



PATENT LAW IN TÜRKİYE  
KEY DEVELOPMENTS AND PREDICTIONS

2026

# Patents and Utility Models

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# Introduction

Patent law is becoming increasingly complex and multi-layered each year as a result of accelerating technological developments, the growing number of cross-border disputes, and the evolving body of judicial case law. The year 2025 witnessed significant developments—both globally and in Türkiye—that shaped the trajectory of patent litigation. Court decisions and academic discussions brought forward new questions and perspectives regarding the scope of patent protection and the manner in which it is enforced. By its very nature, patent law continues to evolve through the interaction between technological innovation and legal interpretation, an interaction that continuously reshapes the boundaries of patent protection mechanisms.

One of the issues that came to the forefront in Türkiye in 2025 in the context of patent disputes was the economic consequences of preliminary injunctions, and in particular the question of how damages arising from wrongful preliminary injunctions should be calculated. Where a preliminary injunction frequently sought in patent litigation is later found to have been unjustified, the criteria according to which the resulting damages should be assessed have become the subject of intense debate both in practice and in academic literature. Questions such as how to evaluate lost profits, market share, commercial reputation, and hypothetical alternative scenarios have gained particular prominence. These discussions once again demonstrated that the institution of preliminary injunctions is not merely a procedural tool, but also a strategic mechanism capable of producing substantial economic consequences.

Developments at the international level further illustrate that patent law is increasingly acquiring a distinctly transnational character. In particular, with the entry into operation of the Unified Patent Court (UPC), patent disputes in Europe have begun to be addressed within a new judicial architecture. The decisions rendered by the Court have started to produce consequences extending beyond the states participating in the UPC system and have become closely relevant to the European patent system as a whole. In this context, the limits of the UPC's international jurisdiction and the debates surrounding its cross-border reach—often referred to as “long-arm jurisdiction”—have emerged as a particularly noteworthy area of development. Although Türkiye is not a party to the UPC system, discussions have increasingly focused on the potential indirect implications of UPC decisions for Turkish companies within the broader framework of jurisdictional rules under European Union law. In addition, the manner in which the doctrine of equivalents is interpreted and applied across different legal systems has been another important topic of debate in 2025. In particular, the question of whether the approach to equivalence applied under Turkish patent law demonstrates any degree of convergence with the emerging case law of the UPC has generated a noteworthy discussion from both theoretical and practical perspectives. The role of the doctrine of equivalents in determining the scope of patent protection, the mutual influence of approaches developed in different jurisdictions, and the implications of these approaches for cross-border disputes appear likely to remain significant in the years ahead.

Debates concerning the conceptual boundaries of patent law also gained notable intensity in 2025. In the context of determining the scope of prior art, the question of whether a product available on the market can truly be regarded as part of the prior art has been reconsidered through the perspective often described as the “Schrödinger paradox.” In addition, the issue of double patenting and the different approaches developed across legal systems to address this matter continue to play an important role in defining the limits of patent protection.

Certain decisions rendered within the framework of European law have also established noteworthy precedents concerning the legal consequences of statements made about competing products in a competitive market environment. In particular, the question of under what conditions technical or commercial statements regarding competing products may give rise to legal liability has brought the intersection between patent disputes and competition law back to the forefront. The potential reflections of such developments in Turkish practice will continue to be closely monitored in the coming period.

In summary, developments in 2025 once again demonstrated that patent law is far more than a purely technical field of rights. Rather, it is a multidimensional area of law shaped by debates on international jurisdiction, preliminary injunction practices capable of producing substantial economic consequences, and conceptual discussions that challenge the doctrinal boundaries of the discipline. Strengthening legal certainty, enhancing the predictability of judicial case law, and ensuring a balanced interpretation of international developments within national practice remain of critical importance for a sustainable patent system that supports innovation.

It is our hope that this study, which examines the key developments, debates, and noteworthy decisions that shaped patent law throughout 2025, will prove useful to legal practitioners, patent holders, industry representatives, and all stakeholders with an interest in this field.

# Table of Content

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## 04

Can the Exercise of Patent Rights Be Limited by Allegations of Unfair Competition?

---

## 07

Schrödinger's Paradox in the Patent World: Can a Marketed Product Fall Outside the Prior Art?

---

## 09

Compensation for Unjust Preliminary Injunctions in Pharmaceutical Patents and Critical Parameters

---

## 12

Prohibition of Double Patenting: Assessment within the Framework of the Turkish Patent Office Practice

---

## 15

An Assessment of the Unified Patent Court's International Jurisdiction and the Sovereign Response of Third States in Light of Recent Case Law

---

## 19

An Important European Precedent Legal Consequences of Statements Concerning Competitors and Its Implications for Türkiye

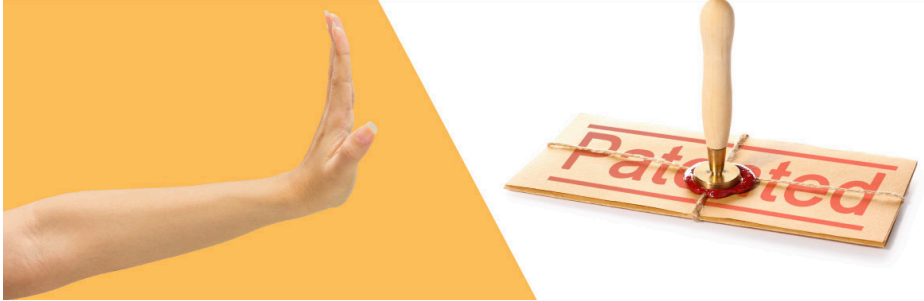
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## 22

Functional Equivalence Across Jurisdictions Convergence Between Turkish Patent Law and the Unified Patent Court

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# Can the Exercise of Patent Rights Be Limited by Allegations of Unfair Competition?



