

**HARMONISATION IN EUROPEAN UNION ON INDUSTRIAL  
PROPERTY RIGHTS PROTECTION PROCEDURES:  
EFFECTS ON TURKEY WITHIN THE FRAMEWORK OF  
CUSTOMS UNION**

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**Approval of the Graduate School of Social Sciences.**

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## **ABSTRACT**

# **HARMONISATION IN EUROPEAN UNION ON INDUSTRIAL PROPERTY RIGHTS PROTECTION PROCEDURES: EFFECTS ON TURKEY WITHIN THE FRAMEWORK OF CUSTOMS UNION**

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This thesis aims at answering two questions under the topic of Harmonisation of Industrial Property Rights Protection Procedures in the European Union. The questions researched are: “What are the current systems of Industrial Property Rights protection in the world, in the European Union and Turkey?” and “Is there a way for Turkey to be included within the EU Industrial Property protection system in the future while still being under the relation of Customs Union?”. To answer these questions current systems of Industrial Property Rights protection in the world, in European Union and Turkey is briefly analyzed and following this analysis, a proposal for a closer cooperation in Industrial Property protection system of Turkey with the European Union is given backed up with a comparison of statistical data of EU, Turkey and candidate countries.

**Keywords:** Intellectual and Industrial Property Rights, Harmonisation, Community Trademark, Community Design, Community Patent, Patent Cooperation Treaty, Madrid Agreement and Protocol.

## ÖZ

# AVRUPA BİRLİĞİ'NDE SİNAİ MÜLKİYET HAKLARININ KORUNMASI USULLERİNİN UYUMLAŞTIRILMASI: GÜMRÜK BİRLİĞİ ÇERÇEVESİNDE TÜRKİYE'YE ETKİLERİ

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Bu Yüksek Lisans Tezi, Avrupa Birliği'nde Sınai Mülkiyet Haklarının Korunması Usullerinin Uyumlaştırılması konusyla ilgili iki temel soruyu yanıtlamayı amaçlamaktadır. Bu sorular Dünyada, Avrupa Birliği'nde ve Türkiye'de mevcut Sınai Mülkiyet Koruma sistemlerinin nasıl olduğu ve gelecekte Türkiye'nin gümrük birliği ilişkisi içinde Avrupa Birliği Sınai Mülkiyet korunması sistemine dahil edilebilmesinin mümkün olup olamayacağıdır. Bu soruları cevaplayabilmek için dünyada, Avrupa Birliği'nde ve Türkiye'de Sınai Mülkiyet Haklarının korunmasına ilişkin mevcut sistemler incelenerek, bu inceleme neticesinde; Türkiye'nin Avrupa Birliği Sınai Mülkiyet Hukukunun korunması sistemine dahil edilmesine yönelik olarak Avrupa Birliği, Türkiye ve aday ülkelere ilişkin istatistiksel verilerin de karşılaştırılması ile desteklenen bir öneri geliştirilmeye çalışılmaktadır.

**Anahtar Kelimeler:** Fikrî ve Sınai Mülkiyet Hakları, Uyumlaştırma, Topluluk Markası, Topluluk Tasarımı, Topluluk Patenti, Patent İşbirliđi Anlaşması, Madrid Anlaşması ve Protokolü

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this study.

Date: 30.05.2004

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## LIST OF ABBREVIATIONS

AT	: Austria
BE	: Belgium
BG	: Bulgaria
BX	: Benelux
CPC	: Community Patent Convention
CU	: Customs Union
CZ	: Czech Republic
DE	: Germany
DK	: Denmark
EC	: European Community
EE	: Estonia
EPC	: European Patent Convention
ES	: Spain
EU	: European Union
FI	: Finland
FR	: France
GATS	: General Agreement on Trade and Services
GATT	: General Agreement on Trade and Tariffs
GE	: Greece
GB	: United Kingdom

GI's : Geographical Indications  
HU : Hungary  
IR : Ireland  
IPR : Intellectual Property Right  
IT : Italy  
LT : Lithuania  
LV : Latvia  
MFN : Most Favored Nation  
NL : Nederland  
NT : National Treatment  
PCT : Patent Cooperation Treaty  
PLT : Patent Law Treaty  
PO : Poland  
PT : Portugal  
R&D : Research and Development  
RO : Romania  
SI : Slovenia  
SK : Slovakia  
SE : Sweden  
TPI : Turkish Patent Institute  
TR : Turkey  
TRIPS : The Agreement on Trade-Related Aspects of Intellectual Property Rights  
WIPO : World Intellectual Property Organization  
WTO : World Trade Organization

## **CHAPTER I**

### **INTRODUCTION**

This thesis aims at answering the following questions under the topic of Harmonisation in European Union (EU) on Industrial Property Rights (IPRs) Protection Procedures.

1. What is the current system of IPRs protection in EU and in Turkey within the scope of convergence process?

2. Is there a possibility for Turkey to be included within the EU system<sup>1</sup> in the future while still being within CU?

To answer these questions, current system of IPRs protection in the world, in EU and in Turkey is analyzed. Following this analysis, a proposal for a connection of Industrial Property protection system of Turkey to the EU is given backed up with a comparison of statistical values of Turkey, EU and candidate countries in IP protection.

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<sup>1</sup> The term “EU system” is used to mean the system for protection of industrial property rights in EU (European Union Industrial Property Rights Protection system)

The first chapter is mainly focused on the IPRs protection in general and investigate the worldwide principles of protection within the framework of international and regional agreements and institutions. Brief description of protection subject to industrial property rights, existing situation in general on IP registration systems, concept of protection of IP rights, registration and protection procedures in IP rights, international and multinational registration systems is analyzed in the first chapter of the study.

In second chapter, EU, which is actually a regional system however worked on to be unified through harmonisation and the history of IPRs protection in Turkey and the legislation in force is given. In this section also the position of Turkey for adopting new legislation in Europe according to national and international legislation and agreements in force are visualized.

The third chapter is written in an interconnected way to provide an evaluation of aims and effects of customs union at present and importance of uniform IP protection in EU and Turkey through statistical data and graphs.

Finally in conclusion, deriving from the analysis that is made within the previous chapters, the second research question of the thesis will be answered. Is there a condition for Turkey to be included within the EU system in the future within the scope of Customs Union? The answer to this question is “yes, in terms of application of IP legislation of EU and participation in IP protection in EU, Turkey is already a part of the EU Single Market and there should be a flexible way to contain Turkey within the uniformed IP protection system of EU.”

## 1.1. The Context

IPRs have been one of the most popular topics of the recent years. Not only the lawyers and academics but also economists, traders, multinational companies, consumers, states and international organizations are interested in IPRs which gained increasing importance in international transactions as the world is moving into the 21<sup>st</sup> century.

The importance of IPRs grew together with the growth of international trade and globalization movement and with the decline of the concept of nation state. Once they were essentially nationalistic and monopolistic in terms of territory. Yet, as technology and trade weaken the borders between the states, they became important international assets.

Creation of an environment in which inventiveness and creativity were highly rewarded was visualized to be an important reason for development. This has brought forward the need to protect IPRs.

Intellectual property (IP) refers to the legal rights, which result from the intellectual activity in the industrial, scientific, literary and artistic fields.<sup>2</sup> Countries have laws to protect IPRs for two main reasons. One is to give statutory expression to the creation and the second is to promote creativity and encourage fair trade, which would contribute to the economic and social development in an era that economic development and growth theories are becoming the core subjects in economics. Especially with the introduction of “New Growth Theory”, the effect of research & development and innovation activities to economy has been focused.

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<sup>2</sup> This is a common definition quoted from World Intellectual Property Organization (WIPO) Publication No.476 (E), “Intellectual Property Reading Material”, 1998, p.3

In this context, IPRs became an important subject in the development of the economies. With its general definition, IP law aims at safeguarding creators and other producers of intellectual goods by granting them certain time limited rights to control the usage of those productions and exploit the benefits of the monopoly power, which can be seen as the reward of the creative talent. IPRs are rights of property, but subject matter of property is immaterial: it concerns an idea, an invention, a creation or a designation.<sup>3</sup>

On the other hand, it is still a debate among economists that weather IPRs stimulate or sabotage the economy. There are arguments supporting the idea that giving the monopoly right to the creator endangers the further development of the economy.

Under the IPR protection system, the government confers to innovators exclusive rights to market the goods and services that are embodied from their intellectual works. There are alternative approaches to the IPR protection on the basis that this exclusive right provides the monopoly power to the inventor and thus endanger the market economy. Reward system comes out as an alternative approach under which innovators are paid for innovations directly by the governments and the innovations pass immediately to public domain, becoming freely available to all.<sup>4</sup> The incentives to innovate are provided without granting innovators monopoly power over price of the patented innovation.

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<sup>3</sup> Blanchet, Thérèse, Risto Piipponen, and Maria Westman-Clément (Eds.) (1994). The Agreement on the European Economic Area. A Guide to the Free Movement of Goods and Competition Rules. Oxford: Clarendon Press. p.97

<sup>4</sup> Shavell, Steven, and Tanguy van Ypersele. October (2001). "Rewards versus Intellectual Property Rights," The Journal of Law and Economics 44: 525. p. 527.

In fact the statement that IP protection is necessary to create incentives for original productions is becoming the mantra of IP supporters; backing up the idea that creativity depends on a government granted monopoly. However, on the other side of the debate the idea is that IP "rights" are not essential to creation, furthermore in some circumstances it can even be preventive either, since by granting exclusive rights, IPRs restrict in many ways the diffusion of knowledge and information, preventing others from using the proprietary knowledge. However, any effort necessitates a reward in order to be meant for it and giving a time limited monopoly power for this creative talent has been an encouraging force behind the development of activities since the first implementations of protection of 1880's.

## **1.2. Protection of Industrial Property Rights in General**

The expression "industrial property" covers inventions, industrial designs, trademarks, service marks, commercial names and designations, including indications of source and appellations of origin and protection against unfair competition.

A brief explanation of these terms and the existing situation in EU about the specific industrial property protection is going to be given below.

Intellectual property is divided into two categories<sup>5</sup>:

Industrial property includes inventions (patents/utility models), trademarks, industrial designs, and geographic indications of source;

Copyright includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings,

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<sup>5</sup>This is a common definition quoted from web site of WIPO, [www.wipo.org](http://www.wipo.org)

photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

For the purpose of this study, copyrights will be kept out of the scope, and just the IPRs protection is going to be investigated.

