Regulation as Annex-1, shall be prepared on an A4 size plain white paper using a typewriter or a computer printer and all of the questions shall be answered.

The list of the goods and services to be used with the respect of the trademark to be registered shall be indicated in the petition without using generalized designations. Where general terms are used, explanation of the terminology shall be requested and examination shall start only after such explanation has been received.

Documents to be Annexed to the Petition:

Article 12 - The following documents have to be annexed to the application petition:

a) 20 copies of the representation of the trademark suitable for reproduction in minimum 5X5cm and maximum 8X8 cm size,

b) the original receipt for the payment of the application, search, examination and evaluation fee,

c) the original receipt for the payment of the class fees,

d) power of attorney if an agent is appointed. Power of attorney shall be notarized for acts relating to withdrawal or cancellation of the application.

Those who are not domiciled in Turkey in order to register and to utilize their rights obtained by registration have to appoint an agent who is domiciled in Turkey.

e) a notarized signature circular where the applicant is a legal person,

f) a document verifying that the applicant is engaged in trade, production or a service activity. This document shall be obtained from either the Chamber of Industry, or the Chamber of Commerce, or the Chamber of Small Business and Craftsman, or the Trade Registry Office or from the Tax Office,

g) where the application concerns a guarantee or a collective mark, a notarized copy of the technical regulation as provisioned in Article 56 of the Decree-Law,

h) if a priority right is claimed, information on the application or applications serving as the basis of the priority claim, and priority document obtained from the relevant authorities of the country of application and the Turkish translation of the section of the document containing the information relating to the application,

i) where the priority claim concerns an exhibition priority, a certified copy of a document obtained from the officials of the country in which the exhibition was held which would specify the name of the product and evidence the first display date of the product with the mark clearly and visibly affixed on the product, and indicate the official opening date of the exhibition,

j) original receipt showing that the trademark registration fee, and the Trademark Certificate of Registration and registry fees have been paid,

k) for applications with an existing registration in a foreign country, a certified copy of the certificate of trademark registration obtained from the country of registration and its Turkish translation can be substituted for the activity report,

l) for applications in respect of service marks, documents evidencing the date of first use if the service has been in use prior to the date of application,

An application petition cannot contain both a trade and a service mark. Separate applications have to be filed for service marks and trade marks.

SECTION ONE

Examination of an Application

Examination

Article 13 - In order for an application to be examined the following documents have to be submitted at the time of filing:

a) a signed petition, conforming to the form attached to the Regulation as Annex-1,

b) the original receipt documenting the payment of the application, search, examination and evaluation fee,

c) 5 copies of the representation of the trademark

Where the application concerns a guarantee or a collective mark a copy of the technical regulation has to be submitted at the time of filing the application documents.

Where any one the above referred documents are missing at the time of filing, the application shall be rejected.

Classification

Article 14 - The goods and services indicated in the petition in accordance with the Article 24 of the Decree-Law shall be classified in conformity with the international classification of goods and services.

The class numbers in respect of the goods and services to be registered shall also be indicated. A fixed fee shall apply for the first three classes in an application. Extra fee shall be charged for each additional class after the first three classes.

The Institute reserves the right to make the necessary alterations on the goods, services and classes indicated in the petition.

Duration

Article 15 - Of the documents provisioned in Article 12, those which have not been submitted at the time of filing the application, except for those specified in Article 13, a period of three months shall be allowed for the submission of the missing documents. Where the missing documents have not been submitted with a justification within the prescribed time, a final additional period of one month shall be allowed conditional to the payment of a fee.

Two months shall be allowed for remedying the deficiencies in the payment of class fees and the submission of the original receipt of payment, and

for submitting the explanations concerning the general description contained in the petition.

A period of one month shall be allowed for any changes to be made on the mark which may be required under Article 22 of The Regulation.

Applications whose deficiencies are not remedied within the prescribed periods as provisioned in the first and second paragraphs of this Article shall be canceled.

SECTION THREE

Publication of the Application and the Registration

Publication of the Application

Article 16 - An application for registration of a trademark which has complied with the conditions of application and which has not been refused according to Articles 29, 30, 31 and 32 shall be published in the monthly Official Trademark Bulletin with the following information.

- a) the application date and number,
- b) the name and address of the applicant,
- c) a representation of the mark,
- d) the list of the goods or services and the class numbers,
- e) the goods or services deleted in accordance with the relevant articles of the Decree-Law.

Institute may publish supplementary Bulletins in addition to the prescribed publication periods.

Where an application is refused after the publication of the application in accordance with the provisions of the Articles referred to in the first paragraph, the decision of refusal shall also be published.

Publication of the Registration

Article 17 - A trademark registered in accordance with Article 39 of the Decree-Law shall be published in the bi-monthly Official Trademark Gazette. The publication shall contain all the information contained in the Register except those concerning the agent.