Undoubtedly, the initiation of patent infringement actions by patent holders for the purpose of protecting their exclusive rights, as well as the notification of third parties outside the proceedings who are suspected of involvement in infringing activities, fall within the scope of the rights conferred by patent law. Nevertheless, particularly in disputes between originator and generic pharmaceutical companies, the boundary between the exercise of patent rights and the prohibition of unfair competition frequently becomes the subject of legal debate.

In this article, claims of unfair competition brought against a patent holder—arising from the filing of a patent infringement action and the sending of a warning letter to a third-party contract manufacturer during the course of the proceedings—together with the accompanying claims for pecuniary and non-pecuniary damages, are examined within the framework of a recent reversal decision of the Court of Cassation (Yargıtay).

As is well known, patent rights grant the patent holder monopoly-like exclusive rights for a limited period of time. The effective protection of these rights may necessitate the initiation of legal proceedings against acts giving rise to a suspicion of infringement and, where appropriate, the notification of third parties. When the exercise of such patent-derived rights intersects with the unfair competition provisions regulated under the Turkish Commercial Code (“TCC”), the question of where the lawful boundaries of conduct begin and end gains particular importance.

The subject of this article is a recent Court of Cassation decision dated May 2025, in which the Court sets out significant principles regarding whether the filing of a patent infringement action and the sending, during the proceedings, of a warning letter to a third-party contract manufacturer of the alleged infringer may give rise to liability for unfair competition.

In the concrete dispute underlying the Court of Cassation's decision, the originator company filed a patent infringement action against a generic company based on its patent rights.

During the proceedings, the claimant patent holder sent a warning letter to the contract manufacturer, providing information regarding the scope of the relevant patent and the existence of the pending litigation, and requested that the patent rights be respected. In the said warning letter, no comments were made regarding the possible outcome of the ongoing proceedings, nor were any false or misleading statements included.

During the course of the patent infringement proceedings, following access to evidence—namely, the initial review of the generic marketing authorization dossiers and the expert report obtained—the patent holder concluded that the generic product did not fall within the scope of the patent. Accordingly, the patent holder declared that the proceedings should be terminated without delay and requested the closure of the evidentiary phase. Ultimately, the patent infringement action was dismissed without any preliminary injunction having been granted; the decision was not appealed and thus became final.

Subsequently, the generic company initiated a separate action against the patent holder, asserting claims for pecuniary and non-pecuniary damages based on allegations of

unfair competition. The generic company argued that, due to the patent infringement action and the warning letter sent by the patent holder to the contract manufacturer responsible for filling the product alleged to infringe, it had been unable to place its product on the market, had missed the opportunity to become the first generic entrant, and that these acts collectively constituted unfair competition.

The court of first instance held that, although the warning letter sent to the third-party contract manufacturer contained factually accurate information, it nevertheless created the impression that a preliminary injunction might be granted. The court found that this impression led the contract manufacturer to suspend production and, on this basis, concluded that the patent holder had acted in violation of the principle of good faith within the meaning of Article 54(2) of the TCC, thereby giving rise to unfair competition. While the court dismissed the claim for pecuniary damages on the grounds that it had not been proven by evidence, it upheld the claim for non-pecuniary damages, holding that the claimant's loss of reputation constituted moral harm.

Although the patent holder's appeal was rejected by the 14th Civil Chamber of the Istanbul Regional Court of Justice, a further appeal was lodged before the Court of Cassation, acting in its capacity as the highest court. Upon review, the Court of Cassation

ruled to reverse the decision of the 14th Civil Chamber of the Regional Court of Justice, which had rejected the appeal on the merits. The key points highlighted in the Court of Cassation's reversal decision, grounded in law and equity, may be summarized as follows:

i. Exercise of Patent Rights and Lawfulness

According to the Court of Cassation, the filing of a patent infringement action by the patent holder and the notification of third parties in relation to such action fall within the scope of the rights arising from the patent. The exercise of patent rights in this manner cannot, in itself, be characterized as unfair competition.

ii. Assessment of the Content of the Warning Letter

The Court determined that the warning letter under review:

- did not state that patent infringement had been definitively established,
- did not create a false or misleading impression as if a preliminary injunction had already been granted, and
- provided accurate and objective information regarding the ongoing proceedings.

Accordingly, the Court concluded that the warning letter could not be regarded as false, misleading, or disparaging in nature.

iii. The Principle of Good Faith under Article 54 of the TCC

The Court of Cassation held that the patent holder's conduct did not violate the principle of good faith within the meaning of Article 54 of the TCC. It emphasized that, while a legal dispute concerning the existence of patent infringement remains pending, the patent holder's act of informing third parties of such dispute cannot be deemed a breach of the duty of good faith.

The decision of the Court of Cassation constitutes a significant clarification of the boundaries between the lawful enforcement of patent rights and the prohibition of unfair competition. By expressly affirming that the initiation of patent infringement proceedings and the good-faith notification of third parties fall within the legitimate scope of patent rights, the Court has curtailed the risk of unfair competition claims being deployed as a strategic countermeasure to patent enforcement. Importantly, the ruling underscores that the decisive criterion is not the commercial impact of the patent holder's actions on competitors, but whether such actions are carried out in an objective, proportionate, and non-misleading manner, in accordance with the principle of good faith. From a practical perspective, the decision provides much-needed legal certainty for patent holders, particularly in the pharmaceutical sector—by confirming that the fear of subsequent unfair competition liability should not deter them from asserting their rights, provided that communications with third parties are factually accurate and refrain from prejudging the outcome of pending proceedings.