**Patent:** Patents protect inventions, which are new, involving an inventive step, non-obvious and capable of industrial application. Invention means a solution to a specific problem in the field of technology and a patent is a document, issued by a government office upon application, which describes an invention and creates a legal situation in which the patented invention can normally only be manufactured, used, sold or imported with the authorization of the owner of the patent.

According to Turkish law and in most of the world as well, diagnostic, mathematic, therapeutic and surgical methods, plants, animals and essentially biological processes except micro organisms, and non-biological production of plants and animals are non-patentable.<sup>6</sup>

In some countries, including Turkey, inventions are also protected with the name of “utility model”. Granting Utility Model Certificate protects inventions, which are novel and applicable in industry. In comparison with the patents, for the utility models, the fees are lower, the procedures and the duration of protection are shorter and the involvement of inventive step is not required.

The main purpose of protection of inventions by patent right is; to recognize the mental creativeness, encourage further development and

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<sup>6</sup> Decree-law no.551 Pertaining to the Protection of Patents, Article 6, June 27, 1997

exploitation of inventions and encourage disclosure of information so that the information related to the current technique is to be widespread.

Additionally, it is increasingly clear that patent information is invaluable and pays for itself many times over in a large amount of commercial situations. This is because patent protection enables to solve technical problems and provide ideas for new products and also it avoids problems in case of an infringement for the term that it is valid. The rights granted by patent protection are temporary and patents are provisionally protected in exchange for the publication of the claims. In exchange for the temporary exclusive rights, inventors have an incentive to disclose knowledge to the public that might otherwise remain as a secret. Although other agents may not directly copy the original claim until the patent expires, they can use the information in the patent to develop innovations and to apply for new innovations and patents on their own.

**Trademark:** Trademarks started to play an important role with industrialization and became a key factor in the modern world of international trade and market oriented economies, which allowed competing producers and traders to offer consumers a selection of goods in the same category, without any appearing difference but differing in quality, price and other characteristics.

In Turkish law, according to the Article 5 of Decree Law No: 556, a trademark is defined as follows<sup>7</sup>: “A trademark provided that it is capable of distinguishing the goods and services of one undertaking from the goods and services of other undertakings...”

There are several functions deployed to trademarks in this definition, which are the function of origin indication, guarantee and advertisement.

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<sup>7</sup> Decree-law no.556 Pertaining to the Protection of Trademarks, June 27, 1995

Referring to the function of origin indication, trademark shows who provides goods or services. This function is usually handed with the function of separation, on behalf of the consumers. Taking into account that the trademark is the connection between the producer and the consumer, trademark indicates the origin of the good or service provided to the consumer in anywhere in the international market and stimulating competition, trademarks serves to the improvement of the quality and economic progress. Increasing the price of the commodity, trademarks comprise strong economic values as well.

Another function of trademarks is to ensure that goods or services have specific quality guaranteed by the producer. Accordingly; owner of a trademark would focus on the quality of the goods in order not to loose the prestige, the potential consumers and to increase the economic value of the product. In fact this issue is a more powerful enforcement for the continuing of aggregate quality of the market than the enforcement provided by the regulations or acts in order to harmonise and ensure uniform and binding provisions on the implementation of IP Protection. Enabling consumers to make choice, trademarks encourage their owners to improve the quality of the production, by this way stimulates economic progress. Similarly due to the common belief that mark is the force behind the sale of the goods, function of advertisement presents an economic factor as well.

Connected with these functions of trademark, although it may result with additional costs for the producers to use a registered trademark, in long-term trademark registration provides benefits for the producer as owner of an economic asset, since it is also possible to sell these rights.

**Industrial Designs:** An industrial design refers to the ornamental or aesthetic aspect of a product. In order to be protected under most national laws,

an industrial design must appeal to the eye. This means that an industrial design is primarily of an aesthetic nature, and does not protect any technical features of the article.

Making an article or a commodity attractive and appealing; industrial designs add to the commercial value of a product and increase its marketability. For this reason, having an economic value, they contribute to the expansion of commercial activities and the export of national products. Protecting industrial designs helps economic development, by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts.

**Geographical Indication/Sign:** A geographical indication/Sign is a sign, used on goods that have a specific geographical origin and enjoy qualities or a character that are due to that place of origin. Most commonly, a geographical indication/Sign consists of the name of the good together with the name of the place of origin of the good.

Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. Geographical indications are understood by consumers to denote the origin and the quality of products. Thus, as an example, “Scotch Whiskey” with the indicator “Made in Turkey” is not permitted. As another example, “Trabzon Butter” or “Erzincan Cheese” with the indication of “Made in China” is not permitted.

From its definition, it seems that geographic indications/signs are similar with trademarks. However there is a difference. A trademark is a sign used by an enterprise to distinguish its goods and services from those of other enterprises. It gives its owner the right to exclude others from using the trademark. A geographical indication/sign tells consumers that a product is produced in a

certain place and has certain characteristics that are due to that place of production. All producers who make their products in the place designated by a geographical indication/sign and whose products share typical qualities may use it.

In the international trade arena, the countries having plenty of geographical indication/sign are considered to be more advantageous. The first registrar of the product holds the right to produce and sell the concerning product in the market. If these products were registered, they would enjoy the protection of Geographical Indication/sign and excluding others in production of these specific products, would contribute an advantage to the national economy in international trade arena as well.

Due to its cultural heritage and nature, Turkey has a rich product variety. Every region has got a specific product and most of these products are called with the name of that region which constitutes the source of that product.

### **1.3. Factors that Necessitate Protection**

1990s have been characterized most by an accelerated growth of the global trade, expanded communication and information technology.<sup>8</sup> The growth of international trade in goods and services, the expansion of communication and importance of information both as a tool and a commodity is the major feature of globalization. However globalization is not simply and only an economic or technological phenomenon, but it is also a result of political will and law, which implies establishing common rules under which international trade can take place.

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<sup>8</sup> Keyder, Virginia Brown. (1997) Intellectual Property Rights and Customs Union. Istanbul: Intermedia Publications. p. 119

IPRs are now recognized as an important asset to trade. By encouraging investment in research & development and innovation, they stimulate economic growth and increased competitiveness. The economic value of IPR is considered to be one of the many factors affecting investment. Many of the specific industries whose development is seen crucial to economic growth and competitiveness in the world trade have been shown to be dependent on IPR protection for investment.<sup>9</sup>

Protection of industrial property rights in general is clearly important for the well functioning of a competitive market in respect to both consumer and producer. Particularly when trademarks and the geographical indications are concerned, there are several functions deployed which are the function of origin indication, guarantee and advertisement. Referring to the function of origin indication, trademark and the geographical indications shows who or where provides goods or services. This function is usually handed with the function of separation, on behalf of the consumers. Taking into account that these indicators are the connection between the producer and the consumer, trademark and the geographical indications indicate the origin of the good or service, provided to the consumer in anywhere in the international market.

Another function of trademarks and the geographical indications is to ensure that goods or services have specific quality guaranteed by the producer. Focusing on the quality of the goods in order not to loose the prestige, the potential consumers and to increase the economic value of the product, a product subject to the protection under a geographical indication would ensure the consumer about the quality and that specific character deployed to the related product by that source or the origin

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<sup>9</sup> This approach is given in the Competition Policy and Intellectual Property Rights (OECD, 1989)

For this end, the most important effect of IPRs is to bring about products, services or artistic works as well, which otherwise would not have been worth to create and put on the market. As they reward the efforts of the owner, IPRs stimulate scientific and economic progress, as well as artistic creation, and therefore contribute to increasing efficiency and consumer profit. Especially the high-tech inventions on the market require a vast investment of time and money and thus protecting and encouraging these investments can be said to be the goals of IPR protection.

IP rights protection is also an essential element of economic policy of the national economies; stimulating research, technological innovation and creativity by allowing individuals and companies to enjoy the benefits of their creative efforts.

There are criticisms that the protection of these rights threatens the economies of developing countries. Even though the refusals for protection are true to some extent, it is also a fact that unless these rights are protected, the research & development activities will not develop either. By this way, these developing countries will not have the incentive and obligation to develop their creativeness. Besides, the lower human resource costs of research & development in these countries gives a comparative advantage and the opportunity to catch up the rest of the world in time.

One of the most harmonised may be the most important subject in international law today is probably the legislation in IPRs. Existence of international agreements, which have been signed by many countries since from the beginning of 1880s, revised due to the changes in conditions and still in force is the proof of this statement.

The agreements related to the fundamental principles and governing multinational registration procedures emerged as end products of a need of the knowledge based new economy after technological improvements and enlarged transnational markets.

## CHAPTER II

### WORLDWIDE PRINCIPLES OF PROTECTION

Paris Convention for the Protection of Industrial Property was created in the 1880s and has been updated many times. It is one of the first international treaties addressing the protection of IPRs and the World Intellectual Property Organization (WIPO) administers this agreement.

The basic principles of protection addressed in this Treaty are national treatment and most-favoured- nation treatment.

#### **2.1. National Treatment Principle**

Under the National Treatment (NT) rule, Members must not apply discriminatory appropriate treatment between imports and alike domestic products. The National Treatment principle means that imported and locally produced goods should be treated equally. The same should be applied to foreign and domestic services, as well as to foreign and local trademarks, copyrights and patents.

This principle of giving others the same treatment as own nationals is also found in all the three main WTO agreements, which are;

GATT-General Agreement on Tariffs and Trade (Article III),

GATS- General Agreement on Trade and Services (Article 17) and

TRIPS- The Agreement on Trade-Related Aspects of Intellectual Property Rights. (Article III).

Although it is handled to some extent differently in each of these treaties, the main purpose that comes out of the spirit of this principle is to ensure fair trade to be implemented in the world market.

National Treatment principle only applies once a product; service or item of intellectual property has entered the market. This rule aims to prevent countries from taking discriminatory measures on imports, by implementing rules at the custom for once and maintain the equality of the imported and locally produced goods in the market. The main purpose of the National Treatment rule is to eliminate hidden domestic barriers to trade by WTO Members. The loyalty to this principle is important to maintain the balance of rights and obligations, and is essential for the maintenance of the multilateral trading system as well.

