

The Regulation on Employee Inventions

The Regulation on Employee Inventions, Inventions Realised within Higher Education Institutions and Inventions Arisen from Projects Supported by Public Authorities entered into force on September 29 2017.

Under the regulation, if an employer demands a full or partial right to an employee invention, reasonable compensation and an award should be paid to the employee. The regulation sets out rules for calculating reasonable awards – in particular, in addition to compensation, the amount should be no less than the net minimum wage.

In principle, the amount of compensation is determined by the parties via a signed agreement, following a full or partial claim. In case of a dispute – especially if the revenue of the invention is indeterminable – compensation is determined by comparing or according with a determinable profit of enterprise from the invention or the reasonable amount the employer would pay if it wanted to purchase the invention. Further, invention revenue is considered equal to revenue earned from:

- a granted licence;
- selling the invention; or
- setting off the invention.

Under existing IP law, after claiming rights to the work-related invention, an employer cannot refuse to pay the inventor's compensation by arguing that the invention is not worth protecting. This provision was open to the interpretation that, where an invalidation action filed against the patent was accepted by the competent court, the employee could not demand compensation over his or her invention. However, the new regulation clarifies this issue by stating that the period up to the finalisation of the invalidation action will be considered for calculating an employee's compensation and award.

Within 8 months term until the Regulation come into force and clear the situation about the impact of the invalidity decision on the patent, some well known local pharmaceutical companies have invalidation actions filed by third parties against their own patents in order not to pay compensation for the work-related inventions. All of these actions have become useless thanks to clarifying provisions of the Regulation.

Another important point is that the Section 1 of the new regulation establishes rules regarding the "route of arbitration that will be followed in case of dispute". Any dispute that falls under the scope of the regulation must be solved via arbitration. However, arbitration is an alternative route that may be decided by the relevant parties in an agreement or ordered by law. Therefore, it is legally impossible to introduce compulsory arbitration via regulations. Under Turkish law, it is rare even for a law to make arbitration compulsory, as this would limit the authority of the courts and may hinder the constitutional right of freedom of justice.

Section 1 of the new regulation and many other provisions that will be affected by it are subject to cancellation actions before the Council of State on the grounds that the regulation exceeds the authority permitted by law and violates the Constitution.



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