# Schrödinger's Paradox in the Patent World: Can a Marketed Product Fall Outside the Prior Art?



On 2 July 2025, the Enlarged Board of Appeal of the European Patent Office ("EPO"), in its decision G 1/23, clarified whether a product already placed on the market, but whose internal structure cannot be analysed or reproduced by the skilled person, may nevertheless be excluded from the state of the art in the assessment of inventive step. In doing so, the Board added a new dimension to the ongoing debate following decision G 1/92.

The dispute giving rise to the decision concerned opposition proceedings initiated by Borealis against European patent EP 2 626 911 ("EP911"), owned by its competitor Mitsui Chemicals, which related to a solar cell encapsulant material and a solar cell module. Borealis argued that ENGAGE® 8400, a polymer marketed by the patentee, was commercially available at the filing date of EP911 and therefore had to be taken into account as prior art in the assessment of inventive step.

Although both parties agreed that ENGAGE® 8400 was a complex polymer, that its manufacturing process was not publicly available, and that the complete reproduction of a complex polymer (even if its final product could be analysed by the skilled person) was not straightforward, they diverged in their interpretation of the much-debated G 1/92 holding: "The chemical composition of a product is considered part of the state of the art once the product itself has been made available to the public and can be analysed and reproduced by the skilled person."

The patentee, relying on a narrow reading of G 1/92, argued that since ENGAGE® 8400 could not be fully reproduced by the skilled person, it should not be considered part of the prior art at all. Borealis, by contrast, contended that G 1/92 should be interpreted more broadly: any characteristics of a product that was publicly available before the filing date and could be analysed, should form part of the prior art, even if the product could not be fully reproduced.

Although the Opposition Division initially rejected Borealis's inventive-step objections, the case was first taken to the Board of Appeal, which decided to further refer it to the Enlarged Board of Appeal.

In its assessment, the Enlarged Board of Appeal rejected the idea that a product already on the market could be treated "as if it did not exist," noting that such an approach would not reflect practical reality. The Board held that G 1/92 required broader interpretation. Whether a marketed product can be reproduced is, according to the Enlarged Board, a matter of proof to be assessed in each individual case; but the mere fact that it cannot be reproduced does not justify excluding it from the state of the art.

Most importantly, with G 1/23, the test of "analysability + reproducibility" was abandoned. The Enlarged Board considered that analysability (i.e., the ability of the skilled person to determine the product's composition/properties through reasonable effort) is sufficient for the product to belong to the state of the art. Reproducibility is no longer a mandatory requirement. According to the decision, if a product is publicly available and the skilled person can understand its features—wholly or in part—that knowledge forms part of the prior art. Moreover, "reproduction" must be understood broadly: it does not mean that the skilled person must be able to manufacture the product themselves, but rather that they must be able to obtain or possess it (for example, by purchasing it). Thus, a marketed product cannot be excluded from the prior

art merely because its full composition or structure cannot be completely analysed or identically reproduced.

In September, The Board of Appeal applied G1/23 for the first time in its decision numbered T 0143/24. The decision referred for appeal was rendered by the Opposition Division before G 1/23 came out and the Division had reasoned that, even though the applicant presented two polyethylene resin products that were already on the market before the priority date, these products did not belong to the state of the art, as there were no public disclosure explaining the products or their means of manufacture.

During the appeal review, the Board of Appeal implemented the G 1/23 principle to the case at hand and reached the conclusion that the products presented by the applicant should be considered as the closest prior art, regardless of the absence of detailed explanations on how to manufacture them and considered in the novelty and inventive step examinations.

The finding of G 1/23—that products already on the market but not fully reproducible by the skilled person are nevertheless prior art—has undeniable potential to reshape both claim-drafting practices and even marketing strategies of patent proprietors. Furthermore, it is indisputable that companies investing in R&D will need to re-examine the fine line between keeping product development as a trade secret and filing a patent application. It is beyond doubt that this decision will reverberate in the patent world for years to come.

# Compensation for Unjust Preliminary Injunctions in Pharmaceutical Patents and Critical Parameters



One of the most complex types of disputes encountered in the field of pharmaceutical patents is compensation lawsuits arising from unjust preliminary injunctions. These compensation lawsuits require meticulous assessment from the perspective of both procedural law and substantive law. Especially, because of the controversies over the nature of fault-based liability arising from the ambiguities in the wording of Article 399 of the Code of Civil Procedure (“CCP”), and where patent law, procedural law, competition law, and economic analyses intersect regarding the calculation of lost profits suffered by generic pharmaceutical companies, the specific features of the concrete case play a decisive role.

Under Article 399 of the CCP, the party in whose favour the preliminary injunction was granted; in cases where it is understood that the party was unjustified at the time of the requesting the preliminary injunction, or if the injunction order expires automatically, or is set aside upon objection, is liable to compensate the damages suffered by the

opposing party due to the unjust preliminary injunction. Although the framework looks like an objective liability regime at first sight, the interpretation of the criterion of “being unjustified at the time the claim is made” is controversial in both doctrine and practice. According to our view, in the infringement actions based on a pharmaceutical patent, upon the infringement being established at an approximate level of proof through technical expert reports and the preliminary injunction decision granted on the basis of a legally valid patent, subsequent revocation of a patent due to invalidity should not be the only reason render the preliminary injunction unjustified. Therefore, since the element of “unjust” required by law did not occur at the time of the request for the injunction, it would be contrary to the principle of equity to grant the owner of the generic drug the right to compensation.