## **2.2. Most Favoured Nation Principle**

Most Favoured Nation (MFN) means that every time a member state improves the benefits that it gives to one trading partner, it has to give the same "best" treatment to all other WTO members, so that they remain equal.<sup>10</sup> Again, equality among the imported and locally produced goods is emphasized here by this rule. Countries are to grant not more favourable or discriminatory but equal treatment to goods and services from all WTO members.

This principle is found in the first article of the GATT but some exceptions are allowed. For example, countries within a region can set up a free trade agreement that does not apply to goods from outside the group. Alternatively, a

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<sup>10</sup> Understanding the WTO, The basic principles of the trading system, available at web site of WIPO, [www.wipo.org](http://www.wipo.org)

country can raise barriers against products from specific countries that are considered to be traded unfairly, and in services, countries are allowed to discriminate in limited circumstances. But the agreements only permit these exceptions under strict conditions and any dispute is open to negotiation under the administration of the Dispute Settlement Body of the WTO.

### **2.3. International Agreements for Worldwide Principles in the Protection of Industrial Property Rights**

#### **2.3.1. World Intellectual Property Organization**

The Paris Convention of 1883 provided for the formation of an “International Bureau”. This establishment was a sort of secretariat at that time and has become the World Intellectual Property Organization, WIPO in time.

The mandate of WIPO is to promote the protection of IP worldwide, including the encouragement of new international treaties and the modernization of national legislation as well.

WIPO administers treaties in the field of intellectual property. These treaties are classified as subclasses relating to the concept of the protection.<sup>11</sup>

The first general group of Treaties/Agreements/Conventions defines internationally agreed basic standards of IP protection in each country. These are Patent Law Treaty (PLT), Paris Convention for the Protection of Industrial Property, Madrid Agreement for the Repression of False and Deceptive Indication of Source on Goods, Trademark Law Treaty, and WTO - TRIPS Agreement

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<sup>11</sup> This classification is available at web site of WIPO, [www.wipo.org](http://www.wipo.org)

The second group of Treaties/Agreements/Conventions provides one international registration or filing to have effect in designated states of the parties. The services under all these treaties are provided by WIPO. By this way the cost of making individual applications in all the designated states is reduced and the procedures are simplified. These are Patent Cooperation Treaty (PCT), Madrid Agreement Concerning the International Registration of Marks, Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, Hague Agreement Concerning the International Deposit of Industrial Designs, Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the Purposes of Patent Protection, signed in 1977, Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The third group of Treaties/Agreements/Conventions index the information for classification systems to organize information concerning inventions, trademarks and industrial designs. These are Locarno Agreement Establishing an International Classification for Industrial Designs, Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks, Strasbourg Agreement Concerning the International Patent Classification, Vienna Agreement Establishing an International Classification of the Figurative Elements of the Marks.

As to the administrative cooperation among the Unions, WIPO centralizes and supervises the administration of the Unions in the International Bureau in Geneva, the secretariat of WIPO. It is clear that centralization ensures economy for the member States and the private sector concerned with intellectual property and by this way encourages the interest in seeking protection abroad. It is more

easy and encouraging for the investors to seek protection through a centralized system of rules and procedures.

The principal purpose of this system is to help trade flow as freely as possible so long as there are no undesirable side effects. This partly means removing obstacles, ensuring that individuals, companies and governments know what the trade rules around the world are, and predicting the framework of the set of rules providing them legal assurance.

### **2.3.2. The Agreement on Trade-Related Aspects of Intellectual Property**

#### **Rights**

The Uruguay Round of 1994 brought an agreed and widespread set of rules establishing minimum standards for the protection of intellectual property rights and stronger measures at international borders to stop the trade infringing on these rights.

Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), member states are obliged to provide in their national laws internationally agreed norms for protecting patents, trademarks, copyrights, industrial designs, trade secrets, integrated circuits and geographical indications.

The Agreement reaffirms basic principles of Intellectual property rights protection, national treatment and most-favoured-nation treatment in Articles 3 and 4.

It sets up "adequate standards and principles concerning availability, scope and use of trade-related intellectual property rights" in Preamble, and in Article 9. Moreover, it provides for "effective and appropriate means for enforcement of trade-related intellectual property rights" in Preamble, and in Article 41, as well as

for "reasonable procedures and formalities" for the acquisition and maintenance of intellectual property rights in general in Article 62. Thus, for the first time, protection of intellectual property rights in an international convention is linked to multilateral trade rights and obligations as a component of the international trading system.<sup>12</sup>

According to the GATT/WTO, the international trading system is based on five principles, which run throughout all agreements.<sup>13</sup>

1- Trade without discrimination between trading partners; "Most Favoured Nation Treatment" or between national and foreign goods, services or nationals; "National Treatment"

2- Freer trade, with progressively coming down barriers through negotiation.

3- Predictable policies ensured by multilateral agreements.

4- Promotion of open and fair competition by discouraging "unfair" practices such as exports subsidies and dumping products at below cost to gain market share.

5- Bring about special provisions for developing countries, giving them more time to adjust, greater flexibility, and special privileges.

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<sup>12</sup> Report by the Secretary-General of UNCTAD, "United Nations Conference On An International Code Of Conduct On The Transfer Of Technology, Negotiations On An International Code Of Conduct On The Transfer Of Technology" "United Nations Conference on Trade and Development", September 6, 1995

<sup>13</sup> Understanding the WTO, Basic Principles of the Trading System, [www.wipo.org](http://www.wipo.org)

### **2.3.3. Paris Convention for the Protection of Industrial Property**

The Convention is one of the first general groups of treaties defining the internationally agreed basic standards of intellectual property protection in each country. It was first held in 1883 to adopt a treaty providing the foundation for international patent protection. The treaty has gone through many revisions since then. The Convention includes all forms of intellectual property and its membership is open to all countries. As of February 2004, 164 countries are members of the Paris Convention.

Today, the Convention is considered to be an international constitution in the field of Industrial Rights Protection. The most striking principals of the treaty other than the national treatment principal and the most favoured nation principal are the provisions of minimum requirements of the protection and the right of priority.

Four important provisions are signified in the treaty, related to these principals:

Article 1: Agreement foresees the equal implementation of the rules and requirements governing the IPRs protection to some extent in all member countries. The member states are set free, concerning the implementations remaining out of the scope of the agreement,

Article 2: Each country of the Union guarantees citizens of other countries of the Union the same rights as its own citizens,

Article 3: Each country guarantees same treatment for citizens of other countries as for Nationals of Countries of the Union,

Article 4: The right of priority is recognized for subsequent filing in the member countries within a certain period, 12 months for patents, 6 months for

trademarks and designs. Thus, if an application is made in a member country, other countries will honour that first filing date. And an inventor wishing protection in multiple countries does not need to file all applications at the same time, but has 12 months from the first application to decide on subsequent filings. Similarly, owner of a trademark or a design wishing protection in other countries has 6 months from the first application to apply for subsequent filings. All nationals of the member states enjoy the right of priority.

The provision stated in Article 2 refers to the basic principal of the industrial property protection; national treatment principal. National treatment principal refers to “the superiority of the national legislation”<sup>14</sup> and that the national legislation is applicable only within the borders of the related country.

A treaty may or may not be intended to have "direct effect" or "self-executing effect" in the domestic law of states that are parties to it and whose national constitutions allow for this possibility. If a treaty is directly effective, persons may rely on it as a source of law and the national government does not need to take additional steps to implement it. The national legislation of the country is always superior unless otherwise contrary to the basic principals of the Agreement.

As the Agreement regulates the minimum requirements of the protection, unless it is regulated with the Agreement, every member state has the right to implement measures different than other states, however without discrimination among the other member states so as not to harm these minimum requirements of the agreement.

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<sup>14</sup> Yalçınmer, Uğur G. (2000). Sınai Mülkiyetin İlkeleri. Ankara: Yalçınmer Danışmanlık ve Dış Ticaret Ltd. Şti. Yayını. p 45

## **2.4 Regional Agreements Governing Multinational Registration Procedures and EU Protection System**

### **2.4.1 Patent Cooperation Treaty (PCT)**

Among the treaties which have been signed to assist the protection of industrial property protection, as far as the patents are concerned, the examination of patent applications have been internationalized in relatively recent years with the Patent Cooperation Treaty (PCT) which came into effect in 1978.

The Patent Cooperation Treaty offers the possibility to seek patent protection for an invention in a large number of countries by filing one single international application. There are several advantages to the PCT process. First, the applicant can file a single PCT application rather than filing a series of national applications. The single PCT application is much less expensive than the individual national filings. Although the applicant will eventually be required to incur a cost similar to the national filings when the PCT application is entered in each national patent office, the PCT procedure allows these costs to be delayed for up to eighteen months. This period of time allows the inventor the time to analyze the patentability and profitability of the invention, and therefore the applicant can make a more informed decision regarding where the patent application should be filed.<sup>15</sup>

A second advantage of the PCT process is that the evaluation of patentability made by the PCT governing body leads to more uniform results in connection with the patentability of the invention in each country. Although

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<sup>15</sup> Schmidt, Luis C. (October 2001). "The Road to Harmonisation," Managing Intellectual Property Vol. 113, p72

individual countries are not bound by the determination made during the PCT process, a positive PCT decision on patentability is often credible evidence.

PCT enables the inventors to seek protection through a uniformed patent investigation in terms of patentability. Patent researches are usually very complex and needs a lot of time and cost a lot of money. Thus this system of unified application procedures is very important in terms of encouraging investors and seeking protection abroad.

#### **2.4.2 Madrid Agreement and Protocol**

As far as trademarks are concerned, the Madrid Agreement for the international registration of marks was signed in 1891. So far, 52 States have signed this Agreement. It provides for the international registration of marks with the WIPO, and these registrations are known as “international registrations”. This is because each registration is effective in more than one country. These registrations are based on national registrations but not applications.

The advantage of the agreement lies in the procedure. All that is required is one application based on national registration to one authority in one language which is French, in order to have protection in 52 countries. However that the only language is French is a disadvantage for many applicants which are not francophone.

