

EUROPEAN PATENT – VALIDATIONS – TURKEY

Patent applications in Europe and in other member states of European Patent Convention with a particular focus on Turkish patent prosecution practice.

Once the European Patent Office (EPO) has issued a communication under Rule 71(3), the validation requirements must be met in Turkey within a three-month period from the European grant date. Typically, this process requires performing translations of the full patent specification, filing patent application form, and paying official fees.

Business seeking patent protection for technical inventions in a number of European countries should not be surprised about hearing a bit confused terminology at first glance, such as “European Patent (EP) Application”, “Conventional Patent Applications”, “Unitary Patent (UP)”, “National Validation in the EPC Contracting States and in the Extension/ Validation States” and even “London Agreement”, among others.

In fact, all these provide business options to consider a multi-territorial coverage for the altering cost and time scenarios due the fact that Europe is not only limited to European Union but covers many countries engaged with one or more multi-national patent related agreements.



Patent Applications in Europe

A right holder can file either multiple applications at various national patent offices or a single patent application at the European Patent Office (EPO). The latter is called a European Patent Application under the European Patent Convention (EPC) and is mostly recommended to reduce the costs and prosecution

load if a number of countries are to be considered for patent protection.

The EPC is not only limited to the EU Member States but also covers Turkey, United Kingdom, Albania, Iceland, Liechtenstein, Monaco, Montenegro, North Macedonia, Norway, San Marino, Serbia, and Switzerland, as non-EU states, summing up to 39 countries, plus one extension states, i.e. Bosnia-Herzegovina, and even four validation states, i.e. Morocco, Moldova, Tunisia and Cambodia.

Meanwhile, “EU Patent” system has almost been accomplished with a few missing member states, i.e. Spain and Croatia -and that’s why it is now called “Unitary Patent”. The European Patent is not affected by the BREXIT.

Once a European Patent’s grant decision is published, it has to be “validated” in the countries of interest within 3 months (or more with fine, if applicable) and a patent owner can decide whether to stick with an EPC patent or request a Unitary Patent to cover the said EU member states within one month of grant.

For EP validations, translational requirements are regulated by the London Agreement and EPC member states’ regulations.

Patent Filings into Turkey

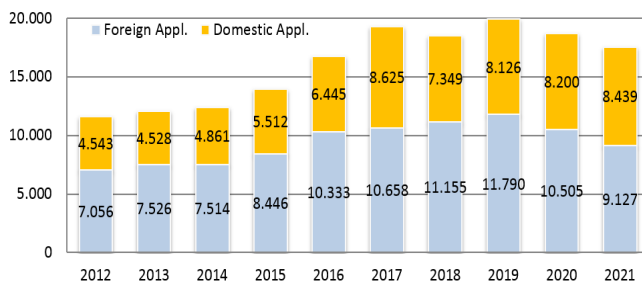
Turkey is the most populous member state of EPC, with a population of 85 million in 2022 (followed by Germany at 83.4 million, the United Kingdom at 67.4 million, and France at 65.6 million) and an important hub at the crossroads of Europe, Asia, CIS countries

and Africa with high potentials of manufacturing and logistics opportunities. Therefore, it is recommended to consider protecting inventions in the TR territory.

Turkey is party to Paris Convention (since 1925), Patent Cooperation Treaty (PCT) (since 1996), European Patent Convention (EPC) (since 2000) and EPC 2000 (since 2007). Therefore, foreign patent applications to be filed at the Turkish Patent and Trademark Office (TURKPATENT) are welcome through three routes, namely: (1) Conventional applications, (2) National entries of international patent applications under the PCT and (3) Validations of granted European patents under EPC.

For the last five years, numbers of patent applications in Turkey have fluctuating around 10K for foreign filings and 8K for domestic filings (see chart and table). Patent filings from domestic applicants has slightly increased for the same period considering that an increase of about 3% is expected in 2022.

Patent Applications (TR)



Breakdown of filing types reveals that the share of foreign applications into Turkey is 57% and the great majority of which -about 96%- is through “EP validations” route for patent protection.