In this article, the compensation lawsuit to be filed in the situation that the preliminary injunction decision is lifted and the patent infringement action on the merits is concluded

against the patent holder, the elements must be proven by the generic firm against whom the injunction order was granted, along with the criteria to be considered in the calculation of compensation, will be examined in light of concrete judicial decisions.

Following the removal of the preliminary injunction, for damages to be awarded in favour of the party against whom the injunction order was granted; it is mandatory to prove, through concrete, objective, and verifiable evidence, the damages incurred due to the “unjust injunction” and the causal link between said damages and the unlawful act (so, the unjust injunction). Because the party claiming compensation bears the burden of proving the potential profit it would have earned had the preliminary injunction not been granted and that it was deprived of this profit due to the injunction.

Another crucial point is the duration of the preliminary injunction alleged to have been unjust. Because this duration should be taken as a basis for calculating the damage. Another point that should be considered is the calculation of the injunction period must be based on the date of actual execution rather than the issuance date of the decision. The damage of the party claiming compensation is deemed to have arisen during the period between the date on which the injunction was actually enforced and the date on which it was lifted.

For calculation of the damages, it is crucial to reconstruct the conditions prevailing during the period when the injunction was in force and to calculate the damage in light of this simulation of the material reality. For example, in case of a pharmaceutical patent, the actual price of the generic product at that date which was excluded from the market due to the injunction order must be taken into consideration. The real price must be calculated by deducting VAT, wholesaler’s margin, pharmacist’s margin, and mandatory Social Security Institution discounts from the retail price. Moreover, to prevent compensation from becoming enrichment technique, production, operation, management, distribution, and other costs should be also taken into account while calculating compensation.

Furthermore, to ensure an objective and equitable assessment of damages based on economic reality, the determination of the actual price must incorporate surplus discounts and discretionary rebates, reflecting the inherent dynamics of the pharmaceutical industry.

It is significant to establish, based on concrete and objective criteria, the extent of market share which a pharmaceutical product could capture for the calculation of lost profits due to unjust preliminary injunction. In this consideration; recognition of the brand and capital strength of the generic firm, the nature and frequency of use of the pharmaceutical

subject to the injunction, the prescribing trends of physicians, the number of other generic products in the market, and similar sectoral factors play a direct and decisive role in each specific concrete case. At this point, IQVIA (IMS) data are considered to be decisive evidence and must be taken into account in compensation proceedings. Because this data, which reveal the actual sales movements in the market, make it possible to determine the market share objectively rather than abstract admissions. Failure to take into account the sales performance of the generic firm in compensation calculations will render the market share assessment incomplete and inaccurate.

In the first decision dated 2018, which was rendered based on a compensation claim arising from an unjust preliminary injunction in pharmaceutical patents, the fact that the plaintiff generic firm didn't launch the product even after the injunction was lifted created necessity for calculation of the compensation amount based on a simulation. Due to the absence of market data, the court relied on a simulation submitted by the originator firm, that was created on the basis of criteria like the features of the market, the pricing and performance of competing generics, the profit distribution in similar markets, and the generic product's ability to penetrate into the market. Accordingly, the Court held that the market share of the first equivalent product to enter the market would have been 16% had its market entry not been prevented by the preliminary injunction decision. The

said judgment was upheld following both appellate and cassation review and has become final.

Exactly 4 years after the first decision, in 2022, another court of first instance issued a new ruling in a case where the generic product was launched after the injunction was lifted. This time, the court calculated the compensation by examining the IMS data as well as the plaintiff's commercial books and pricing data and ultimately based its assessment on a market share of 33.86%. This decision is currently under appeal review.

In these proceedings, although the generic companies seeking damages claimed exorbitant amounts of profit and market share, it was accepted that these claims were unrealistic and that the amounts of damages sought were excessive.

As it seen, compensation lawsuits arising from unjust preliminary injunctions require a highly complex and multi-layered judicial assessment. Therefore, factors such as the extent of each medicinal product's indications, pricing, prevailing market conditions, the commercial reputation and brand strength of the original product, and the efficacy and safety of the generic product directly affects the competitive environment. Accordingly, each case requires a specific assessment based on each concrete case.

# Prohibition of Double Patenting: Assessment within the Framework of the Turkish Patent Office Practice



The prohibition of double patenting is a fundamental principle in patent law that aims to prevent obtaining multiple patent protection for the same invention. This prohibition is intended to prevent both the granting of a second patent for the same invention (narrow sense of double patenting) and the effective extension of the protection period through applications that are not substantially different from each other and contain the same invention idea in terms of technical contribution (broad sense of double patenting). The principle is based on the exceptional nature of the monopoly right granted by the patent system and the fact that its duration is limited by law; since the repeated protection of the same technical teaching through different applications or claims undermines the legal certainty of third parties, unnecessarily restricts free competition, and causes technical information that should become freely available to the public upon the expiration of the patent term to remain subject to private rights. Consequently, the prohibition of double patenting is a structural limitation that balances the scope and

duration of patent protection and ensures proportionality between the public interest and the interests of the rights holder.