Due to that procedural rules mentioned above led certain problems with this Agreement, which made access difficult for certain English-speaking countries, further provisions were added to the agreement in the early 1980s. The result was the Protocol Relating to the Madrid Agreement Concerning the

International Registration of Marmonks ("Madrid Protocol"), which was signed on June 27, 1989, and entered into force on April 1, 1996.

The main areas in which the Protocol differs from the Agreement are:

1. Unlike the Madrid Agreement, the Madrid Protocol permits international registration to be based on a national application rather than a national registration.

2. Madrid Protocol provides that if the national registration or application upon which the international application was based is cancelled, the owner of the international registration may convert the international registration into distinct national applications, while retaining the effective filing date of the original international registration.

3. Madrid Protocol allows filings in English as well as in French, whereas the Madrid Agreement obliges filings to be in French.

4. Madrid Protocol enables countries to charge fees that cover filing costs under the international application procedures.

5. Madrid Protocol extends the deadlines for countries to notify applicants of denial of their national applications up to 18 months after the filing date of application.

Of these innovations, the most important is that the Madrid Protocol was the first system that provided for international application rather than international registration. In other words, it will be possible to file an application for international registration on the basis of either the Madrid Agreement or the Madrid Protocol, or both. The option chosen will depend on the countries for which the extension of protection is required and their membership of either the

Madrid Agreement, or the Madrid Protocol, or of both of the abovementioned agreements.

### **2.4.3 Hague Agreement Concerning the International Deposit of Industrial Designs**

Hague Agreement Concerning the International Deposit of Industrial Designs was signed in 1925. This system of international registration of industrial designs enables designers to obtain protection quickly and cheaply in several countries through a single procedure, thus enabling them to enjoy the advantages in overseas markets with a minimum of time and expenditure.

This multilateral agreement enabling protection in several countries through a single procedure offers business and industry a simple and cost-effective way to obtain protection for their industrial designs in any or all of the contracting states by making a single international filing. Without the system, an owner would have to file separate applications in each of the countries in which protection was sought which would mean to spend more time and more investment and thus probably discourage the owners or investors.

Turkish parliament has decided to participate in the Hague Agreement on Concerning the International Deposit of Industrial Designs on 08 April 2004.

### **2.4.4 European Patent Convention (EPC)**

European Patent Convention (EPC) concerning the granting of the European patent protection was signed in Munich in 1973 within the scope of the European Economic Community. As similar with all the other regional protection systems, the aim of the EPC is to make the protection of inventions in the Contracting States easier, cheaper and more reliable by creating a single

procedure, valid in Europe, for the grant of patent on the basis of a uniform body of substantive patent law.

The aim of the Contracting States, while signing this convention was to strengthen co-operation between the States of Europe in respect of the protection of inventions, and to form such a protection that may be obtained in those States by a single procedure for the grant of patents and by the establishment of certain standard rules governing patents granted by this way.

The number of the Contracting States is 27 and there are 4 associate members as from the beginning of 2004<sup>16</sup>.

A European patent confers on its owner, in each Contracting State for which it is granted, the same rights as would be conferred by national patent granted in that State and any infringement of a European patent is dealt with by national law.

The term of protection of the European patent is twenty years as from the date of filing of the application. European patents granted by a single and uniform procedure continue to live as national patents in the countries to which their effects extend. Thus a European Patent granted for a member state will have the same effect as a patent granted through the national route by the national Patent Office.

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<sup>16</sup> As of 1 January 2004 is as follows: Austria, Belgium, Bulgaria, South Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and four Associate Members are Albania, Latvia, Lithuania and Macedonia. 12 Contracting States addition to 15 EU member states are; Switzerland, South Cyprus, Monaco, Liechtenstein, Turkey, Bulgaria, Czech Republic, Estonia, Hungary, Romania, Slovenia and Slovakia and the 4 associate members are Albania, Latvia, Lithuania and Macedonia.

It is also currently possible to obtain a European patent by way of a PCT filing for all the EPC Contracting States. This obtaining a European patent by way of a PCT filing is called Euro-PCT route.

#### **2.4.5 European Union IP Protection System**

European Union is a multinational system of IP protection enabling its members the opportunity of single filing and grant rights valid in member states. However this regional system differs from the other multinational registration systems given above at the point that this system is closed to the countries which are not members of the union. The concept of this union is politic and economic as well as cultural and it is not a system established specifically for IP protection.

Concerning the trademark protection, realization of a unified trademark right system in Europe was firstly in 1994 through the EU trademark regulation, executed to establish the Office for Harmonisation in the Internal Market (OHIM) for the registration of trademark rights that would be effective throughout the EU. Similarly industrial designs are also within this system of single filing with the name of Community Design.

The Community Trademark (CTM) is separate from and co-exists with the member states national trademark laws.<sup>17</sup> System is an autonomous body of law that provides unitary and uniform protection throughout the territory of the EU. Autonomy means that the community law governs CTM and the unitary protection means that CTM is valid throughout the territory of member states and may be acquired, assigned or invalidated only for the territory as a whole.

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<sup>17</sup> Pinly, Karl H., and Brett R. Eagle. (1998). The Significance of IP at the Community Level. European Intellectual Property Review. No:1, p.4

Concerning the patent protection, Europe's complex structure for IP-related policymaking and system administration is a tripod, composed of the governments of each member state, the European Patent Organization and the European Union (EU). But since the beginning of the 1990s, there has been increasingly active movement toward an EU-based strengthening of IP protection in patent field. This is a result of the complex character of patent protection in general.

In 1997, The European Commission has issued a Green Paper calling for comments on the necessary steps required to improve patent protection in the European Union (EU). In particular, the Green Paper addresses the question of whether the Community Patent Convention<sup>18</sup> (CPC), which would create a single EU-wide patent. Since it was signed in 1975 known as Luxembourg Convention on a Community Patent, could not be brought into effect. The paper notes two weaknesses in the present form of the Convention, namely the cost of translations and the risk that a court, which has little experience with patent matters, could revoke a Community Patent.

The comments from the Commission regarding the CPC were issued in Brussels on 5 July 2000 addressed the problem of the costly translations of patents into 11 languages required by the 15 states and stated to leave CPC Patents in the official EPO language they were filed which are German, French or English and translating only the claims into the other two languages.

Lately at its spring meeting on 20 and 21 March 2003, the EU Council reached agreement on a Common Approach concerning the Community Patent. This includes the main features of the system of jurisdiction, the language regime,

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<sup>18</sup> Community Patent Convention, published in 1989, which is also known as Luxembourg Agreement on a Community Patent

costs and the role of national patent offices and the distribution of fees. Nevertheless, establishing a unique patent protection would differ from the Community trademark and Community design systems in anyway, since it is already a complex issue to be supervised.

## **CHAPTER III**

### **PROTECTION OF INDUSTRIAL PROPERTY RIGHTS IN THE EUROPEAN UNION AND IN TURKEY**

#### **3.1 European Union**

The EU was originally founded by six states in 1952 and growing from six member states to 15 by 2004, the union is on the way to be enlarged with 13 candidate countries in the future in order to respond to the major economic and social changes of the world of the day.

Protection of industrial and intellectual property rights is seen as a safeguard for the continuous and dynamic adaptation of the EU single market to the requirements of the new economy, based on research and innovation. This is also a must for a competitive and open market where operations could function in a secure legal environment under which innovation and technological advances are promoted for the betterment of the whole society. Protection of IP rights in general is clearly important for the well functioning of Single market in respect to both consumer and producer.

The European Community confirmed the importance of the link between innovation, growth and employment in its Action Plan for the Single Market

adopted in 1997.<sup>19</sup> The Plan identified industrial property as “a sphere in which action needs to be taken in order to make it more effective and user friendly, so as to promote the potential of the single market in innovative goods and services”. The Community’s policy on industrial property is an integral part of its efforts towards the completion of the Single Market. Certainly, it is also an important element of the external trade policy.

The Community's action in this field consists of two levels:

- Harmonisation of the national legislations by application of the subsidiary principle and creating unitary rights
- and
- Mechanisms for enforcement at Community level. Community Trademark and Community Designs is already in force and legal arrangements are expected to be finalized on Community Patent.

All these aim at reducing the costs of acquiring rights over industrial property in order to gain a competitive edge in the new economy. Affordability and legal certainty are the key concerns in this approach.

In 1995, Green Paper on Innovation was introduced, indicating a need for the harmonisation of IP protections in the region and advocates the promotion thereof. Promoting innovation through patents, Green paper on the Community Patent and the Patent System in Europe was adopted in 1997<sup>20</sup>. This report studies the revision of the Community Patent Convention, which has not yet been put into effect, harmonisation within the region, and a revision of the European Patent

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<sup>19</sup> Action Plan for the Single Market dated 1997 is available at [www.europa.eu.int](http://www.europa.eu.int)

<sup>20</sup> COM(97)314, June 1997, Promoting Innovation Through Patents - Green Paper on the Community patent and the patent system in Europe, available at [www.europa.eu.int](http://www.europa.eu.int)

Convention with the aim of improving and modernizing the European patent system, stating that “Europe appears to be less well placed with regard to innovation than its main competitors”<sup>21</sup>. Considering the results of a series of consultations and studies following publication of this green paper, the establishment of a community patent system is announced to be an urgent issue with the “Promoting Innovation Through Patents”-Communication published on February 5, 1999 from the Commission to the Council, the European Parliament and the Economic and Social Committee.

With its proposal for a Community Patent Regulation, issued on 1 August 2000 and revised for many times after, the European Commission took the first real steps towards implementing the Community Patent. Before the proposal, the Agreement relating to the Community Patents (ACP) in 1989 has also called for a Community Patent to be created by way of an international treaty. However what the Commission is proposing this time is Community legislation in the form of a Council Regulation based on Article 308 of the EC Treaty, which calls for Council to take appropriate measures stating that

If action by the Community should prove necessary to attain, in the course of operation of the common market, one of the objectives of the Community and this treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take appropriate measures.

