

**Decree-Law No. 544 on the Establishment and
Functions of the Turkish Patent Institute***
(of June 24, 1994)

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PART I
GENERAL PROVISIONS

Section I
Establishment and Objective

Establishment and Objective

1. The Turkish Patent Institute is hereby established, as an independent legal entity with a special budget, being attached to the Ministry of Industry and Trade and liable under special judicial provisions for matters not provided for in this Decree-Law, with the objective of supporting technological development in Turkey, establishing and protecting industrial property rights and providing the public with worldwide information on industrial property rights, thereby supporting the growth of a competitive environment and the development of research and development activities. The Turkish Patent Institute, established as a public institution, shall be known in abbreviated form as “the TPE.”

The headquarters of the TPE shall be in Ankara.

Definitions

2. For the purposes of this Decree-Law the following, when mentioned therein, shall have the meanings specified:

- (a) Institute: the Turkish Patent Institute;
- (b) Managing Board: the Managing Board of the Turkish Patent Institute;
- (c) Advisory Board: the Advisory Board of the Turkish Patent Institute;
- (d) Presidency: the Presidency of the Turkish Patent Institute;
- (e) Ministry: the Ministry of Industry and Trade.

Section II
Functions and Organization

Functions

3. With the objective of furthering the technological and industrial development of the country, the Institute shall:

(a) implement services for the registration of the industrial property rights provided for in the Patent and Trademark Laws and related enactments, and engage in appropriate activities for the protection of those rights;

(b) act as mediator in cases of compulsory licensing and as technical advisor to the courts;

(c) record transfer and licensing agreements in the appropriate registers;

(d) monitor the use of inventions, and store and disseminate information on new technology and technology transfers;

(e) establish cooperation with international organizations and other foreign organizations that are active in the same area of interest;

(f) represent Turkey in dealings with international organizations, subject to approval by the Ministry;

(g) contribute to the drafting of international agreements on industrial property rights in the light of the country's needs and interests, and implement those agreements in Turkey;

(h) engage in cooperation with international organizations that pursue technology and research and development activities, create documentation centers and supply information to the public;

(i) publish material on industrial property rights and a periodical entitled Turkish Industrial Property Gazette;

(j) undertake the necessary studies and action with a view to informing the public on developments in industrial property matters;

(k) undertake such other functions as may be entrusted to it by legislation.

Organs and Administrative Units

4. The Institute shall be composed of the following organs and administrative units:

(a) Managing Board;

(b) Advisory Board;

(c) Presidency;

(d) Reexamination and Evaluation Board;

(e) Main Administrative Units;

(f) Auxiliary Service Units;

(g) Consultancy Units.

Managing Board

5. The Managing Board is the highest management and decision-making organ of the Institute. The Managing Board shall have a membership of seven, composed of one member each from the Ministry of Justice and the Ministry of Finance, two members from the Ministry of Industry and Trade or attached institutions, and the President and two Vice-Presidents of the Institute.

The President of the Institute shall act as Chairman of the Managing Board.

Board members shall be appointed by a joint decree at the request of the respective Ministries. The President and Vice- Presidents shall be appointed by a joint decree at the request of the Ministry of Industry and Trade.

The term of office of members of the Managing Board shall be five years, and shall be renewable on expiry.

Vacancies on the Board shall be filled by replacements appointed according to the same rules, and the new appointee shall serve the balance of the term of the replaced member.

The Managing Board shall elect one of the Vice-Presidents to replace the President in the event of the latter's absence from Board meetings.

The procedures and rules of work of the Managing Board shall be determined by Implementing Regulations to be issued by the Ministry.

