

“Intellectual Property & Horizon 2020: How to deal with your intellectual Assets”

Intellectual Property in Europe and Turkey

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Istanbul, 2/2/2016

What is Intellectual Property in Europe?

Intellectual property consists of products, work or processes that you have created and which give you a competitive advantage.

There are 3 subcategories:

- **Industrial property:** inventions (patents), trademarks, industrial designs, new varieties of plants and geographic indications of origin
- **Artistic work protected by copyright:** original literary and artistic works, music, television broadcasting, software, databases, architectural designs, advertising creations and multimedia
- **Commercial strategies:** trade secrets, know-how, confidentiality agreements, or rapid production.

What is WIPO ?

You can protect your intellectual property by means of the intellectual property rights (IPR) laid down by the [World Intellectual Property Organisation \(WIPO\)](#)

What is WIPO?

WIPO is the global forum for Intellectual property services, policy, information and cooperation.

WIPO is a self funding agency of the United Nations, with 188 members.

Turkey joined WIPO in 1976, therefore, Turkey fulfils the conditions to be a member of WIPO. The WIPO Convention provides that membership is open to any state that is:

- A member of the Paris Union for the protection of Industrial Property (Paris Convention)
- member of the Berne Union for the Protection of Literary and Artistic Works; or
- a member of the United nations, or of any of the United Nations' Specialised Agencies, or of the International Atomic Energy Agency, or that is party to the Statue of the International Court of Justice, or
- Invited by the WIPO General Assembly to become a member state of the Organisation

Turkey who joined WIPO in 1976 was at that time a member of the Paris Union (since 1925) and of the Berne Union (accession in 1951, entry into force in 1952)

IP Types

- The form of protection depends on the type of IP:
 - **trademarks** - protect the name of your product by preventing other business from selling a product under the same name
 - **patents** - allow you to stop third parties from making, using or selling your invention for a certain period depending on the type of invention, in general minimum 20 years
 - **copyright** - informs others that you (as the author) intend to control the production, distribution, display or performance of your work. Copyright is granted automatically, with no need for formal registration. You can start using the copyright symbol immediately.

A National matter

IPRs are still chiefly protected by national rather than EU laws.

- Defending them in each individual EU country can be complicated and costly.

You can save time and money by protecting your intellectual property at EU level.

- This will make sure that your innovations and creations are protected across the EU, and that you are rewarded for them.

1. Trademark

A **trademark** can be protected at EU level through with an **EU trade mark (ETM)**.

Why ?

- If you do business in more than one EU country, an EU trade mark (ETM) offers you protection throughout the EU.
- ETMs are registered in Alicante (Spain), at the **Office for Harmonization in the Internal Market (OHIM)**.
- Under the provisions of the 2015 amending Regulation (REGULATION (EU) 2015/2424 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2015), the name of the Office will change to the **European Union Intellectual Property Office**.
- This change will come into effect on 23 March 2016, when the legislation enters into force.

European Trade Mark

- A ETM gives the owner protection for all EU Member States in one single registration.
- The ETM is an all-or-nothing deal: either you get it for all the Member States, or you do not get a ETM at all.
- If you do business in only one EU country, you can register your trade mark at a national office and get protection for your brand and all the value it entails where you need it.

OHIM / European Union Intellectual Property Office?

What is the **European Union Intellectual Property Office (OHIM)**?

- **OHIM / European Union Intellectual Property Office** is the European Union agency responsible for managing two important vehicles for the protection of creativity and innovation – the Community trade mark and the registered Community design.
- Based in Alicante (Spain).
- The regulation establishing OHIM was adopted by the Council of the European Union in December 1993 and revised in 2009.
- It created the Community trade mark as a legal instrument in Community law and established OHIM as a Community body with legal, administrative and financial autonomy.
- Council Regulation (EC) No 6 of 2002 created the registered Community design.