Since the initiation of Single European Act and the introduction of Article 95 (former Article 100a) into the EC Treaty, the Commission’s proposals on the

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<sup>21</sup> COM(97)314, June 1997, Promoting Innovation Through Patents - Green Paper on the Community patent and the patent system in Europe, available at [www.europa.eu.int](http://www.europa.eu.int)

approximation of laws affecting the internal market must be based on a high level of consumer protection, which is main purpose of IP protection as well.<sup>22</sup>

### **3.1.1 Philosophy of Harmonisation**

Industrial property law in general is identified by Keyder to be by its nature monopolistic and territorial<sup>23</sup>. Accordingly, all intellectual property law assures to right holders a monopoly over certain economic activities in relation to their ideas for a specified period of time. During that time, the right holder may prevent anyone else from engaging in those activities within the boundaries of the nation state granting the monopoly.

Traditionally, during the heydays of nation states, the holder of an IP right could legitimately prevent the import of any goods subject to his intellectual property rights, into his national territory and he would either produce the goods himself or license someone else to exploit national monopoly.

This is because intellectual property was organized around the idea of the nation state. When Europe consisted of nation states with borders, different forms and applications of IP laws in various nation states presented no problems that could not be solved through international treaties such as early attempts to harmonise the procedure, the Paris Convention of 1883.

However the principles underlying the formation of the European Community as set forth in the Rome Treaty of 1957 conflicted directly with the

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<sup>22</sup>Article 95 emphasizes the role of scientific evidence, both at EU and national level, in the evaluation of proposals concerning health, safety, environmental protection and consumer protection measures.

<sup>23</sup>Keyder, (1997), op. cit., p. 204

principles which national IP law was based. Through Articles 81-82, EC sought to limit power of monopolies to set prices, engage cartels, limit production and generally to prevent abuse of dominant position in the market. It also sought through Articles 30-34 to establish free movement of goods over all national borders within the Community.

On the other hand since IP law is both monopolistic in nature and organized on a territorial basis, it potentially represented a significant threat to both the anti-monopoly and free movement policies of the EC. Given the important incentive that IP rights protection provides to investment and creativity, and considering the role that goods subject to intellectual property law play in economic life and development and overall European competitiveness; however IP laws could not be abolished either, a compromise had to be found that would meet the needs of both national IP law and legal principles fundamental to the EC as set forth in the Treaty of Rome.<sup>24</sup> The conflict between IP law and European competition law for the most part settled in favour of the competition principles set forth in Articles 81-82 of the Treaty.

Harmonisation is the process by which the varying laws of different sovereign entities are changed to more closely reflect a common set of legal principles agreed to by those sovereign entities.<sup>25</sup> The rationales of harmonisation are efficiency, clarity, and predictability. Accordingly; harmonisation does not lead to a uniform set of agreed rules, but rather directs a change of rules, standards

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<sup>24</sup> Keyder, (1997), op. cit., p. 204

<sup>25</sup> Blakely, Timothy W. (Nov 2000). "Beyond The International Harmonisation of Trademark Law: The Community Trade Mark As A Model of Unitary Transnational Trademark Protection," University of Pennsylvania Law Review, Vol. 149 Issue 1: p 309

or processes in order to avoid conflicts and bring about equivalence. Therefore, the end product of harmonisation is not a complete unitary body of law that governs a particular subject matter over a number of distinct jurisdictions. Instead, even after harmonisation, the governing law in each jurisdiction is not the target set of legal principles, but the revised national law of each local jurisdiction.

### **3.1.2. Fundamentals of Harmonisation Efforts**

Efforts at harmonizing the law regarding the protection of intellectual property have developed along two major fronts, first of which is the development of multinational procedural and substantive norms through bilateral and multilateral treaties and the second is the harmonisation of national laws.

The Treaty of Rome, which established the Common Market, had as its primary goal the elimination of trade barriers, which impede the free movement of goods and services among member states. The Council of Ministers however, recognized that such barrier elimination could not be completely accomplished as long as national intellectual property laws among the member states substantially differed in scope and methods of protection. In order to reduce these differences, the Council of Ministers has sought to approximate national laws governing IP within the EU through the conduction of various directives and regulations aimed at reaching an approximation in member states' laws.

The first major IP harmonisation directive was issued in December 1988 and was aimed at approximating the laws of the member states relating to trademarks.<sup>26</sup> In the preamble of the Trademark Directive, it is acknowledged that national trademark laws “contain disparities which may impede the free

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<sup>26</sup> First Council Directive 89/104 of 21 December 1988 to Approximate the Laws of the Member States Relating to Trade Marks, 1989 O.J. (L 40) 1 (Trade Mark Directive).

movement of goods and freedom to provide services and may distort competition within the common market” and that “it is therefore necessary, in view of the establishment and functioning of the internal market, to approximate the laws of member states.”

Another source of IPR protection in EU is the EU Competition Law and related articles governing restrictive agreements and abuse of dominant position. The interface between the IPRs and the competition law has always been problematic. Since IPRs confer exclusive rights upon their owner and competition law deals with keeping the market open and competitive and there seems to be a conflict between these two areas of law arising from their purposes. It is a complex matter to determine how to balance the amount of protection that needs to be afforded to inventors to encourage them in their activities on the one hand against the desirability of maintaining an open and competitive market on the other.<sup>27</sup> The common point of these two branches of law is that the balance of the amount of protection to afford the inventors and to encourage innovations on the one hand and the desire to create an open and competitive market on the other has to be determined.

Both IPR and competition law have the same objective of maintaining efficiency and economic welfare of the society, however, the ways followed by each system of rules are contrast to each other. IPRs grant their owners’ exclusive rights that sometimes lead to existence of monopolistic situations in a certain territory, national, regional or Community-wide. For instance patent right provides the owner with exclusive rights to manufacture and sell the product for

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<sup>27</sup> Whish, Richard. (2001). “The Relationship between Intellectual Property Rights and Competition Law,” Competition Law, p.676

the first time and as a result the right holder can prevent the third parties from reproducing and selling the patented invention without prior authorization. Such exclusive rights are considered to be necessary for creative innovation as a result of which the society gets certain benefits while the creators are given the reward to recompense their effort.

On the other hand, competition law is in favour of free competition and is against the monopoly and is in search of finding the ways to reduce the monopoly power.

The Competition policy of the EC is central to the overriding objectives of the EC itself, since they are designated to eliminate practices, which interfere with the integration of the separate economies of the EC member states into a single European market.<sup>28</sup> One of the essential objectives of the European Community is a customs union, allowing the free movement of goods between Member States. Articles 30 to 36 of the Rome Treaty are the major instruments for ensuring that Member States do not impede trade, through the use of tariffs, quotas and other restrictions. These efforts to provide a single market would be impeded if private parties could freely re-partition the Community along national lines.

In direct contrast, an essential feature of intellectual property is the exclusive right to control distribution and to prevent and discourage potential competitors from producing similar products. The cost and time involved in developing new products or creative works, combined with the often ease of reproduction and piracy, provides legitimate reason for demanding restraints on competition.

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<sup>28</sup> Gutterman, Alan S., and Bentley Anderson (eds.) (1997). Intellectual Property in Global Markets. London: Kluwer Law International, p.46

The Rome Treaty has a reference on IPR in two articles. The first one is Article 30 (former 36), which state that, “The rules on free movement of goods should not prejudice the protection of industrial and commercial property”.

The other rule is Article 295 (former 222), which state that, “The Treaty shall in no way prejudice the rules in Member States governing the system of property ownership”.

The Rome Treaty did not predict common rules governing IPR and left this area to the jurisdiction of the member states.

However, with regard to competition law, the Rome Treaty foresees rules directly applicable on the undertakings operation within the EC, in particular Article 81 (former 85) governs the agreements, concerted actions and decisions between the undertakings and of association of undertakings and Article 82 (former 86) governing the abuse of dominant position by the dominant undertakings, as far as they affect the trade between member states.

The impact of nationally protected IPR on the integration objective of the Treaty of Rome has been subject to concerns and implementing the IPR related conducts of the undertakings under both Article 81 and 82, the negative effects of the IPR on the competition in the Common Market is aimed to be minimized.

Being aware of the “tension” between IPRs and the competition law, the ECJ distinguished the existence or specific subject matter of such rights from the exercise of them, and treated the exercise which is “a matter of national law” as falling out of the reach of the competition rules whereas the exercise, an issue for European law, may be caught by the competition rules.

Article 81 prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade

between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which share markets or sources of supply. Article 81 of EC competition law applies to agreements granting third parties the right to exploit the right-holder's intellectual property.

Article 82 prohibits an abuse of dominant position by the undertakings, which holds market power. The article states as follows:

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

From the wording, to fall under Article 82, the company exercising its IPR should satisfy the three conditions for the Article to be applied, that is, the company must have dominant position, this dominant position must be abused and that abuse must be liable to affect trade between member states.

An undertaking, which owns a patent or other IPR is not necessarily in a dominant position and does not necessarily have market power, because the product or process to which the right applies, may not constitute a market separate from other products. The basic principle in European competition law is that a dominant company which owns an IPR is not obliged, only because it is dominant, to licence the right. Refusal to grant a licence of an IPR alone is not unlawful under Article 82. It is unlawful only if it is combined with some additional abusive element.<sup>29</sup>

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<sup>29</sup> Lang, J.T. (2002). Compulsory Licensing of Intellectual Property in European Community Antitrust Law, for the Department of Justice/Federal Trade Commission Hearings, Washington D.C. available at [www.ftc.gov/opp/intellect/020522langdoc.pdf](http://www.ftc.gov/opp/intellect/020522langdoc.pdf)

According to Article 222, which prevents the Treaty of Rome from interfering with the national systems of property ownership, the ownership of IP as it exists under the laws of the Member States of the community is recognized by the Community law.<sup>30</sup>

The ECJ has been given the initiative to balance the principle of the free movement of goods with IP protection. The harmonisation of IPRs is made by judicial decisions of the ECJ and the Commission in practice.