Functions and Powers of the Managing Board

6. The Managing Board shall be responsible for ensuring that the Institute performs the duties conferred on it by this Decree-Law and other statutory obligations. For those purposes the Board:

(a) shall take all the necessary administrative, financial and technical measures to enable the Institute to perform its duties efficiently and productively; it shall draft the Implementing Regulations and put them into effect on approval by the Ministry, as required, for the effective performance of the Institute;

(b) shall execute the relevant statutes of the Institute;

(c) shall approve the Institute's budget;

(d) shall deliberate and pronounce on activity and financial reports;

(e) shall prepare and execute short and long-term work programs and identify topics for research on industrial property rights within the context of development plans and annual programs;

(f) shall prepare, and submit to the Ministry for approval, the schedule of fees to be charged for the services of the Institute;

(g) shall decide on appointments requested by the President;

(h) shall call meetings of the Advisory Board where necessary;

(i) shall deliberate and pronounce on the advisory decisions of the Advisory Board;

(j) shall decide on the organization of symposia, seminars, conferences or similar activities to inform the public on topics within the Institute's area of responsibility;

(k) shall create, where found necessary, permanent or *ad hoc* committees to obtain observations from experts in the industrial property field;

(l) shall decide on the purchase, sale or rental of fixed and liquid assets of the Institute and on the construction of an administration building.

The Managing Board shall have a minimum of two meetings every month at the request of its Chairman.

The Managing Board shall be convened by a minimum of four members, and decisions shall be taken by a simple majority of those attending. In the event of equally divided votes, the Chairman shall have a casting vote.

One or more members of the Managing Board may assign powers of attorney to the Chairman in writing which shall clearly define the scope of the powers assigned. However, such assignment of powers shall not relieve the assigning member of any liabilities.

Advisory Board

7. The Advisory Board is the consultative unit of the Institute and shall be composed of: one member each from the Ministries of Justice, Defense, Foreign Affairs, Transportation, Environment, Industry and Trade, and Culture; one member each from the Under-Secretariats of State Planning Organization, Treasury, Foreign Trade, and Customs; one member from the

Turkish Scientific and Technical Research Institute; five members from the Universities to be appointed by the High Education Council; one member each from the Turkish Atomic Energy Institute, the National Productivity Center, the Union of Chambers of Commerce and Industry and the Union of Chambers of Architects; and one member each from the Confederations of the Labor Unions and the Employers' Unions, selected from the confederations with the greatest number of members.

The Managing Board may call upon experts to attend the meetings where required.

The term of office of a member of the Advisory Board shall be two years. Members may be reelected on completion of their term.

The work procedures of the Advisory Board shall be defined by Implementing Regulations to be issued by the Ministry.

The Advisory Board shall meet at least once every year. Meetings shall be presided over by the Minister of Industry and Trade or by a person appointed by him.

Functions of the Advisory Board

8. In order to assist the Institute in performing its activities, the Advisory Board shall:

(a) provide advice and observations on effective means of protecting industrial property rights, creating a competitive environment and promoting the technological development of Turkey within the context of development plans and annual programs;

(b) provide advice and observations on the operational principles of the Institute;

(c) provide advice and observations on the Institute's activity and financial reports.

Presidency

9. The President is the chief executive officer and represents the Institute. The Presidency is composed of the President and the two Vice-Presidents.

The President and Vice-Presidents of the Institute shall be appointed by a joint decree for a term of five years. On completion of the term reappointment shall be possible. The vacancy of any of these posts, for whatever reason, shall be filled by a replacement appointed according to the same procedure within one month, and the new appointee shall serve the balance of the term of his predecessor.

The President, Vice-Presidents and Department Heads who have not been reappointed to the same position on completion of their terms of office shall be appointed as of right to other offices consistent with the salary scales that they have attained in that position.

The President shall be responsible for ensuring that the services of the Institute are performed in conformity with national legislation, international treaties on industrial property rights to which Turkey has become party, national security policies, development plans and annual programs and the decisions of the Managing Board. The President shall prepare the Institute's activity report and financial report and submit them to the Managing Board for approval. The President shall be liable for the action of the Institute, and shall have responsibility and authority for the inspection of the Institute's activities and accounts.

Reexamination and Evaluation Board

10. The appeals of applicants or third parties against decisions of the Institute in connection with procedures for the registration of industrial property rights shall be examined and evaluated by the Reexamination and Evaluation Board.

Decisions on appeals concerning matters to be reexamined and evaluated shall be taken by the Board, which shall be chaired by the President of the Institute or by one of the Vice-Presidents, chosen by him, and composed of a minimum of two members appointed by the President of the Institute from among those who have experience of the subject matter of the appeal and have not been party to the decision appealed against.