Submit for an EU Trade Mark

- An online ETM application costs €900 and is filed in just one language. The fee for a paper form is €1050
- When OHIM receives a ETM application, OHIM checks it and processes it.
- Once registered, your ETM can be renewed indefinitely every ten years.
- The same principles apply to **designs**.

How can you protect your IP in Europe?

Conclusion on the advantages

- The major advantage of the EU trade mark system is that it makes possible the **uniform identification** of products and services by enterprises throughout the European Union (EU).
- A unique procedure applied by the [Office for Harmonisation in the Internal Market \(OHIM\)](#) allows them to register trade marks which will benefit from unitary protection and be fully applicable in every part of the EU.

Rights by ETM

- The rights conferred by the ETM [REGULATION \(EU\) 2015/2424 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2015](#)
- A EU trade mark confers on its proprietor **exclusive rights**. The proprietor is entitled to prohibit all third parties from using in the course of trade, in relation to goods or services, any sign where:
 - (a) the sign is identical with the EU trade mark and is used in relation to goods or services which are identical with those for which the EU trade mark is registered;
 - (b) the sign is identical with, or similar to, the EU trade mark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the EU trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;
 - (c) the sign is identical with, or similar to, the EU trade mark irrespective of whether it is used in relation to goods or services which are identical with, similar to or not similar to those for which the EU trade mark is registered, where the latter has a reputation in the Union and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the EU trade mark.

Regulation examples

The Regulation set examples of what can be prohibited, but the list is **not exhaustive**:

- (a) affixing the sign to the goods or to the packaging thereof;
- (b) offering the goods, putting them on the market, or stocking them for those purposes under the sign, or offering or supplying services thereunder;
- (c) importing or exporting the goods under the sign;
- (d) using the sign as a trade or company name or part of a trade or company name;
- (e) using the sign on business papers and in advertising;
- (f) using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC of the European Parliament and of the Council (*).

Right to prohibit preparatory acts

- The Regulation even grants the **right to prohibit preparatory acts** in relation to the use of packaging or other means, where the risk exists that the packaging, labels, tags, security or authenticity features or devices or any other means to which the mark is affixed could be used in relation to goods or services and such use would constitute an infringement of the rights of the proprietor of an EU trade mark.
- The rights conferred by an EU trade mark shall prevail against third parties from the date of publication of the registration of the trade mark.

Limitations of EU Trade Mark effects

Limitation of the effects of an EU trade mark.

- An EU trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:
 - (a) the name or address of the third party, where that third party is a natural person;
 - (b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of the goods or services;
 - (c) the EU trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular, where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

Important Articles on REGULATION 2015/2424

The Regulation goes into deep details regarding new issues:

- Intervening right of the proprietor of a later registered trade mark as a defence in infringement proceedings (Article 13a)
- Transfer of a trade mark registered in the name of an agent (Article 18)
- Procedure for entering licences and other rights in the Register (Article 22a)
- Procedure for cancelling or modifying the entry in the Register of licences and other rights (Article 24a)

Please see the Regulation for more details.

How to register a ETM ?

- Online on the OHIM Website [Application online](#).
- A ETM registration lasts for 10 years but can be renewed indefinitely.
- Every 10 years you will be faced with the question: do I want to renew my trade mark?
- The answer depends on your brand strategy.

What happens after the application?

- Receipt of application
- Examination
- Publication of the application
- Opposition period
- Registration
- Publication of the registered mark

[Video on what happens after the application](#)

[Video on enforcing your trademark](#)

2. Patents

- You can apply for a national patent at a patent office in your own country or for a European patent through the European Patent Office.
- Based in Munich, the **European Patent Office (EPO)** offers inventors a uniform application procedure which enables them to seek patent protection in up to 40 European countries.
- The Office is the executive body of the European Patent organisation.