In the White Paper the Commission noted:

Differences in intellectual property laws have a direct and negative impact on intra Community trade and on the ability of enterprises to treat the common market as a single environment for their economic activities.<sup>31</sup>

Maintaining approximation in IPRs applications by judicial decisions would lead to confusion, since it is not easy to have exactly uniform results. As a result, in order not to lead confusion among the traders and the market, the Community has adopted several measures directed at harmonizing IPRs of Member States. The commission has since taken a series of initiatives aimed at harmonising, as far as possible, national laws with respect to patents, trademarks and copyrights.<sup>32</sup>

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<sup>30</sup> Okutan, Gündüz. (1996). "Exhaustion of Intellectual Property Rights: Anon-Tariff Barrier to International Trade?", Istanbul: Annales de la Faculté de Droit d' Istanbul No.46 p.113

<sup>31</sup> Completing Internal Market, White Paper from the Commission to the Council, COM(85)310 Final (June 14, 1985), p.145

<sup>32</sup> Gutterman, Alan S., and Bentley Anderson (eds.) (1997). Intellectual Property in Global Markets. London: Kluwer Law International, p.185

### **3.1.3. Protection of Trademarks in EU**

On trademarks The First Council Directive 89/109/EEC to approximate the Laws of Member States Relating to Trademarks has as its main purpose the harmonisation of national trademark laws.

Concerning the trademark protection in EU, the main legal provisions regarding the Community trademark are contained in three Community regulations, which are:

1. Council Regulation No 40/94 of 20.12.1993 usually referred to as 'the basic Regulation' or the 'CTMR';
2. Commission regulation No 2868/95 of 13.12.1995 implementing Regulation 40/ 94, usually referred to as the 'Implementing Regulation' or the 'IR';
3. Commission regulation No 2869/95 of 13.12.1995 on the fees payable to the Office, usually referred to as the 'Fees Regulation' or the 'FR'.

Community Trademark (CTM) Regulation by the Council of the European Union in 1993 was an event of considerable significance in creation of the CTM, which is effective throughout the community by single filing and registration.

By this way Europe took a step further to become one entity in the global market. It can be said that this is the only regulation, which has been successful in creating true Community-level protection of IP in the sense that it operates a supranational level, with its own community level administration and dispute settlement provisions.

By the regulation, The Community Trademark Office was established in January 1, 1996. Since the large single market necessary for the economic development of Europe is not possible without the free movement of goods and

services; modelled on the Benelux trademark system<sup>33</sup>, created as from 1994, the Office for Harmonisation in the Internal Market (OHIM) provides a trademark owner with the advantage of filing one single application for all of the EU and provide effectiveness in all of the EU countries.

Created under European Community law OHIM is a European Community body with its own legal personality. Its activities are subject to Community law and the Community courts are responsible for overseeing the legality of the Office's decisions.

The Office's task is to promote and manage trademarks and industrial designs as well, within the European Union. It carries out registration procedures for Community industrial property. The Office is responsible for balancing its budget from its own revenue, of which main source are registration fees and fees for the renewal of trademark protection. This special condition provides the institution freedom in administration.

#### **3.1.4. Protection of Patents in EU**

For the time being, there is not a unique system, which regulates the patent protection in EU and comprises the whole and the only EU countries although the EU has been working many years for establishing a Community Patent.

A National patent in Europe today can be granted according to two different procedures. Firstly, a National Patent Office can grant a patent. Secondly, a patent can be granted by the EPO (European Patent Office) according to procedures of the EPC (European Patent Convention).

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<sup>33</sup> The Economic Union of BENELUX was established in 1958 and in the same year the decision was taken to standardise national trademark registration. The national laws were repealed in 1971 and applications cover the whole of Benelux. Benelux is considered as a single entity and thus it is not possible to obtain protection in just one Benelux country.

A proposal was published in August 2000, indicating that a third patent system should be established within the EU.<sup>34</sup>

European Patent Convention is a system of law for the grant of patents for invention, which is common to the Contracting States, comprising 5 other contracting states in addition to 15 EU member states and four extension states. Thus although the patent granted by EPC is named European Patent, it does not indicate the EU as a unique entity but indicates Europe as a continent and the contracting states as states located in the continent Europe. A Community patent, which at this time does not exist, would be granted following a common procedure similar to the current European patent. However after its grant, the Community patent would be unitary, valid for the whole Community.

### **3.1.5. Protection of Industrial Designs in EU**

Similar with the CTM, Community Design also enjoys the advantage of single filing and registration in OHIM and effective in all EU countries. An efficient and cost-effective system for the protection of industrial designs in a uniform manner throughout the European Community has been long awaited. Only the Benelux countries have introduced a uniform design protection law. In all the other Member States the protection of designs is a matter for the relevant national law and is confined to the territory of the Member State concerned. The directive<sup>35</sup>, which became applicable since 01.04.2003, created a unified system for obtaining a Community design to which uniform protection is given with uniform effect throughout the entire territory of the Community.

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<sup>34</sup> Proposal for a Council Regulation on the Community Patent, presented by Commission on August 1, 2000

<sup>35</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs

### **3.1.6. Protection of Geographical Indications in EU**

On the EU side, in order to prevent the unfair competition that discourages producers and misleads the consumers, in 1992 EU created systems governing protection in GIs. These three systems known as PDO (Protected Designation of Origin), PGI (Protected Geographical Indication) and TSG (Traditional Specialty Guaranteed) have the object to promote and protect food products.

A Protected Designation of Origin (PDO) covers the term used to describe foodstuffs, which are produced, processed and prepared in a given geographical area using recognized know-how.

In the case of the Protected Geographical Indication (PGI), not all the process have to take place in a certain origin but the geographical link must occur in at least one of the stages of production, processing or preparation. Furthermore, the product can benefit from a good reputation.

A Traditional Specialty Guaranteed (TSG) does not refer to the origin but highlights traditional character, either in the composition or means of production.

Registering a product name in EU requires the definition of the product according to precise specifications and the application including the specifications, must be sent to the relevant national authority. The application undergoes a number of control procedures by the Commission. If it meets the requirements, it is published in the Official Journal of the European Union in order to inform those in the Union who are interested. If there are no objections, the European Commission publishes the protected product name in the Official Journal of the European Communities.

This system of Geographical Indication protection is criticized by the International Trademark Association (INTA)<sup>36</sup> to be violating the WTO TRIPS Agreement in several important aspects such as including provisions in favour of the EU Member States and their nationals at the expense of other WTO members and their nationals.<sup>37</sup> INTA has served as the voice of trademark owners before the WTO Secretariat and with a number of WTO Member States in reference to the protection of geographical indications.

The main criticism results from the conflict among protection of trademarks and geographical indication is that the national treatment principal is violated since a party not resident or established in the EU, even if having trademark rights in a member state, has no rights to object to a proposed registration of a geographical indication.<sup>38</sup> The priority advocated by INTA is that, a validly registered prior mark should prevail against a later geographical indication and vice versa.

The interpretation of TRIPS Agreement, which provides exclusivity to the prior trademark, is not a view uniformly held among all WTO member states. In particular the EU, traditionally pursue a concept of geographical indication protection, which assumes a certain element of superiority of geographical indications over trademarks.<sup>39</sup>

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<sup>36</sup> Organized as The United States Trademark Association in 1878 and changed its name as International Trademark Association in 1993.

<sup>37</sup> EU Regulation: Agricultural Geographical Indications and Designations of Origin, Violations of the TRIPs Agreement, August 1998

<sup>38</sup> Ibid.

<sup>39</sup> Goebel, Burkhardt. 2003. "Geographical indications and trademarks, the road from Doha," Volume 93, Worldwide Symposium on Geographical Indications, TMR p.10

INTA criticized the register of geographical indications advocated by EU stating that the EU-proposed register amounts to an elimination of trademark owners' rights and is against the principles of territoriality, exclusivity and priority. The case subject to the problem is that the designation, which is a geographical indication in its country of origin, has become or has always been a generic term in another country.

The system that aims to govern IPRs protection in EU is not uniform for all articles subject to industrial property. Concerning trademarks and industrial designs, a unique system is established however it is a hard issue to maintain a similar system for patent protection since the subject matter of patent protection is much more complex and the number of languages that has to be implemented states a burden for an application of a unique system.

Besides, all these interface between competition law and IPR protection and criticisms for GIs protection system of EU enlightens that IPR protection has an impact that distorts the competition since recognition of these rights creates entrance barrier to the market. However, despite these objections or danger, in order to maintain competition based on renovations, these rights have to be protected to some extent due to the Research & Development expenditures getting more and more expensive each day. In case of that these rights are not respected and protected properly; companies will avoid directing their resources in this field. The logic of creating a harmonised system of protection is the will to encourage developments in these fields, to eliminate disparities among member states and prevent confusion at the market by predicting the framework of legal environment.

### **3.2 Protection of Industrial Property Rights in Turkey**

On Lisbon Summit on Innovation in May 2000, EU identified Europe's transition to a knowledge based economy as a top priority and a number of developments in intellectual and industrial property as well which are relevant to Turkey since under framework of the CU and accession Process, Turkey will eventually have to adopt harmonizing its legislation which has already begun.

The CU came into force on December 31, 1995.<sup>40</sup> In order to give effect to its primary objectives, the free movement of industrial goods and the elimination of duties, Turkey were required to adopt and/or approximate certain EC legislation and international treaties and conventions, including those governing intellectual property. In relation to intellectual property, the harmonizing process had three stages, the third of which was to be completed by January 1, 1999.

The Helsinki European Council in late 1999 approved Turkey as a candidate country for accession. Turkey therefore became subject to the "Copenhagen criteria", which includes the adoption of the "acquis communautaire" that constitutes the entire body of EU law, including the EC Treaties, all Directives and Regulations as well as the case law of the European Court of Justice.

In any case, EU-wide political consensus would be required before any offer of membership negotiations could be made, and Turkey - as with all potential EU candidates - would have to fulfil the agreed political and economic 'Copenhagen criteria'. Turkey has already made significant process in introducing the required legislation under CU, however there is much progress to be made

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<sup>40</sup> Fulfilling the final stage of the Ankara Agreement of 1964, on March 1995, the EC-Turkey Association Council took decision 1/95 for Turkey to establish a CU with the EU. The Customs Union Decision Art 65, OJ L 35, 13.02.1996

under Copenhagen criteria. Nevertheless, there is probably no country, which has ever changed its intellectual property laws so much such a period of time.<sup>41</sup>

### 3.2.1 Historical Background

Protection of IPR had begun with trademarks by the “Regulation for Registration of Trademarks” dated 20.07.1871, which was adopted from French law of trademarks dated 1857, during the Ottoman era.<sup>42</sup> Putting into force the Law of Trademarks numbered 551 in 1965 abolished this regulation. However this law, which stayed in force until 1995, did not include service marks. Legal arrangements concerning industrial designs and geographical signs have also waited until 1995.<sup>43</sup>

Within the wording of Article 5/b of the Law of Trademarks numbered 551, the GI s have not been protected by registering, but in an indirect way protection of GI s were arranged through not registering as a trademark.