The decisions of the Reexamination and Evaluation Board shall be considered final decisions of the Institute. Action can be brought against such decisions before the appropriate courts.

The operational principles and procedures of the Reexamination and Evaluation Board shall be determined by Implementing Regulations to be approved by the Ministry.

PART II ADMINISTRATIVE UNITS

Section I Main Administrative Units

Main Administrative Units

11. The main administrative units of the Institute are:

- (a) the Patents Department;
- (b) the Trademarks Department;
- (c) the International Relations Department.

Patents Department

12. The functions of the Patents Department shall be:

- (a) to receive, examine, search, register and keep the records and files of patent applications in conformity with the provisions of the relevant statutes;
- (b) to carry out the procedures relating to transfer, licensing and other amendments affecting patents and patent applications in accordance with the provisions of the relevant statutes;
- (c) to engage in action with respect to publication and classification and the keeping of the Patent Register;
- (d) to undertake such other functions as may be delegated to it by the Presidency.

Trademarks Department

13. The functions of the Trademarks Department shall be:

- (a) to receive, examine, search, register and keep the records and files of trademark applications in conformity with the provisions of the relevant statutes;

(b) to carry out the procedures relating to transfer, licensing and other amendments affecting trademarks and trademark applications in accordance with the provisions of the relevant statutes;

(c) to engage in action with respect to publication and classification and the keeping of the Trademark Register;

(d) to undertake such other functions as may be delegated to it by the Presidency.

International Relations Department

14. The functions of the International Relations Department shall be:

(a) to monitor and examine international agreements that have a connection with the functions of the Institute, and to undertake the necessary work to meet the requirements laid down by those agreements;

(b) to undertake the necessary action for participation in international agreements in accordance with the provisions of Law No. 1173;

(c) to submit proposals to the Presidency when amendments are required in the statutes;

(d) to monitor and procure foreign statutes;

(e) to undertake such other functions as may be delegated to it by the Presidency.

Section II **Auxiliary Service Units**

Auxiliary Service Units

15. The Auxiliary Service Units of the Institute are:

(a) the Personnel Department;

(b) the Administration and Finance Department;

(c) the Information and Documentation Department;

(d) the Data Processing Department.

Personnel Department

16. The functions of the Personnel Department shall be:

(a) to perform services associated with personnel file maintenance, service contracts, promotion, health, leave, travel, pay, and other personnel-related services;

(b) to organize in-service training programs and social services;

(c) to undertake such other functions as may be delegated to it by the Presidency.

Administration and Finance Department

17. The functions of the Administration and Finance Department shall be:

(a) to carry out the procedures relating to procurement, payments and the collection of revenue as required by the Institute in conformity with the provisions of the relevant laws and statutes;

(b) to submit proposals to the Managing Board regarding maintenance, repair and cleaning services and the procurement, sale or rental of the Institute's assets, and to implement them after their approval by the Managing Board;

(c) to arrange for an efficient inward and outward flow of files as well as for the storage of files;

(d) to keep a record of office equipment and supplies;

(e) to undertake such other functions as may be delegated to it by the Presidency.

Information and Documentation Department

18. The functions of the Information and Documentation Department shall be:

(a) to publish educational and general information books, brochures and periodicals on the action of the Institute;

(b) to publish documents on industrial property rights;

(c) to collect and store information and documents on patents and trademarks registered locally and abroad, and to place them at the disposal of the public;

(d) to publish the Official Industrial Property Gazette;

(e) to undertake such other functions as may be required of it by the Presidency.

Data Processing Department

19. The functions of the Data Processing Department shall be:

(a) to create a data processing system in the Institute and to operate and develop the related hardware and software;

(b) to store information and documents on industrial property rights in the memory of the computer system;

(c) to make the necessary arrangements for the appropriate units of the Institute to have ready access to the information stored in the computer system;

(d) to undertake such other tasks as may be delegated to it by the Presidency.

Consultative Units

20. The Consultative Units of the Institute are:

(a) the Research, Planning and Coordination Department;

(b) the Legal Department.