SECTION FOUR Renewal

Renewal

Article 18 - At the request of the proprietor of the mark or of the person authorized by him, registration of the registered trademark shall be renewed, upon the payment of the renewal fee prescribed in the Circular,

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

Documents Necessary for Renewal Application

Article 19 - When applying for a renewal, the original receipts of payment of the trademark renewal fee, and the certificate renewal and recording fee must be submitted along with the petition. The Institute may request other documents which might be missing in the file. Deficiencies concerning a renewal and changes that have occurred after registration have to be completed within the duration as specified in Article 15.

SECTION FIVE Changes After Registration

Changes Concerning the Address, the Title and the Firm Characteristics

Article 20 - The proprietor of a trademark has to inform the Institute any changes with respect to a trademark. If after the registration of a trademark changes have occurred with respect to the address, the title and the characteristics of the firm, such changes shall be recorded in the Register upon the request of the proprietor or if such changes are identified at the time of a new application of the proprietor of the mark, corrections shall be requested on the other marks registered or applied for in the name of the proprietor.

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

a) For changes of address:

- 1) a petition,
- 2) the Trademark Certificate of Registration,
- 3) the original receipt of payment of fees,
- 4) power of attorney (if appointed) for the agent, signature circular for the legal entity.

b) For changes concerning the title:

- 1) a petition,
- 2) the copy of the Trade Registry Gazette showing the change of title or other document evidencing such change,
- 3) the original Trademark Certificate of Registration ,
- 4) the original receipt of payment of fees,
- 5) power of attorney (if appointed) for the agent, signature circular for the legal entity.

c) For changes concerning the characteristics of the firm:

- 1) a petition,
- 2) a document evidencing the change,
- 3) the Trademark Certificate of Registration ,
- 4) the original receipt of payment of fees,
- 5) power of attorney (if appointed) for the agent, signature circular for the legal entity.

Transfer by Inheritance

Article 21 - The following documents have to be submitted in order to record in the Register changes resulting from the transfer of trademarks by way of an inheritance.

- a) a petition,
- b) the court decision,
- c) the original receipt for the payment of fees,
- d) the original Trademark Certificate of Registration,
- e) power of attorney (if appointed) for the agent, signature circular for the legal entity.

Assignment of the Mark and Merger

Article 22 - Trademark, in accordance with Article 16 of the Decree-Law can be subject to assignment with respect to all or part of the goods or services

for which it is registered. Assignment is permissible only with the assignment of the existing other similar marks and applications. Following documents have to be submitted in case of an assignment:

a) a notarized assignment certificate describing the mark and containing the signatures and declarations of both the assignee and the assignor. In case of partial assignment the full list of the goods of services assigned have to be specified,

b) a certificate of commercial activity for the assignee,

c) the original Trademark Certificate of Registration,

d) the original receipt for the payment of fees,

e) signature circular if the assignee is a legal entity,

f) power of attorney if an agent is appointed.

If the assignment procedures fall within the provisions of paragraph four of Article 16 of the Decree-Law, the changes to be effected are transmitted to the assignee. Unless the assignee submits his acceptance of the changes in writing to the Institute within the period prescribed in Article 15 of this Regulation the registration of the assignment shall not be effected.

Following documents have to be submitted in case of a merger.

a) a petition,

b) the documents evidencing the merger,

c) certificate of commercial activity,

d) the original Trademark Certificate of Registration,

e) signature circular for the legal entity,

f) power of attorney for the agent,

g) the original receipt for the payment of fees.

Licenses

Article 23 - The proprietor of a trademark can license his rights over a trademark with respect to some or all of the goods and services for which it is registered. A licensing contract cannot contain provisions contrary to the Decree-Law and the other related laws, decrees and regulations.

Following documents have to be submitted for licenses:

a) notarized license contract containing the declarations and the signatures of the licensee and the licensor, the registration number of the trademark, the duration and the fees of the contract,

- b) certificate of commercial activity of the licensee,
- c) the original Trademark Certificate of Registration,
- d) the original receipt for the payment of fees,
- e) signature circular if the licensee is a legal entity,
- f) if appointed power of attorney for the agent.

Trademark renewal and all other changes with respect to a trademark which are recorded in the Register shall be published in the Official Trademark Gazette. The fees prescribed in the Circular of Fees shall be paid for this purpose.

Placing the Trademark as Security

Article 24 - A registered trademark may be charged as security independently of the undertaking.

Upon the request of one of the parties, the placing of security shall be entered in the Register and published.

Changes

Article 25 - Except for the change of address or renewal of the mark, other changes or licensing shall not be allowed with respect to the trademark placed as security.

Changes with respect to such a trademark can only be allowed with the permission of the holder of the security.

Following documents have to be submitted for recording of the security.

- a) a petition,
- b) the original documents evidencing the placing of the security or its notarized copy,
- c) the original Trademark Certificate of Registration,
- d) the original receipt for the payment of fees,
- e) power of attorney for the agent or signature circular for the legal entity.

In order to cancel the recording of security in the Register, the original document evidencing the cancellation or a notarized declaration by the holder of the security is required.