Patent right is introduced in Turkey in 1879 with the Innovation Patent Law<sup>44</sup> dated 23.03.1879. The basis for this law was again the French patent law of the time. However, the protection did not include patent protection of pharmaceutical processes and products for human and animals. This patent law stayed in force between 1879 and 1995, protected only agrochemical processes and products and all other innovations.

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<sup>41</sup> Keyder, (1997), op. cit., p. 121

<sup>42</sup> Yalçın, Uğur G. (1997). “Türk Sınai Mülkiyet Sisteminin Geçmişi, Bugünü ve Yarını” İkinci yılında Gümrük Birliği Semineri 8-9 Kasım 1997”, Türkiye Avrupa Birliği Derneği İstanbul Şubesi Yayınları No.4, İstanbul, 1998

<sup>43</sup> Intellectual Property Protection in Turkey, Turkish Patent Institute, 1997

<sup>44</sup> İhtira Beratı Kanunu

An important progress in June 1994 was the establishment of Turkish Patent Institute. It was first aimed with the 6<sup>th</sup> 5 year Termed Development Plan with the regulation numbered 955. Another most important progress in the term of 6<sup>th</sup> Plan has been the presentation of the draft amending the old Innovation Patent Law dated 23.03.1879. Until 1994, the legal system in IP field providing limited possibilities of registration was generally considered to be outdated.

### **3.2.2 Uruguay Round, TRIPS and Customs Union**

Besides the rapid change in economic conditions of the era such as the global trade conditions and the desire to offer more attractive investment environment, the first incentive for Turkey to establish legal reforms in IP field is the CU with EU. The second motivation is TRIPS Agreement, which is one of the most considerable outcomes of Uruguay Round.

CU with EU provides for the free movement of goods between the Union and Turkey and hence necessitated the elimination of customs duties and harmonisation of rules relating the free movement of goods. In this sense, protection of IPRs constitutes a fundamental aspect of the CU with EU, as it is considered to be a non-tariff barrier. With the Council decision of 95/1 establishing CU, both parties declared that effective protection of IP and conformity of domestic laws would be one of the core principles of the CU.

Dealing with IP protection, Annex 8 of the decision provides rules for harmonisation in order to secure a reasonable level of protection equivalent to that existing in the EC.

Pursuant to Article 2 of Annex 8, Turkey has committed to continue improve effective protection of intellectual, industrial and commercial property

rights in order to secure a level of protection equivalent to that existing in the EC and to take appropriate measures to ensure that these rights are respected.

The parties also confirm the importance they attach to obligations arising from TRIPS Agreement. In this respect, in Article 1 of Annex 8, Turkey undertakes to implement the TRIPS Agreement no later than three years after the entry into force of the decision. Since the existing rules in the EU are nearly identical with those of the TRIPS agreement, harmonisation of rules with the EU would also mean to comply with the provisions of the TRIPS agreement.

Although the studies for protection of industrial rights have started by 1970s with developed countries like USA, France, Germany, Japan; it was let to second plan for 116 years in patent protection and for at first 94 years, later for 30 years in trademark protection disregarding the developments in the world. Not following the developments in the world resulted with staying behind of the developed countries like USA, France, Germany and Japan with which Turkey has started together in IP field and not followed continuously.<sup>45</sup>

Finally, Turkey has made legal reforms in the field of IP and harmonised its laws so radically within such a short period of time.<sup>46</sup> TRIPS provisions provided for 5 years of transition period of time up to the year 2000. Nevertheless Turkey has adopted its national legislation for patents, trademarks, industrial designs and geographical indications in June 1995.<sup>47</sup>

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<sup>45</sup> Yalçiner, (2000), op. cit., p 19

<sup>46</sup> Keyder (1997), op. cit., p.121

<sup>47</sup> Intellectual Property Protection in Turkey, Turkish Patent Institute, 1997

### **3.2.3 Protection of Patents in Turkey**

As mentioned previously Patent right is introduced in Turkey in 1879 with the Innovation Patent Law dated 23.03.1879, which stayed in force between 1879 and 1995.

It is obvious that patent protection which found its implementations efficiently in 1964 in UK, 1790 in USA, 1791 in France, 1877 in Germany and in 1879 in Ottoman Empire, in 1885 in Japan had important contributions to the technological and economic developments to these countries except Ottoman. The only reason that these countries except Ottoman maintained this development is that these countries had examined and developed the conditions of gain and usage of patent right and renewed their patent system periodically.<sup>48</sup>

Turkey founded Turkish Patent Institute in 1994 and brought the patent and utility model legislation into force in 1995. By this way, the appropriate environment for technology transfer, upgrade the current technology and maintain the continuity of them is created.

Turkey is a member to the Paris Convention for the Protection of Industrial Property and a party to the Patent Convention Treaty as of January 1996 and The European Patent Convention as of November 1, 2000.

### **3.2.4 Protection of Trademarks in Turkey**

The first regulation on trademarks and on industrial property rights in Turkey as well was Trademark Regulation of 1871.<sup>49</sup> By this regulation, the

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<sup>48</sup> Yalçınar, (2000), op. cit., p 126

<sup>49</sup> Eşya-i Ticariyeye Mahsus Alamet-i Farikalara Dair Nizamname

registration of trademarks was legalized. This regulation is also among the first examples of the world.<sup>50</sup>

Turkey is a member of the Paris Convention for the Protection of Industrial Property, and is also party to Madrid Protocol as of 1 January 1999. According to its membership to the Nice Agreement, the international classification of goods is followed, and the revision of class 42 with the creation of classes 43 to 45 has been adopted as of January 1, 2002.

Later by the Law No: 6591 dated 1955; the system of examination of similarity in the registration of trademarks was introduced. On March 12, 1965 the Law No: 551 on the Protection of Trademarks came into force.

### **3.2.5. Protection of Industrial Designs in Turkey**

Although patents and trademarks were legally arranged, nothing has been done in industrial designs and GIs as well until June 1995. The protection was provided through law on intellectual and artistic works and especially through unfair competition of Commercial Code.<sup>51</sup>

Regarding the industrial designs, Turkey has adopted 2 Decrees, 1 Decree Law, 1 Law and 2 regulations in 1994 and 1995.<sup>52</sup>

In terms of industrial designs, Turkey has complied with all obligations arising from the CU and TRIPS Agreement and has modified its laws accordingly. Articles 5, 10, 28 and 35 of Decree Law no: 554 are based on Article 25 of TRIPS

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<sup>50</sup> Yalçiner, (2000), op. cit., p 7

<sup>51</sup> Intellectual Property Protection in Turkey, Turkish Patent Institute, 1997, p.1.

<sup>52</sup> Yalçiner, (1997), op. cit., p.17.

Agreement and Articles 12, 17, 21, 22 and 23 of Decree Law are based on Article 26 of TRIPS Agreement.

The International Classification of Locarno is effective in Turkey as of November 1997. However Turkey is not party to the Hague Agreement on Concerning the International Deposit of Industrial Designs.

### **3.2.6 Protection of Geographical Indications in Turkey**

Until 1995 there were no legislative studies pertaining to protection by registration of GIs however this did not mean that there was a lack of private legislation, which lead to an absence of protection. As mentioned above, GIs were generally protected by means of unfair competition provisions of the Turkish Commercial Law, specifically by prohibiting registration as a trademark at that time.

On June 27, 1995 the Decree Law No: 555 pertaining to the protection geographical indications has entered into force. The articles 5, 8, 16 and 24/A of this decree law has been amended/added by the law no 4128 on November 7, 1995 and also “Implementing Regulation under Decree Law No. 555 pertaining to the Protection Geographical Indications” came into force on November 5, 1995.

In preparation of this new legislation for GIs for Turkey, it is aimed to establish a functional system to meet the demands and realities of Turkey, create the Turkish GI system being compatible to the systems of other countries, the provisions of TRIPS Agreement and European Community Directives and Regulations.<sup>53</sup>

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<sup>53</sup> Intellectual Property Protection in Turkey, TPI, 1997, p.7.

The aims of this decree law is given in Article 1 to be to protect the natural, agricultural, mining and industrial products and handicrafts under geographical signs when they are in conformity with the definitions of designation of origin or geographical indications.

In preparation of the new geographical sign legislation for Turkey, it is aimed to establish a functional system to meet the demands and realities of Turkey, create the Turkish geographical sign system being compatible to the systems of other countries, the provisions of TRIPS Agreement of WTO Agreement and European Community Directives and Regulations.

The protection of geographical signs aims to protect the natural, agricultural, mining and industrial products and handicrafts under geographical signs when they are in conformity with the definitions of “designation of origin” or “geographic indications”. For the purposes of geographical signs protection system of Turkey, geographical signs are divided into two groups as designation of origin and geographical indication.

The name of a place, an area or a region of a product's origin shall mean "designation of origin" when all of the following conditions are met:

- The geographical boundaries of the origin of the product shall be defined;
- The essential and exclusive quality or characteristics of the product shall be due to the inherent natural and human factors of the place, area or region;
- The production, processing and preparation of the product shall be within the defined boundaries of the place, area or region.

In EU, generally foodstuffs that are produced, processed and prepared using a recognized know-how in a given geographical area is defined to be PDO, Protected Designation of Origin.

According to Turkish legislation, the name of a place, an area or a region of a product's origin shall mean "geographical indication" when the following conditions are met:

- The geographical boundaries of the product originating from a place, an area or a region shall be defined;
- The process of the product having specific quality, reputation or other characteristics shall be attributed to this place, area or region;
- At least one of the activities of production, processing or preparation of the product shall take place within the defined boundaries of the place, area or region.

Traditional geographical or non-geographical names, which have become customary in the current language, designating a product originating in a place, an area or a region which fulfil the conditions referred above may also be used as designations of origin. The counterpart of this definition in EU is close to the Traditional Specialty Guaranteed (TSG) protection.