According to Article 145(2) of the Industrial Property Law ("IPL"), "No more than one patent or utility model, or both of these documents, shall be granted to the same person or their successor, independently of each other, for the same invention and with the same scope of protection." The prohibition of double patenting defined by these provisions is a principle of patent law that prevents the same invention from being protected by more than one patent in favor of the same person. Similarly, according to Article 21 of the Regulation on the Application of the European Patent Convention Concerning the Granting of European Patents ("Regulation"), "If the same person or their successor in title has requested the same priority date, on the same filing date or, if a priority date is claimed, on the same priority date, for the same subject matter, both a European patent for which Turkey is designated and a national patent or

utility model certificate, the European patent shall continue unchanged following the opposition proceedings or, if no opposition is filed during the opposition proceedings, the national patent or utility model certificate shall expire at the end of the opposition period.” This article states that when both a European patent for which Turkey has been selected and a national patent certificate are granted for the same subject matter, and if it is decided that the European patent shall continue unchanged as a result of the opposition proceedings or if no opposition is filed during the opposition proceedings, the national patent shall expire at the end of the opposition proceedings.

To the view, neither the IPL nor the Regulation requires claims to be word-for-word identical for double patenting to be considered. What matters is that the subject matter of the claims is the same and that the technical solution and technical effect provided by the patent overlap. This prohibition aims to prevent the circumvention of the limited patent protection period, ensure legal certainty, and prevent the excessive expansion of the property rights protected by the patent. Although there is no established practice example of the Turkish Patent and Trademark Office (“TÜRKPATENT”) conducting ex officio double patenting monitoring and examining patent applications in terms of the double patenting prohibition, it has been observed that it conducts evaluations within the framework of the double patenting prohibition in examinations conducted upon objection.

In the case that serves as an example for the assessment in question, a national application was filed with TÜRKPATENT, followed by an international PCT application with priority claimed, and this application was filed with the European Patent Office (“EPO”) by selecting the EPO. Following the examination conducted at the EPO, a patent with the same subject matter and set of claims was registered. No opposition was filed during the opposition period against this patent registered at the EPO, and after the opposition period ended and the patent became final, the patent was validated in Turkey and became valid in Turkey with a new number at TÜRKPATENT. Consequently, as a result of all these procedures, there are two registered patents on the same subject matter granted to the same person at TÜRKPATENT. Upon learning of the second registration, which violated the prohibition on double patenting, an application was made to the TÜRKPATENT Patent Department requesting that the first registered patent be removed from the register, as its validity had expired in accordance with Regulation Article 21. However, TÜRKPATENT evaluated the patents in question by considering only the wording of their independent claims No. 1 and disregarding the differences arising from the translation. It stated that the newly registered patent offered a “different approach” with a different definition and decided to reject the request. The abstract expression “a more different approach” used in the decision was not justified technically or scientifically.

In the aforementioned rejection decision, Regulation Article 21 was misinterpreted. Despite the extremely clear wording of the Regulation provision, instead of assessing whether the two patents were on the same subject matter, an erroneous decision was made by comparing the words in the claims of both patents one-to-one and conducting a photographic assessment. An appeal was filed against this decision before the Re-examination and Evaluation Board ("Board") pursuant to Article 100 of the IPL. In its evaluation, the Board decided to accept the appeal. The Board decision highlighted four criteria:

For two patents to cause double protection under the IPL, both patents must:

- Belong to the same person or their successor.
- Have the same application date (or the same priority date if priority rights are claimed).
- Be on the same subject matter.
- The European patent must be maintained unchanged following the opposition proceedings, or no opposition must be filed during the opposition proceedings.

In the Board decision, each criterion was evaluated individually, taking both patents into account and while it is permissible to pursue two applications simultaneously that have the same specification but do not claim the same subject matter in their claims (the decision also refers to EPO Board of

Appeal decision T 2461/10 in this regard), it is stated that the basis for the "same subject matter" assessment should be the claims, not the specification. In this context, after the comparison based on the claims, it was concluded that the patents were "on the same subject matter," even though the wording of the claims was not identical and/or the location of the elements was not exactly the same. The objection was accepted, and since the first registered patent had expired, it was decided to remove it from the register. With this decision, TÜRKPATENT correctly pointed out that it is incorrect to take a photographic approach, such as considering whether the claims of the patents in question are identical or very similar, when assessing whether there is a violation of the "double patent" prohibition, and that the decision should be made by determining whether the subject matter of the invention is the same within the scope of protection of the claims.

# An Assessment of the Unified Patent Court’s International Jurisdiction and the Sovereign Response of Third States in Light of Recent Case Law



The scope of the international jurisdiction of the Unified Patent Court (“UPC”) has, in recent years, become one of the most striking and controversial issues in patent litigation. Having commenced its operations in 2023, the Court was established with the objective of creating a uniform and centralized patent adjudication system across Europe. However, through its recent decisions, the UPC appears not to confine its jurisdiction to Contracting Member States alone, but rather to extend it so as to encompass non-contracting states as well.

The issue commonly referred to as “long-arm jurisdiction” in the context of EU courts — and now associated with the UPC — finds its roots in the answers given by the Court of Justice of the European Union (“CJEU”) to preliminary references submitted by national courts of EU Member States in cross-border infringement disputes.

In disputes concerning European patents, the

starting point of the “long-arm jurisdiction” debate is often considered to be the CJEU’s judgment of 25 February 2025 in Case C-339/22, BSH Hausgeräte GmbH v Electrolux AB. This is not because the question of cross-border jurisdiction of EU courts was raised for the first time in that case. On the contrary, earlier jurisprudence — notably *Roche Nederland BV and Others v Frederick Primus and Milton Goldenberg and Solvay SA v Honeywell Fluorine Products Europe BV* — had already laid important foundations. What distinguishes *BSH v Electrolux* is that it systematized and reinterpreted previously fragmented CJEU case law specifically in the context of patent infringement claims and invalidity defenses.

