



## International report - New AMTC raises patent-related questions

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The Tenth Development Plan, which covers 2014 to 2018, emphasises the government's aim of enhancing international accreditation and standard-setting capacity to provide the effective and sustainable use of research infrastructures and to foster greater cooperation between the public and private sectors.

In order to achieve this aim, the Turkish government had declared a policy of transforming research centres within universities and public institutions into sustainable structures that work in close collaboration with the private sector. According to the development plan, measures will be taken and interfaces established to facilitate and encourage public and private sector cooperation, especially in the priority R&D areas set out in the Ninth Development Plan (ie, life sciences, materials science, aviation and space, defence and nanotechnology).

Significant steps have been taken under the Tenth Development Plan. One indication of the increase in R&D in the aeronautical industry is the cooperation agreement signed between the Technological Research Council of Turkey (TUBITAK) and Rolls Royce to build the first advanced manufacturing technology centre (AMTC) in Turkey. The aim of the AMTC is to develop industrial skills and abilities that will form the basis of national projects carried out under the auspices of the Turkish Ministry of Science, Industry and Technology. The AMTC is expected to act as a centre of excellence in the form of a private-public partnership, and will aim to increase the manufacturing and implementation capabilities of technology in the aeronautical sector, although in time it is also expected to include broader areas such as civil nuclear, marine and other industrial sectors.

The work carried out in the centre is expected to make a major contribution to the manufacturing of new technologies, which will go into production in Turkey and United Kingdom. It is also hoped that the initiative will encourage other international companies to invest in Turkey and that collaboration between Turkey and the United Kingdom in this field will increase as a result.

As the agreement signed between TUBITAK and Rolls Royce is not publicly available, it is unclear how the relevant IP rights will be regulated. However, during the tender process, a procurement official stated that "Turkey wants a final product for which all the technology-related licences belong to the Turkish government".

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**Selin Sinem  
Erciyas**

Although ownership of the IP rights resulting from the AMTC's work is not governed by law, but rather depends on the agreement between the parties, certain general rules on patent ownership must be taken in to account.

Section 3(1) of Decree-Law 551 on the Protection of Patent Rights governs “employee inventions” and provides that an invention made by an employee during the employment term and as per his or her obligations in a private enterprise or a public authority, or which depends to a large extent on the experience and activity of the private enterprise or public authority, shall be classified as a “service invention”. Under Decree-Law 551 the employee must notify the employer in writing and without delay of a service invention. The employer can then claim rights in the service invention in full or in part. If the employer claims full rights in the service invention, all rights shall be transferred to the employer.

By definition, the work of AMTCs, which focuses on developing and implementing new technologies, is done through employees creating inventions. Under Turkish patent law, unless otherwise agreed by the parties, the AMTC shall have the right to demand the transfer to itself of all rights in a service invention made by an employee, making the AMTC the sole rights holder.

A special situation exists for the development of computer programs and software, which is closely related to technology application development in AMTCs. Contrary to the US, Canadian and Japanese systems, under Turkish Law computer software is protected not as an invention under Decree-Law 551, but rather as a “literary and scientific work” under Law 5846 on Intellectual and Artistic Works. Article 6/c of Decree-Law 551 expressly excludes computer software from its scope on the basis that it is “not [an] invention as of [its] nature”. On the other hand, it is widely accepted that systems with technical functions which incorporate computer software (ie, computer-implemented inventions) can enjoy patent protection under Decree-Law 551.

The rules concerning rights ownership under Law 5846 differ from those regulated under Decree-Law 551. As per Article 8 of Law 5846, the creator of the work is the owner of the work, and accordingly is the sole owner of all moral and financial rights in the work. By definition, moral rights on the work are non-transferable. As for financial rights, Article 18 of Law 5846 states that “unless otherwise is understood from the parties’ agreement or the nature of the work, rights on the works created by officials and employees during the course of their duties shall be exercised by their commissioners”. Since Article 18 mentions merely the ‘use’ of the financial rights in the work, if the work is created during the course of the employee’s duties only the use of the employee’s rights will be transferred to the employer; the ownership of the rights will remain with the employee. This creates a different scenario from that envisaged for service inventions under Decree-Law 551, where all rights in the service invention are transferred to the employer if it so desires.

Since the sole rights holder of the service invention will be the employer (if it claims full rights), the employer will have the right and be under the obligation to file a patent application for the invention.

On the other hand, the Turkish government may deem the inventions made by the AMTC, such as developing fighter jet motors, to be related to national security. In such case the government may order the AMTC not to file a patent application to ensure secrecy, or to keep a patent application secret.

Bearing in mind Turkey's aim to be one of the top aerospace and defence nations by 2023 and its development policy, the AMTC is expected to play a big role in bridging the gap between academia and industry and to bring great economic value, as it will focus on developing supplier capability (including training and skills development) and boosting technological innovation.

**For further information please contact:**

Selin Sinem Erciyas

Gün + Partners

[www.gun.av.tr](http://www.gun.av.tr)

Email: [selin.yalincakli@gun.av.tr](mailto:selin.yalincakli@gun.av.tr)

Tel: +90 212 354 00 00