The European Patent Organisation (EPO)

- The [European Patent Organisation](#) is an intergovernmental organisation that was set up on 7 October 1977 on the basis of the European Patent Convention (EPC) signed in Munich in 1973.
- It has two bodies, the European Patent Office and the Administrative Council, which supervises the Office's activities.
- The Organisation currently has 38 Member States.
- [Turkey became a Member State on 1 November 2000](#)

EPO Member States

■ **Member states (38)**

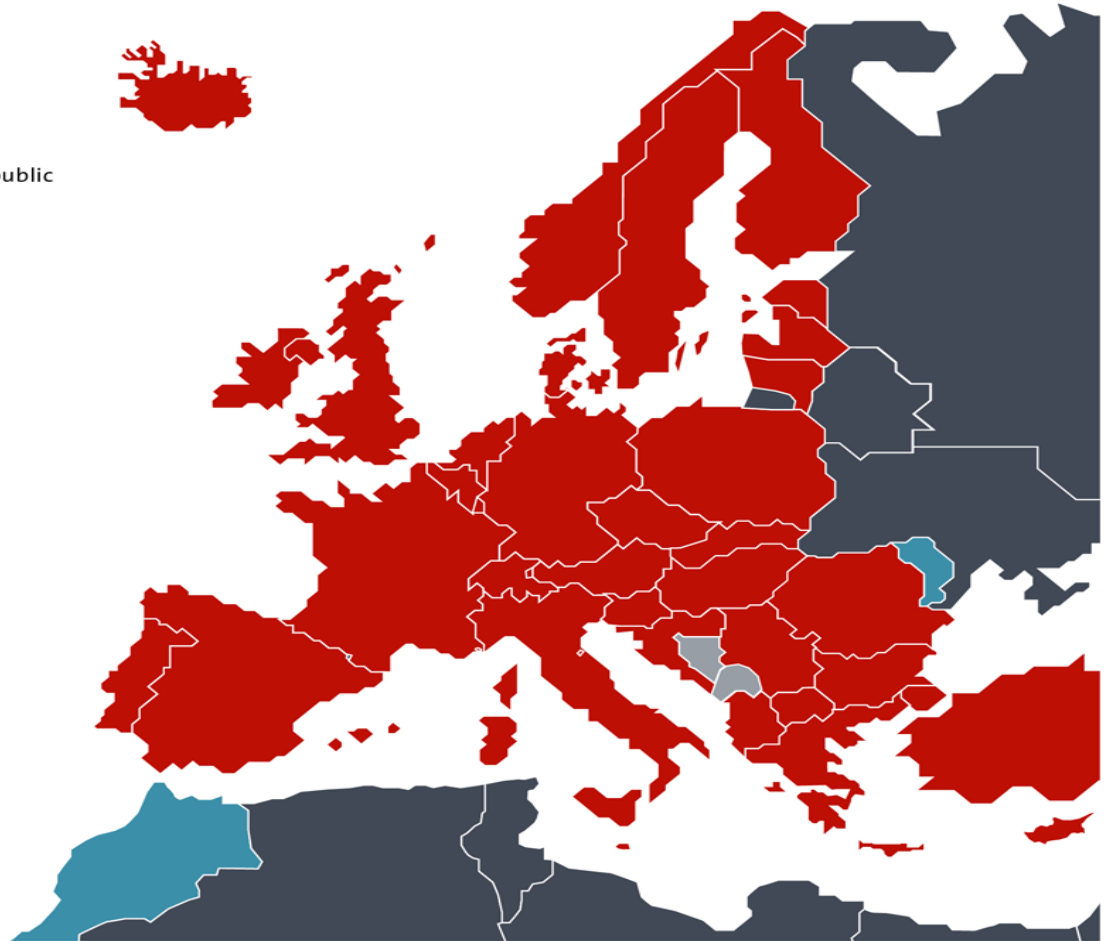
Albania	Luxembourg
Austria	Malta
Belgium	Monaco
Bulgaria	Former Yugoslav Republic of Macedonia
Croatia	Netherlands
Cyprus	Norway
Czech Republic	Poland
Denmark	Portugal
Estonia	Romania
Finland	San Marino
France	Serbia
Germany	Slovakia
Greece	Slovenia
Hungary	Spain
Iceland	Sweden
Ireland	Switzerland
Italy	Turkey
Latvia	United Kingdom
Liechtenstein	
Lithuania	

■ **Extension states (2)**

Bosnia-Herzegovina
Montenegro

■ **Validation states (2)**

Morocco
Republic of Moldova



European Patents

- However, a European patent needs to be validated by the national patent office in each country where protection is required.
- Depending on the country's law, you may have to provide translations or pay fees by a certain period.
- Why does this translation requirement exists ? Because of the 3 languages used in EPO.