In that dispute, BSH alleged that Electrolux’s activities in various European countries infringed different national patents derived from the same European patent, including the Turkish validation. The action was brought before the Swedish courts, as the courts of

the defendant's domicile. Electrolux raised a jurisdictional objection, arguing that a national court may adjudicate only infringements of patents valid within its own territory and lacks jurisdiction to rule on patents valid in other states.

The referring court was uncertain how the general rule of jurisdiction under Article 4 of the Brussels I-bis Regulation — conferring jurisdiction on the courts of the defendant's domicile — should operate in light of the exclusive jurisdiction rule concerning validity proceedings, which reserves such jurisdiction to the courts of the state in which the patent is registered. It therefore referred the matter to the CJEU.

The decisive distinction drawn by the CJEU concerned the relationship between infringement proceedings and patent validity. While confirming that jurisdiction to rule on the validity of a patent belongs exclusively to the courts of the state concerned, the Court clarified that this exclusive jurisdiction does not displace the jurisdiction of the courts of the defendant's domicile in infringement actions. In other words, the mere invocation of an invalidity defense does not deprive the court seized of jurisdiction over the infringement claim. Validity may either be treated as a preliminary issue for the purposes of the infringement analysis or left to separate revocation proceedings, but the infringement action itself may proceed.

Following the CJEU's *BSH v Electrolux*

judgment, particular significance has attached to the question of how international jurisdiction will be determined in actions brought before the UPC alleging infringement of the same European patent in multiple countries. The issue becomes especially critical where the countries in which infringement is alleged include states that are not members of the EU — and therefore not part of the UPC system — but are parties to the European Patent Convention ("EPC") and where the European patent in suit has been validated.

This matter is of particular importance for states such as Türkiye, the United Kingdom, Switzerland and Norway, which are parties to the EPC but remain outside the EU/UPC framework.

Indeed, in its decision of 28 January 2025 in Case No. UPC\_CFI\_355/2023 (*Fujifilm v Kodak*), the Düsseldorf Local Division held that the defendants' domicile in an EU Member State sufficed to establish UPC jurisdiction to adjudicate infringement claims concerning the United Kingdom part of a European patent. However, the Court also ruled that it lacked competence to revoke the UK national part of the European patent with erga-omnes effect.

At the same time, the Court clarified that in an infringement action before the UPC concerning the UK validation of a European patent, the defendant may raise an invalidity defense without being required to initiate

separate national revocation proceedings in the United Kingdom. In such a case, the UPC would assess validity only as a preliminary issue for the purposes of the infringement analysis.

Another noteworthy decision in which infringement of a European patent in a non-UPC state was invoked before the UPC is the Milan Local Division's order of 8 April 2025 in Case No. ORD\_64124/2024 (Alpinstars S.p.A. v Dainese S.p.A.). In that case, the Milan Local Division interpreted Articles 4 and 71b(3) of the Brussels I-bis Regulation in conjunction. The Court concluded that where the defendant is domiciled in a UPC Member State, and provided that there is a sufficient connection between the alleged infringements, the claims are not necessarily limited to UPC Member States. At the same time, the Court expressly acknowledged the continued existence of the European patent as a bundle of national rights and emphasized that the assessment must be conducted separately under the applicable national law for each country concerned.

By positioning the defendant's domicile within the EU as the central and decisive criterion, the Court shifted the axis of international jurisdiction debates in European patent law.

While non-EU and non-UPC states have questioned the legal and equitable foundations of this expansive approach, the Hamburg Local Division has taken the matter

even further. In its decision of 14 August 2025 in Case No. UPC\_CFI\_387/2025 (Dyson Technology Ltd v Dreame Technology (Tianjin) Co., Ltd.), the defendant was not domiciled in an EU Member State but was an EU-external manufacturer. The UPC nevertheless asserted jurisdiction on the basis that the products were introduced and marketed in Europe pursuant to a single commercial plan and organizational structure.

The Court considered that, although the defendant was not EU-domiciled, its activities were carried out through European subsidiaries and operational infrastructure, thereby establishing a sufficiently close connection with Europe. As a result, jurisdiction was linked not merely to formal domicile but to the center of economic activity directed at the European market. The UPC thus effectively expanded its jurisdiction by grounding it in a unified economic infringement strategy rather than the classical domicile-based connecting factor.

Taken together, these recent decisions demonstrate that the UPC's jurisdiction extending toward non-Contracting States has first been constructed and subsequently broadened.

The European Union is, at its core, an economic union, and its legal instruments are designed to support that economic structure. It is therefore unsurprising that the Unified Patent Court — open only to EU Member

States and deriving its jurisdictional regime directly from the Brussels I-bis Regulation — may evolve from a neutral judicial forum equally representing all parties to a model prioritizing the effective protection of intra-EU economic activity.

However, when the issue concerns international jurisdiction, principles of state sovereignty and judicial authority carry particular weight. The UPC's progressively expansive interpretation of cross-border jurisdiction must therefore remain within the limits of proportionality and foreseeability. Otherwise, third states may inevitably develop countermeasures designed to safeguard their own jurisdictional domain and to limit the practical effects of UPC decisions.

One such measure — increasingly prevalent in recent years — is the anti-suit injunction ("ASI"). An anti-suit injunction is an interim measure by which a court restrains a party from initiating or continuing proceedings in another jurisdiction.

A striking example is the decision of the Mannheim Local Division of 22 December 2025 in Case No. UPC\_CFI\_936/2025 (InterDigital v Amazon), concerning a standard-essential patent (SEP). Upon InterDigital's application, the Court granted an anti-interim-licence injunction ("AILI"), a specific form of ASI. InterDigital argued that Amazon might seek relief before the UK courts aimed at preventing InterDigital from pursuing infringement proceedings before the UPC.