Research, Planning and Coordination Department

21. The functions of the Research, Planning and Coordination Department shall be:

(a) to assist in the preparation of the main policies and plans of the Institute;

(b) to develop plans and projects for the productive utilization of the manpower, funds, equipment and other such resources available for the performance of services in the most effective and economic manner;

- (c) to draw up the Institute's annual program of operations;
- (d) to monitor technological developments;
- (e) to engage in work on the evaluation of the technology requirements of the country's economic development;
- (f) to undertake such other tasks as may be delegated to it by the Presidency.

Legal Department

22. The functions of the Legal Department shall be:

- (a) to undertake updating work on the provisions of the statutes relating to industrial property rights;
- (b) to act as advisors to the Managing Board and Presidency on legal matters;
- (c) to keep available for use national and international laws, treaties, regulations, other statutes, reports and related works dealing with industrial property rights;
- (d) to represent the Institute before the courts;
- (e) to execute such other tasks as may be delegated to it by the Presidency.

Attorneys, Legal Advisors and other personnel working in the Legal Department shall also be entitled, in accordance with the provisions of Law No. 1389 on the Counselling Fees to be Awarded to Attorneys-at-Law Representing the State Before the Courts, to the counselling fee specified by the courts and execution offices.

PART III

APPOINTMENT, CONDITIONS, BUDGET AND PERSONNEL

Section I

Conditions of Appointment

Conditions of Appointment

23. The members of the Managing Board shall be appointed from among those who have completed a minimum of four years of higher education in law, engineering, economics, business administration or finance, have gained sufficient experience in the profession and have worked for a minimum total of 10 years at institutions referred to in Article 87 of Law No. 657. Those members shall also comply with the conditions laid down in paragraph A, with the exception of subparagraph 3, of Article 48 of State Personnel Law No. 657.

The members of the Managing Board, the President and the Vice-Presidents cannot be removed from office before the completion of their tenure. However, where they no longer comply with the terms of their appointment, or where they have committed offenses for which judgment has been passed by the courts in relation to duties entrusted to them by law, their duties deriving from office shall cease.

For appointments as department heads and to managerial positions, the length of service at the Institute and experience gained locally and abroad in the subject matter to which the appointment relates shall be evaluated and taken into consideration in addition to the requirements laid down in the State Personnel Law.

For appointments as heads of department and to managerial positions in the Patents, International Relations and Information and Documentation Departments, knowledge of at least one of the languages English, French and German shall be evaluated as a matter of priority.

Institute personnel with the exception of those to be appointed by joint decree shall be appointed by the Managing Board at the request of the President.

To be appointed to the Institute:

(a) as a junior expert, in addition to the requirements of the State Personnel Law, it shall be necessary:

1. to have graduated from a four-year university course;
2. to have passed the proficiency examination set;
3. to be under 30 years of age on January 1 of the year in which the proficiency examination is taken;

(b) as an expert, it shall be necessary to have worked at the Institute for a minimum of three years as a junior expert, to have obtained a favorable job reference and to have passed the proficiency examination.

Those who have failed two consecutive examinations shall be transferred to other appropriate positions.

Those to be appointed to the position of expert in the Technical Services Class shall be required to have a good knowledge of at least one of the languages English, French and German.

The principles and procedures applicable to junior experts and experts and their training arrangements shall be laid down in Implementing Regulations to be issued by the Ministry.

Section II

Inspection, Income, Expenditure and Budget

Inspection

24. For the purposes of inspection, the Institute shall be under the authority of the High Inspection Board.

Income, Expenditure and Budget

25. The income of the Institute shall consist of:

- (a) fees collected for the services rendered by it;
- (b) other income.

The fees for patent and trademark applications provided for in Schedule No. 8 of the Law on Duties No. 492 shall be collected by the Institute together with the fees for the Institute's own services. The amounts so collected shall be transferred to the Ministry of Finance by the twenty-first of the following month at the latest.

The expenditure of the Institute shall be conducted in accordance with the budget approved by the Managing Board.

Section III Personnel

Personnel

26. Notwithstanding the provisions governing personnel under service contract of State Personnel Law No. 657 and corresponding provisions in other laws, it shall be possible to use special service contracts for the appointment of personnel to the positions of President, Vice-President, Department Head, Legal Advisor, Advisor, Section Chief, Patent Expert, Trademark Expert, Expert, Junior Patent Expert, Junior Trademark Expert, Translator, Data Entry Clerk, Programmer and Computer Operator. Foreign experts may also be employed under service contracts. The employment of foreign experts shall be done in accordance with Implementing Regulations to be drawn up by the Institute and approved by the Ministry.