How to apply for a European Patent?

Before applying for a European patent

1. It is important to know what inventions and patents are.

2. Application:

- The European Patent Office accepts applications under the European European Patent Convention (EPC) and the Patent Cooperation Treaty (PCT).
- If you are seeking protection in only a few countries, it may be best to apply direct for a national patent to each of the national offices.

Parts of a European Patent

A European patent application consists of:

1. a request for grant
2. a description of the invention
3. claims
4. drawings (if any)
5. an abstract.

Applications can be filed at the EPO in any language. However, the official languages of the EPO are English, French and German.

If the application is not filed in one of these languages, a translation has to be submitted.

Filing and Formalities examination

The first step in the European patent granting procedure is the examination on filing. This involves checking whether all the necessary information and documentation has been provided, so that the application can be accorded a filing date. The following are required:

1. an indication that a European patent is sought
2. particulars identifying the applicant
3. a description of the invention or
4. a reference to a previously filed application.

If no claims are filed, they need to be submitted within two months.

This is followed by a formalities examination relating to certain formal aspects of the application, including the form and content of the request for grant, drawings and abstract, the designation of the inventor, the appointment of a professional representative, the necessary translations and the fees due.

How to search for a patent?

- While the formalities examination is being carried out, a European search report is drawn up, listing all the documents available to the Office that may be relevant to assessing novelty and inventive step.
- The search report is **based on the patent claims** but also takes into account the description and any drawings.
- After it has been drawn up, the **search report** is sent to the applicant together with a copy of any cited documents and an initial opinion as to whether the claimed invention and the application meet the requirements of the European Patent Convention

Publication of the Application

- The application is published - normally together with the search report - 18 months after the date of filing or, if priority was claimed, the priority date.
- Applicants then have 6 months to decide whether or not to pursue their application by requesting substantive examination.
- Alternatively, an applicant who has requested examination already will be invited to confirm whether the application should proceed.
- Within the same time limit the applicant must pay the appropriate designation fee and, if applicable, the extension fees.
- From the date of publication, a European patent application confers provisional protection on the invention in the states designated in the application.
- However, depending on the relevant national law, it may be necessary to file a translation of the claims with the patent office in question and have this translation published.

Substantive Examination

- After the request for examination has been made, the European Patent Office examines whether the European patent application and the invention meet the requirements of the European Patent Convention and whether a patent can be granted.

Grant of a patent

- If the examining division decides that a patent can be granted, it issues a decision to that effect.
- A mention of the grant is published in the European Patent Bulletin once the translations of the claims have been filed and the fee for grant and publication have been paid.
- The decision to grant takes effect on the date of publication. The granted European patent is a "bundle" of individual national patents.

Validation

- Once the mention of the grant is published, the patent has to be validated in each of the designated states within a specific time limit to retain its protective effect and be enforceable against infringers.
- In a number of contracting states, the patent owner may have to file a translation of the specification in an official language of the national patent office.
- According to the European Patent Convention (Article 2) , Turkey has to provide a translation of the complete patent specification
- Depending on the relevant national law, the applicant may also have to pay fees by a certain date.

Opposition

- After the European patent has been granted, it may be opposed by third parties – usually the applicant's competitors – if they believe that it should not have been granted.
- Notice of opposition can only be filed within 9 months of the grant being mentioned in the European Patent Bulletin.
- Oppositions are dealt with by opposition divisions

Limitation / Revocation

- This stage may also consist of revocation or limitation proceedings initiated by the patent proprietor himself.
- At any time after the grant of the patent, the patent proprietor may request the revocation or limitation of his patent.
- The decision to limit or to revoke the European patent takes effect on the date on which it is published in the European Patent Bulletin and applies ab initio to all contracting states in respect of which the patent was granted.