The Mannheim Local Division prohibited Amazon from seeking an ASI before the UK courts or from pursuing any equivalent legal or administrative remedy capable of preventing InterDigital from bringing infringement proceedings before the UPC.

The UK courts did not remain silent. Interpreting the UPC's order as effectively encompassing the final relief sought in the UK proceedings and seeking to safeguard the continuation of the substantive RAND (reasonable and non-discriminatory) determination, the UK court granted an anti-anti-suit injunction ("AASI") in favor of Amazon.

As illustrated in *InterDigital v Amazon*, the UPC's expansive interpretation of cross-border jurisdiction has transcended a purely technical jurisdictional debate and has become a matter directly touching upon the judicial sovereignty of states. The AILI order of the Mannheim Local Division and the responsive AASI granted by the UK court constitute tangible manifestations of competing jurisdictions seeking to protect their procedural autonomy and judicial authority. These developments demonstrate how rapidly an injunction versus anti-injunction spiral may be triggered in multi-forum patent disputes.

# An Important European Precedent Legal Consequences of Statements Concerning Competitors and Its Implications for Türkiye



In today's business world, competition among companies is shaped not only by the quality of their products and services, but also by their communication strategies with the public. However, the legal boundaries of such statements should be carefully determined. Statements made about competitors, particularly in Europe, may constitute "defamation" which are evaluated within the scope of competition law and provisions concerning unfair competition and may lead to serious legal consequences. In this context, a recent case in France has clearly demonstrated why companies should take a high degree of sensibility in their communication policies.

## The Biomerieux Case: A precedent decision from France

QIAGEN N.V., one of the leading companies in the biotechnology sector, issued a press release on 03 March 2025 announcing

that it filed a patent infringement action against Biomerieux S.A. before the Unified Patent Court (UPC). Subsequently, Biomerieux claimed that the press release was "defamatory" and constituted unfair competition, given that the company had only been notified of the lawsuit on 11 March 2025 and that there was no judicial decision yet.

The Lyon Court for Economic Activities ruled that QIAGEN's press release constituted "defamation and unfair competition" against Biomerieux and issued a preliminary injunction. The Court stated that such unilateral information declared to those with expert knowledge in the field and also the general public, without providing any information on the context and nature of the facts giving rise to the alleged infringement prior to a court decision, leads to the portraying of Biomerieux as a company which had committed acts of patent infringement.

The Court also emphasised that, due to the permanence of such an announcement on the internet, the impact of the violation would continue and that the removal of the press release from QIAGEN's website would not end the violation.

In the reasoning of the preliminary injunction, it was stated that the factor of urgency required for granting of the preliminary injunction was also present in the concrete case since Biomerieux was a publicly-traded company and the announcement coincided with the announcement of the financial statements of the company.

In scope of the decision of preliminary injunction issued by the Court:

- Publication Ban: QIAGEN N.V. and QIAGEN GmbH are prohibited from publishing any press releases or any other content related to the UPC case in open source media until the final judgement in the case is rendered. A fine of EUR 50,000 is indicated for each infringement.
- Obligation to Publish the Decision: QIAGEN is required to publish the full text of the preliminary injunction on its website ([www.qiagen.com](http://www.qiagen.com)) under the heading "Press Releases" for at least 3 months; a fine of EUR 50,000 for each day of its delay in publication if the 72-hour period is exceeded.
- Publication Permission for Biomerieux: Biomerieux is permitted to publish the

court decision on preliminary injunction on its website ([www.biomerieux.com](http://www.biomerieux.com)) for 3 months.

- Litigation Expenses: QIAGEN was ordered to pay Biomerieux EUR 10,000 in attorney's fees and all litigation costs.[1]

This decision is of significance in terms of determining the legal boundaries of external communications, especially in patent infringement cases where the judicial process has started but is yet to be finalised.

The Legal Framework in Türkiye: Assessment in scope of the Turkish Commercial Code and Protection of Competition Code

Article 54 et seq. provisions related to unfair competition of the Turkish Commercial Code No. 6102 ("TCC") aims to ensure that commercial life operates within the framework of the rule of honesty and that market actors can compete on equal terms. In particular, Article 55(1)(a)(1) of the TCC clearly states that "disparaging others or their goods, work products, prices, activities or commercial affairs with false, misleading or unnecessarily offensive statements" constitutes unfair competition.

In addition, the Protection of Competition Code No. 4054 ("PCC") prohibits acts that distort or restrict competition and aims to protect effective competition in the market. Although the PCC does not directly regulate the act of "defaming the

competitor”, communication strategies that may have destructive effects in the market may be considered within this scope. In particular, it is possible to file a complaint before the Competition Authority if the public statements of enterprises holding dominant positions in the market have an obstructing impact on the activities of their competitors.

Although the number of public statements made by competitors- especially regarding ongoing judicial proceedings- which may constitute unfair competition and defamation, are high in number, the number of precedents on this particular matter in Turkish Law is extremely low, and challenges may be experienced in the effective application of the provisions of the TCC and the PCC.

As demonstrated by the Biomerieux decision, public statements regarding ongoing judicial proceedings should be prepared with extreme caution. Thus, it is of critical importance for companies to act in consideration of possible risks in terms of both the Turkish Commercial Code and the Protection of Competition Code when publishing public statements, especially in sensitive sectors where there is a high degree of competition, in order to protect the reputation and legal safety of companies.