For tasks that require specific qualifications, special contracts may be entered into by order of the Managing Board.

Local and foreign personnel may be employed for medical and training-related activities with the approval of the Managing Board.

The principles and procedures applicable to contracts, salaries and other payments in connection with those employed under the above provisions shall be laid down by the Council of Ministers.

Personnel engaged under special service contracts shall be covered by the State Pension Fund if they so request.

The Institute may avail itself of the services of other local or foreign establishments for the performance of services in connection with patents and trademarks.

The fees payable to such establishments for the services rendered shall be collected by the Institute together with the fees for its own services, and the amounts corresponding to the fees accruing to the establishments shall be refunded by the Institute.

Staffing of the Institute

27. The creation, utilization and abolition of staff positions and other matters relating to staff positions shall be governed by the provisions of Decree-Law No. 190 on General Staffing Procedures.

PART IV OTHER PROVISIONS

Provisions Not to Be Implemented

28. The provisions of General Accounting Law No. 1050 shall not apply to acts and procedures engaged in by the Institute established by this Decree-Law. The Institute is moreover not bound by the State Tendering Law No. 2886 for its procurements, rentals and other action.

Implementing Regulations defining the procedures for the Institute's procurements, rentals and other action shall be drafted by the Institute and shall become effective after obtaining the Ministry of Finance's ratification on approval by the Ministry of Industry and Trade.

Implementing Regulations

29. The Implementing Regulations provided for in this Decree-Law that relate to the arrangements for the organizational structure of the Institute shall be prepared within three months after the first meeting of the Managing Board.

Persons Authorized to Be Representatives Before the Institute

30. The representation of holders of application rights in dealings with the Institute may only be undertaken by natural or legal persons having the following qualifications. Natural persons shall require the following qualifications to become agents:

- (a) they must be Turkish citizens;
- (b) they must possess legal maturity;
- (c) they must be domiciled in Turkey;
- (d) they must not have been convicted of a criminal offense;
- (e) they must have completed a minimum of four years of higher education;
- (f) they must have passed the proficiency examination for agents administered by the Institute as prescribed in the Implementing Regulations;
- (g) they must have obtained professional liability insurance of a value specified by the Managing Board of the Institute.

Legal persons acting as representatives shall be represented by a natural person who has the qualifications of an agent.

The proficiency examination for agents shall be held once a year for patent agents and trademark agents separately. Success in both examinations shall be required for qualification as both a patent and a trademark agent.

Patent agents and trademark agents shall be entered in the appropriate registers kept by the Institute.

Agents shall be responsible for representing the persons concerned in dealings with the Institute pertaining to the establishment and protection of industrial property rights and in all procedures for the establishment and conduct of relations with the administration. The relevant provisions of the Code of Obligations shall apply with respect to agents.

Those who have worked at the Institute for a minimum of three years as President, Vice-President, Department Head, Section Chief, Expert or Junior Expert shall, on leaving the Institute, be entitled to act as agents without undergoing the proficiency examination.

Provisions Repealed

31. The expression “Department of Industrial Property” in the ninth line of Annex 1, entitled Main Service Units of the Central Organization of the Ministry, subparagraph (i) of Article 8, subparagraph (f) of Article 2 and Article 15 of Law No. 3143 on the Organization and Functions of the Ministry of Industry and Trade, and also Decree-Law No. 518 are hereby repealed.

Provisional 1. All books, documents, periodicals, publications, files, computers and all such movable assets belonging to the Department of Industrial Property of the Ministry of Industry and Trade are hereby transferred to the Institute.

Provisional 2. The staff and auxiliary personnel working at the Department of Industrial Property of the Ministry of Industry and Trade on the date of entry into force of this Decree-Law shall have the right to join the staff of the Institute. Those transferring to the Institute from the Department of Industrial Property whose titles and positions have been altered shall be regarded as having been appointed to their new positions.