Year	Domestic				Foreign				Filings Total	Grants Total
	Conv.	PCT	EPC	Total	Conv.	PCT	EPC	Total		
2012	4.360	74	109	4.543	78	154	6.824	7.056	11.599	7.816
2013	4.345	54	129	4.528	95	175	7.256	7.526	12.054	8.925
2014	4.654	112	95	4.861	149	183	7.182	7.514	12.375	8.530
2015	5.302	50	160	5.512	251	238	7.957	8.446	13.958	10.100
2016	6.153	88	204	6.445	407	211	9.715	10.333	16.778	11.074
2017	7.994	181	450	8.625	202	178	10.278	10.658	19.283	12.424
2018	7.114	42	193	7.349	137	173	10.845	11.155	18.504	13.882
2019	7.751	120	255	8.126	63	154	11.573	11.790	19.916	13.720
2020	7.803	117	280	8.200	90	148	10.267	10.505	18.705	13.017
2021	8.071	163	205	8.439	85	157	8.885	9.127	17.566	12.566

Turkish Patent System

On 10th January 2017, the new industrial property law (# 6769) introducing a single comprehensive law by replacing the earlier decree-laws for the protection of patents, trademarks, designs, geographical indications and integrated circuit designs came into force in Turkey.



Some notable changes related to patent protection include the introduction of post-grant opposition procedure, removal of professors' privilege, cancellation of non-examined patent system allowing a short-term patent protection of 7 years, introduction of novelty search requirement for utility models and simplification on evidence of use requirement.

Recommendations for Validating European Patents in Turkey

Once the European Patent Office (EPO) has issued a communication under Rule 71(3), the validation process must be started by considering and meeting the following requirements:

(1) Coverage:

Turkey is not an EU member state but only bound to EPC. Therefore, Unitary Patent system is not applicable and a separate application for the validation must be filed at the TURKPATENT.

(2) Due date:

The “non-extendible” term for validating a granted European Patent in Turkey is three months from the date on which the mention of grant is published in the European Patent Bulletin.

(3) Translation requirement:

Turkey is not a signatory to the London Agreement on translations. Therefore, the complete patent specification (i.e. description, claims and figures) of a granted European patent is required to be translated into Turkish and filed at the TURKPATENT in order to have an effect in Turkey.

(4) Delaying Translation:

It is possible to delay the translation up to two months and to file it by paying a fine provided that the request for validation is filed in due time.

(5) Representation by a Turkish Patent Attorney

This is mandatory for applicants without residence or principal place of business in Turkey.

(6) Power of Attorney

Not required.

(7) Provisional protection:

It is also possible for a "pending" European patent application to get a provisional protection through filing claims only in Turkish.

(8) Costs

Filing fee in 2023 is TL 8.910 (about € 451 as of January 5th) plus attorney's charge and translation costs. Allowance should also be made for patent annuities to be paid (gradually increasing during the 20-year period of the patent, i.e. from TL 1.050 of 3rd year to TL 8.900 of 20th year).

OFFICIAL FEES

Schedule of all fees for patents and utility models as well as for other types of IP filings is regularly published and updated by the TURKPATENT), and available in English and Turkish at:

<http://www.turkpatent.gov.tr/>

Procedure

Once the validation of a granted European patent in Turkey is requested in time, such a request is to be examined within 1 month simply on the availability of formal requirements and checked if the European patent is filed in Turkish as it is, i.e. in respect of translation and entitlement thereof.

The European patent will have effect after the publication of the Turkish text in the patent bulletin within 1-2 months. A European patent certificate is electronically issued well after the publication.

Accurate Translations

A patent document is a legal instrument and is therefore required to be translated into Turkish language with great precision and accuracy under the supervision of qualified patent attorneys.

Incorrect translations may result in irrevocable problems when a patent holder enforces patent rights against infringers.

We always recommend clients to employ services of experienced and trustable patent attorneys, working with only qualified professional patent translators in-house for patent validations.

Ersin Dereligil

Patent & Trademark Attorney
European Patent Attorney
ersin.dereligil@kordinat.com.tr



KORDINAT

The information in this update is intended to be general information about Turkish Patent Practice only and not comprehensive. It is not to be relied on as legal advice nor as an alternative to taking professional advice.

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