[1] For the Biomerieux Decision published on the internet, please see: [bioMerieux-ordonnance-11-04-2025-EN.pdf](#)

# Functional Equivalence Across Jurisdictions Convergence Between Turkish Patent Law and the Unified Patent Court



Barely two years after its operational launch, the Unified Patent Court (“UPC”) has already begun shaping a transnational doctrine of patent infringement by equivalence. Between late 2024 and mid-2025, four landmark first-instance decisions—*Plant-ev Bioo* (The Hague LD), *Brussels LD CFI 376/2023*, *Mannheim LD CFI 471/2023*, and *N.J. Diffusion v Gisela Mayer* (Paris LD) — established, refined, and finally harmonised the analytical framework for assessing functional equivalence under Article 26 UPCA and Article 69 EPC together with its Protocol on Interpretation.

The European framework resonates closely with the approach already codified in Article 89/5 of the Turkish Industrial Property Code, which defines the doctrine of equivalence in explicitly technical-functional terms. Under this provision, the protection conferred by a patent extends not only to what is literally claimed but also to elements that are equivalent to those expressed in the claims, provided that they perform substantially the

same function in substantially the same way and produce substantially the same result.

This three-part formula (“function–way–result”) creates a narrowly technical standard that excludes policy considerations such as fairness or foreseeability. Turkish courts, particularly the Ankara and Istanbul specialized IP courts, consistently apply this approach by examining whether the allegedly infringing feature carries out the same operation, by the same technical means, to reach the same outcome as the claimed invention. Only when all three conditions are met is infringement by equivalence recognized.

When Turkish Court’s approach is compared to the UPC jurisprudence, the closest conceptual match is found in the Mannheim Local Division’s decision of 6 June 2025 (CFI 471/2023). However, the Mannheim panel insisted that infringement by equivalence must be excluded whenever there is no technical-functional equivalence between the patent’s

feature and the alleged variant. Just like the Turkish Courts, the Mannheim LD has also focused purely on technical substitutability and did not consider whether the patentee deserves broader protection or whether third parties could have foreseen the variant.

By contrast, the earlier *Plant-e v Bioo* judgment of the Hague Local Division reflects a much broader and more policy-oriented conception of equivalence. Hague LD applied a four-question framework combining technical and normative considerations: whether the variant achieves the same technical result, whether extension of protection would be fair to the patentee, whether legal certainty for third parties would be preserved, and whether the variant remains novel and inventive over prior art.

The approach of Hague LD expands well beyond the Turkish Court's approach as it introduces balancing factors of fairness and foreseeability.

The Brussels Local Division took a step closer to the Turkish Court's approach without a full alignment.

In its January 2025 ruling (CFI 376/2023), the Brussels judges reduced the equivalence test to a functional-effect criterion, asking only whether the modified means perform the same function or at least achieve the same effect.

While this brings the analysis closer to the "function" and "result" prongs of Article 89/5, it omits the intermediate requirement that the element operate in the same way.

Turkish Courts, by contrast, treat this "way" component as indispensable; it ensures that mere similarity of purpose or outcome is insufficient unless the technical mode of operation is also equivalent.

Finally, the Paris Local Division's decision in *N.J. Diffusion v Gisela Mayer* (1 August 2025, CFI 363/2024) represents the culmination of UPC convergence toward the same technical ideal, even if phrased more simply.

After reviewing *Plant-e*, Brussels, and Mannheim, the Paris panel adopted what it called the "lowest common denominator" test: whether the modified or substitute means perform essentially the same function to achieve essentially the same effect.

This rule omits explicit reference to the "same way" criterion but, in practice, embodies the same spirit of functional-result equivalence that underlies Turkish Court's approach.

The Court denied equivalence precisely because the accused product's component served a different function and therefore produced a different effect. The reasoning is perfectly compatible with the outcome a Turkish Court would likely reach.

In short, the Mannheim Local Division's

reasoning most faithfully mirrors the Turkish Court's approach. Both adopt a purely technical and objective analysis that asks whether the accused embodiment performs the same function, in the same manner, with the same result.

The Brussels and Paris approaches can be viewed as partial reflections of this rule, capturing its functional essence but simplifying its structure.

The Hague's Plant-e framework, on the other hand, stands furthest apart, introducing equitable and policy dimensions foreign to the Turkish case law.

What is noteworthy is that, while the UPC initially experimented with broader, policy-driven tests, its subsequent evolution—especially in Mannheim and Paris—has gravitated toward the strict technical equivalence model that the Turkish legislature had already enshrined.

Thus, Türkiye's codified approach and the UPC's case law are now converging upon a shared European standard: one that defines equivalence not through notions of fairness or foreseeability, but through objective functional identity within the bounds of the claims.

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# Firm Overview

We are one of the oldest and largest law firms in Turkey and are considered internationally to be among the top-tier of legal services providers.

We are a full-service law firm leading the intellectual property field among others, providing dispute management, advisory, transactional, prosecution, investigation, and regulatory markets law services to domestic and multinational corporations.

We are based in Istanbul, with working and correspondent offices in Ankara, Izmir and the major commercial centres in Turkey.

We operate mainly in Turkish and English and also work fluently in German and French.

We advise a large portfolio of clients in numerous fields of activity including life sciences, insurance and reinsurance, energy, construction & real estate, logistics, technology, media and telecoms, automotive, FMCG, chemicals and the defense industries.

Our vision is to be the leader in the services we provide, sensitive to wider society, the environment, and our employees as an innovative and sustainable institution.

Our clients' success is at the heart of our own success. We closely monitor developments in the business sectors in which our clients operate and invest in accumulating industry specific knowledge to understand their changing needs. We actively participate in professional, trade and business organisations in Turkey and internationally.

We are committed to adapt to our clients' changing business needs by delivering innovative, high quality and commercially prudent legal solutions.