Appeal

- Decisions of the European Patent Office – refusing an application or in opposition cases, for example – are open to appeal.
- Decisions on appeals are taken by the independent boards of appeal

Route to apply for European Patent

Filling options

- Online filing : several options [EPO new online filing \(CMS\) or the EPO web form filing.](#)
- Filling on paper or fax : applications for European patents can be filed by post, fax (excluding authorisations and priority documents) or by hand at the EPO's headquarters in Munich, its branch in The Hague and its Berlin sub-office.

[See online filing options.](#)

National Route on Patent

- If you intend to apply for a patent in just a few European countries, it may be better to choose the national route and file your application at the IP offices in the countries for which you are seeking protection.
- Patent law in the EPO member states has been extensively harmonised with the European Patent Convention (EPC) in terms of patentability requirements. However, the national route generally leads to national rights which confer protection of differing extent.
- Further information on the IP Office in Turkey
<http://www.tpe.gov.tr/TurkPatentEnstitusu/>

What next in Europe?

- The future Unitary Patent and the Unified Patent Court
- What is the **unitary patent** - or "**European patent with unitary effect**" ?
 - It is a European patent, granted by the EPO under the rules and procedures of the European Patent Convention, to which, upon request of the patent proprietor, unitary effect is given for the territory of the 25 Member States participating in the unitary patent scheme (Croatia, Poland and Spain are not part of the scheme).
 - The unitary patent will co-exist with national patents and with classical European patents.
 - Patent proprietors will in future be able to choose between various combinations of classical European patents and unitary patents.

How can you protect your IP in Europe?

- For example:
 - a unitary patent for the 25 Member States of the European Union which participate in the unitary patent scheme;
 - together with a classical European patent taking effect in one or more EPC Contracting States which do not participate in the scheme, such as Spain, Italy, Switzerland, Turkey, Norway, Iceland, etc.
 - On 11 December 2012 the European Parliament voted positively in a first reading on the EU Council's compromise proposals for two draft EU regulations on a unitary patent for Europe.
 - Find out more : http://ec.europa.eu/growth/industry/intellectual-property/patents/unitary-patent/index_en.htm

Why a Unified Patent Court ?

- Currently, national courts and authorities of the contracting states of the European Patent Convention are competent to decide on the infringement and validity of European patents.
- In practice, this gives rise to a number of difficulties : high costs, risk of diverging decisions and lack of legal certainty.
- Forum shopping is also inevitable.

Agreement on Unified Patent

- The [Agreement on the Unified Patent](#) Court addresses these problems by creating a specialised patent court ("Unified Patent Court", or UPC) with exclusive jurisdiction for litigation relating to European patents and European patents with unitary effect (unitary patents).
- The UPC will comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance will be composed of a central division (with seat in Paris and two sections in London and Munich) and by several local and regional divisions in the Contracting Member States to the Agreement. The Court of Appeal will be located in Luxembourg.
- The Agreement was signed by 25 EU Member States on 19 February 2013. It will need to be ratified by at least 13 states, including France, Germany and the United Kingdom to enter into force (see [status of ratification](#)).

Copyright

- Informs others that you (as the author) intend to control the production, distribution, display or performance of your work.
- Copyright is granted automatically, with no need for formal registration.
- You can start using the copyright symbol immediately.

Protection against Counterfeiting

- Counterfeiting ☞ unauthorised imitation of a branded good
- Piracy ☞ unauthorised copying of an item covered by an intellectual property right
- Depending on the law in the EU country in question and the source of counterfeit goods, the authorities to turn to are:
 - customs, market surveillance (trading standards), the police or the patent and trade mark offices

Thank you for your attention