



International report - European patent validation and avoiding double patenting

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Double patenting is prohibited in Turkey under Article 21 of the Implementing Regulations to the European Patents Convention.

Under Article 21, if a European patent which designates Turkey and a national patent is granted to the same person, for the same subject matter and with the same application or priority date, the national patent lapses at the end of the opposition term set out in the European Patent Convention if:

- the European patent is maintained as a result of oppositions; or
- the opposition term expires without any opposition.

However, under Article 12 of the implementing regulations, a European patent which designates Turkey should be validated in Turkey by filing a translation of its *European Patent Bulletin* entry – including its description, claims and drawings – and paying the relevant fee within three months of its publication in the bulletin. Applicants may extend this deadline by a further three months if a request is made within the first three-month period and the relevant fee is paid. Accordingly, the maximum term in which to validate a European patent in Turkey is six months – otherwise, the patent will be deemed retroactively invalid.

Articles 12 and 21 appear contradictory. An applicant that waits for the nine-month opposition term established by the European Patent Convention to expire will lose its right to have the patent



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validated in Turkey. While a European patent can be maintained after resolving any opposition, this may revoke the right to have it validated in Turkey because, under Article 12, it should be done within three months (or six months with an extension) of its publication in the bulletin.

In light of this contradiction and the potential for loss of rights, the Patent and Trademark Office has offered a practical solution. European patents which designate Turkey should be validated within the prescribed timeframe in Turkey. However, when granting both a European patent in which Turkey was designated and a national patent, the Patent and Trademark Office will permit the two patents (ie, a European patent and a national patent) to co-exist until the opposition term expires or is concluded.

If the European and national patents have the same scope, applicant, application date or priority date at the end of these terms, the national patent will be lapsed and the validated European patent will remain.

Although double patenting is normally prohibited, the Patent and Trademark Office may condone it under these circumstances.

At the end of an opposition term, if a patent is limited and therefore the scope of protection is differentiated from the national patent, these will become two different patents and both of them will be protected in Turkey without breaching any anti-double patenting regulations.

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