Levy of Execution

Article 26 - A registered trademark may be levied in execution independently of the undertaking.

Levy of execution shall be entered in the Register and published upon the request of one of the parties concerned.

Changes

Article 27 - Except for the change of address or renewal of the mark, all other changes and licensing shall be allowed only with the permission of the executor.

The execution shall be considered terminated,

- a) when the creditor has relinquished his due,
- b) upon the termination of the period if the contract has specified a time period for the duration of the execution,
- c) upon the sale of the trademark under execution.

Following documents have to be submitted for recording of the execution:

- a) a petition,
- b) the contract for the levy of execution,
- c) the original Trademark Certificate of Registration,
- d) the original receipt for the payment of fees.

In order to cancel the recording of security in the Register, the original document evidencing the cancellation or a notarized declaration by the holder of the security is required.

SECTION SIX Fees, Copies, Register and Priority

Fees

Article 28 - The fees payable with respect to a trademark registration and operations shall be published as a Circular of Fees to be Administered by The Turkish Patent Institute in accordance with the provisions of Articles 6/f and 25 of the Decree-Law no 544.

The fees are payable by the party requesting the service.

The applications are rejected when their fees are not paid.

A copy of the Trademark Certificate of Registration shall be supplied upon the request of the trademark proprietor or of the agent.

Following documents have to be submitted for obtaining a copy:

- a) a petition,
- b) the original receipt for the payment of the relevant fee for obtaining a copy of the Trademark Certificate of Registration.

Registry

Article 29 - Trademark registry is open to the public. Upon request and payment of the prescribed fee a copy of the Register shall be available to the any requesting party.

The Information Contained in the Register

Article 30 - The following information shall be recorded in the Register:

- a) the registration number of the trademark, the application and the registration dates,
- b) a representation of the trademark,
- c) the name, if a legal entity the title, nationality and address of the proprietor of the trademark, and agent's name and address if applicable,
- d) the list of the goods or services in respect of the trademark,
- e) class codes.

Priority

Article 31- Where a priority claim is accepted, the following observations are recorded in the Register and on the Trademark Certificate of Registration.

It has hereby been recognized that the first application for the registration of this trademark has been filed at the administration of..... on the day of.....with filing no....., and therefore is entitled to the priority right as of this date.

PART FOUR Oppositions

Opposition to the Publication of an Application

Article 32 - Notices of opposition to the registration of a trademark on grounds that it may not be registered under the provisions of Articles 7 and 8 of the Decree-Law, and notices of opposition on grounds that there exists bad faith

in the application shall be submitted within three months of the publication. Opposition is filed in writing conforming to the form attached to this Regulation as Annex II. Institute may request further facts, evidences and documents which have to be complied within one month.

Where the additional facts, evidences and documents requested have not been submitted to the Institute within this period the opposition shall be deemed to have not been made.

Where the opposition is found to be valid, the application for the registration of the trademark is rejected.

Appeals Against The Decisions of the Institute

Article 33 - Any party adversely affected by a decision of the Institute may appeal at the Institute against the decisions. Any of the other third persons who are parties to the proceedings shall on their own have the right of appeal.

Form of Appeal

Article 34 - Notice of appeal must be filed in writing at the Institute within two months after the date of notification of the decision. The fee for appeal has to be paid at the time of filing of the notice in order for the appeal to be examined. The grounds for appeal must be filed in a written statement within two months of the notification of the decision. Where the statement of grounds for appeal has not been submitted within this period the appeal shall be deemed not to have been filed.

Rectifying a Decision

Article 35 - The related department of the Institute upon deciding that the appeal is true and right may rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

If the appeal is not found acceptable by the related department, the appeal shall be forwarded to the Re-examination and Evaluation Board by the department without comment as to its merits.

Examination of Appeals

Article 36 - The Re-examination and Evaluation Board shall consider the appeal if the appeal is admissible.

The Re-examination and Evaluation Board shall invite the parties to submit within one month their own observations on the observations of the other parties or those of the administration.

Opposition fee

Article 37 - The fee paid for filing an opposition to the Institute's decision with respect to a trademark application shall be deducted from the trademark registration fee if the appeal is accepted.

PART FIVE Last Provisions

Provisions Repealed

Article 38 - The Implementing Regulations of the Trademark Law published in the Official Gazette no 22262 dated 18.4.1995 have hereby been repealed.

Transitional Article 1 - Those trademarks having the renewal right of a three year period under the repealed Trademark Law no 551, irrespective of their remaining periods shall be renewed within six months of the publication of this Regulation. A trademark which is not renewed within this period is to be deleted from the registry.

Transitional Article 2 - The fees payable for applications filed as of 27.6.1996 shall be paid within two months of the coming into force of the Circular of Fees to be Administered by The Turkish Patent Institute in accordance with the provisions of Articles 6/f and 25 of the Decree-Law no 544.

Entry into Force

Article 39 - These Regulations shall enter into force on the day of publication.

Execution

Article 40 - These Regulations shall be executed by the President of the Turkish Patent Institute.