Those whose titles or positions have been altered or abolished shall be entrusted with appropriate responsibilities until they are appointed to their new positions, and shall receive salaries and other remuneration commensurate with their previous positions until such time as the amounts concerned are exceeded by the salaries and all other remuneration accorded them by virtue of their new positions.

Provisional 3. The Ministry of Industry and Trade shall continue to conduct all business relating to industrial property rights until the Institute is organized.

Provisional 4. The President, Vice-Presidents and members of the Managing Board shall be appointed, at the latest, within 15 days following the entry into force of this Decree-Law. The members of the Advisory Board shall be appointed within two months after the first meeting of the Managing Board.

Provisional 5. Those staff members of the Ministry of Industry and Trade, Department of Industrial Property, with a higher education degree who have been working for at least two years on industrial property matters on the date of entry into force of this Decree-Law shall be eligible, but not more than twice, to take the junior expert proficiency examination, regardless of their age and without having to meet the conditions laid down in the Implementing Regulations. Successful candidates shall be appointed to expert and junior expert positions according to their level of achievement in the examination.

Provisional 6. The positions created according to the schedule given in Annex 1 are hereby added to the schedules annexed to Decree-Law No. 190 as a section of the Institute.

The positions transferred from the Department of Industrial Property to the Institute under Decree-Law No. 518 and the positions created by the same Decree-Law are hereby repealed and deleted from the schedules of the Ministry of Industry and Trade annexed to Decree-Law No. 190.

Provisional 7. Those who do not comply with the provisions of subparagraph (e) of Article 3 shall be entitled to undergo the proficiency examination for agents not more than three times provided that they have each acted as agents for 20 applications a year, for every year without interruption during the four years preceding the date of entry into force of this Decree-Law. Such persons shall have the right to undergo examination only in the subject in which they have uninterruptedly acted as agents. Those applying to undergo both the patent and the trademark examination must, to be eligible, have acted as agents for a minimum of 20 applications pertaining to each subject in every one of the said four years.

Provisional 8. The first proficiency examination for agents shall be set within three months following the entry into force of the relevant Implementing Regulations. The results of the examination shall be announced within 15 days. After the announcement of the results of the examination, only those who have passed the examination shall have the right of representation before the Institute. Agents who have acted in relation to applications prior to the date of announcement may continue to act only in relation to those applications. For other applications of the same applicant filed after that date, only authorized agents registered with the Institute shall have the right to act.

Provisional 9. The expression “Ministry of Industry and Trade” used in the Patent Law dated March 23, 1879, and in Trademark Law No. 551 are hereby amended to “Turkish Patent Institute.”

As from the date of creation of the Turkish Patent Institute, patent and trademark applications shall be filed with the said Institute.

Provisional 10. The Institute’s expenditure for the 1995 financial year shall be met from the budget of the Ministry of Industry and Trade.

Provisional 11. The title “President of the Turkish Patent Institute” following the title “President of the Insurance Audit Board” in part (*d*), and the expressions “patent expert” and “trademark expert” at the end of part (*h*) are hereby inserted in Section I—General Administrative Services Class of Schedule No. I, and the title “Vice- President of the Turkish Patent Institute” are inserted after the title “Vice-President of the State Personnel Directorate” in Section I—Judicial Institutions, Attached Institutions and Higher Education Institutions of Schedule No. II of State Personnel Law No. 657.

Provisional 12. The following amendments are hereby made to State Personnel Law No. 657:

(*a*) insertion of the expressions “Assistant Trademark Expert,” and “Assistant Patent Expert” after the expression “Assistant Consumer and Competition Expert,” and insertion of the expressions “Trademark Expert” and “Patent Expert” after the expression “Consumer and Competition Expert” in paragraph (11) of the “Common Provisions” section of Article 36;

(*b*) insertion of the expressions “Trademark Experts” and “Patent Experts” after the expression “Consumer and Competition Experts” in subparagraph (*i*) of paragraph A—Special Service Compensation under Section II—Compensations of the Article entitled “Salary Increases and Compensation.”

Entry Into Force

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

Execution

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

* *Entry into force:* June 24, 1994.

Source: Communication from the Turkish authorities.

Note: Translation by the International Bureau of WIPO on the basis of an English translation supplied by the Turkish authorities.

** Added by the International Bureau of WIPO.