## **CHAPTER IV**

### **CUSTOMS UNION, EU ENLARGEMENT AND COMPARISON OF EMPRICLE DATA**

This chapter includes comparison of Turkey, EU resident states and the group of new member states and candidates' patent and trademark applications and grants in the years between 1994 and 2001.<sup>54</sup>

#### **4.1 Main Aims of CU between Turkey and EU**

Trade has always played a major role in European economy and EU has the aim of promoting trade both intra-community and out. The European Community started out as a customs union and gradually transformed itself into a union that has not been imagined in 1957. Bilateral agreements provided for mutual advantageous commercial concessions resulted with links with African, Caribbean and Pacific countries, deepened relationship with the rest of the world and finally accession with the new democracies in Central and Eastern Europe and of course Customs Union with Turkey.

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<sup>54</sup> The new member states as from 01.05.2004 by the fifth enlargement of EU are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Since during the preparation of this study, these countries were still candidates and further the statistics do not cover the group of these 10 new members together in data tables, the comparison is made between Turkey, 15 EU member states and the group of "candidate countries" which cover new member states and also Bulgaria, Romania and Croatia.

Ankara Agreement, which was signed in 1963 and came into force on December 1, 1964 is the basis of the relationship between Turkey and EU which establishes a partnership between two sides stating the final aim to be the full membership of Turkey in the EC.

The CU between the EU and Turkey came into effect on January 1, 1996 with the Association Council Decision No 1/95 on March 6, 1995. The decision rules on the “Intellectual, Industrial and Commercial Property Rights” in Article 31 and Annex 8.<sup>55</sup>

According to these provisions Turkey undertook to implement the TRIPS not later than three years after entry into force of the Decision and to continue to improve the effective protection of intellectual, industrial and commercial property rights in order to secure a level of protection equivalent to that existing in the EC and will take appropriate measures to ensure that these rights are respected.

Annex 8 points out the multilateral conventions on intellectual, industrial and commercial rights that Turkey shall accede, and identifies the areas that Turkey shall adopt the domestic legislation which is compatible with the legislation adopted in the EC and the Member States before the entry into force of the decision.

Consequently Turkey has adopted many legislation on the protection of IPRs in 1995 within the framework of approximation of laws. The first step was the foundation of TPI in June 24, 1994 and later during the time from June 24, 1994 to November 7, 1995; the legislation comprising 2 laws, 6 decree laws, 2

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<sup>55</sup> Association Council Decision No 1/95

Decision of Council of Ministers, 14 regulations and decisions were came into force.<sup>56</sup>

#### **4.2 Importance of Unique Industrial Property Protection in the Customs Union Area:**

A “unique” industrial property protection in the customs union area is clearly important for the well functioning of the market, which became “single” for the member states with the Single European Act of 1986. A uniformly recognized industrial property rights throughout the Union is a complementary part of the single market functioning properly.

Patent system may be defined as the most producible outcome of creative talent comprised by the industrial property rights and a vehicle for commercial and economic expansion. And it may be accepted that the main starting point of the EC has been the concerns to catch up the rivals US and Japan. Later during 70's were the times of a technological boom shifting the focus to globalization and IPRs. The first attempts to place IP on the international agenda was in 70s at Tokyo Round of GATT negotiations.

Europe has never endured to stay behind of the rest of the world particularly US and Japan, and Turkey does not endure to stay behind of Europe either. Thus the importance of promotion and protection of creative talent was recognized by Turkey as soon as the economic policy shifted to an open market economy during 80's.

Turkish and EU industrial property legislation which came out with this wave are similar, mainly identical except the penalties and fines set forth for the violation of IPRs. Although an applicable legislation pertaining to the protection

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<sup>56</sup> For the list of these legislations see Yalçiner, Uğur G.; (2000), p.14.

of patents exists, the effective functioning of this system needs further public awareness and encouragement of innovation and innovators hiding at the corners.

Concerning the trademarks, both Turkish and EU legislations provides in its recitals that the function of trademark is to guarantee the trademark as an indication of origin in order to prevent confusion of the consumer and the description of what may legally constitute a trademark under Turkish law is mainly straightforward with the provisions of TRIPS and Article 2 of the EC Directive harmonizing trademark law in member states.

Concerning the Geographical Indications, Turkish Decree Law No: 555 pertaining to the protection of GIs was primarily modelled on the legislation on the protection of GIs, issued by the European Community in 1992<sup>57</sup>. However in Turkey the scope of protection is broader than in the EU since the EC regulation covers only agricultural products and foodstuffs but the Decree law includes all other products that may be qualified for protection as GIs such as natural, agricultural, mining, industrial products and handicrafts.

Turkey attaches importance to the extension of GIs protection to all products. This protection has already been provided to wines and spirits. EU has a different system and separate legislation for the protection of wine and spirits and agricultural products, while in Turkey, there is no distinction among these products. Turkey has a single system for the protection of GIs for any kind of products like TRIPS.

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<sup>57</sup> Regulation no: 2081/92 on the protection of geographical indications and designations of origin for agricultural products and food-stuffs.

Another difference between the EC Regulation and the Decree law concerning GIs is the period in which no legal action would be taken against such use. The period is stated as 10 years by Turkey and 5 years by the EC.

Both legislations in Turkey and EU have provisions that protected names may not become generic names. Moreover, both of them have stated a clear distinction among the terms “designation of origin” and “geographical indication, indication of source”. Definition of these terms contains geographical indications identifying products of a certain quality or reputation directly linked to a specific region.

As different from Turkey, registration and all administrative procedures are free in the EU. The community charges no fees of the kind usually levied under comparable systems. All the advantageous of the system should accrue to producer, in terms of more reliable information. However, the Regulation does not provide for any assistance for the indirect expenditure such as organizing producer groups or investment to comply with specifications.<sup>58</sup>

In Turkey, applicant must pay a certain amount of money for registration and administrative procedures. This is certainly a disadvantage for the goods subject to GI in Turkey. Although has got a large variety of goods that may be protected under GI protection, Turkey is less behind of Europe in this sense and does not have a comparative advantage in the European market.

Since Turkey is a rich country of which economy is still mainly based on agriculture and has got a large variety of traditional and cultural goods special to its geography, further participation to EU In this sense, Turkey’s participation to European Union unique industrial property registration system which is consist of

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<sup>58</sup> Green Europe, “Speciality Agricultural Products and Foodstuffs”, Brussels, 1996, p 26

Community Trademark, Community Design and foreseen Community Patent is important in terms of having benefit of being included by single filing for whole European Union.

Subsequent to the recognition of Turkey as a candidate to the EU at the Helsinki summit on the 10 - 11 December 1999, 8 committees were established to implement the EU legislation under the responsibility of the Turkish – EU Joint Sub Committees. The subject matter of intellectual and industrial property was included in the second sub committee, named “Internal Market and Competition”.

IPR’s have been given a short-term priority in the “Accession Partnership Document” established by the EU commission on the 8 November 2000. Subsequent to the publication of the Accession Partnership Document, Board of Ministers has approved “The Turkish National Programme Related to Undertake the EU Legislation” and "The Decision Concerning the Implementation, Coordination and Follow up of the Turkish National Programme Related to Undertake the EU Legislation" with the decision number 2001/2129, on 19.03.2001.

As it is mentioned in the 2nd article of the afore mentioned decision, all public institutions and establishments have to realize the tasks mentioned in the National Programme in time and in the way it is aimed.

In this context, participation has been established to the meetings with the EU General Secretariat and the Ministry of Foreign Affairs and the information has been disseminated to related units of the TPI and cooperation has been continued.

Participation has been established to the entire Internal Market and Competition Sub Committee meetings and the Internal Coordination and Adaptation meetings held for this purpose.

The staff of the Trademarks Department has participated in the meetings and seminars organized by “The Office for Harmonization in the Internal Market (OHIM)” under the framework of a “Memorandum of Understanding” signed between OHIM and TPI dated 1<sup>st</sup> of December 2001 with the objective of constituting exchange of information and cooperation.

The Treaty of Accession was signed with 10 candidate countries (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia) on 16 April 2003 and on 1st May 2004, the European Union will be enlarged for the fifth time since the establishment of the European Community in 1957.

Since enlargement will necessitate amendments on both the CTM and CD systems in order to cope with the changes, as a result of the negotiations, two new provisions governing the legal implications of enlargement for CTMs and CDs were agreed. Consequently, the solution arrived at to ensure that the unitary character of the Community trademark and design be maintained and, at the same time, that the pre-existing rights in the new Member States be fully respected.

#### **4.3 Milestones in Industrial Property Protection in Last 10 Years**

Turkey began a series of reforms in 1980s with the aim to shift to a private-sector and market-based economy. These reforms achieved an incredible growth, but this growth and improvement in the economy has been interrupted by financial crises in 1994, 1999 and 2001. Diminishing the reputation of the country

as an industrial market subject to the industrial property rights, these financial crises affected the number of applications/grants which can also be seen from the statistics below.

1994 is an important date for Turkey in terms of starting developments in IP field. The Uruguay Round of 1994 is an imported milestone since it is an important pact comprising TRIPS Agreement in order to bring widespread set of rules to establish minimum standards for the protection of intellectual property rights.

In order to create the appropriate environment for technology transfer and upgrade and maintain the continuity of the current technology, Turkish Patent Institute was founded in 1994 and the patent and utility model legislation was brought into force in 1995.

In January 1996, Turkey became party to the Patent Convention Treaty which is known as PCT and The European Patent Convention EPC in November 2000. In trademark field, Turkey is a member of Madrid Protocol as of January 1999.

All these developments affected the interest in IP protection which can be seen from the statistics as well. Conventions and treaties established to ease the seeking protection abroad with relatively costless way and time raised the applications in Turkey and in the world as well.

Turkey is also a member to the Paris Convention for the Protection of Industrial Property since 1930.

Consequently, Turkey attaches importance to participate the current developments in IP field however the reputation of the country which can be estimated from the data in terms of its attractiveness in industrial investments

stays behind of most industrialized countries as well as the Ex-Soviet Block candidate states.

In order to maintain growth and stability simultaneously, Turkey seeks to improve the investment climate and has taken steps to improve its investment climate through strengthening intellectual property legislation. However continuing gaps in the intellectual property regime slow down the foreign investment in the country.

A specialized court on intellectual property rights has been first established in Istanbul. Additionally the courts in Ankara and Izmir have been established on 15. 10. 2003 by the Ministry of Justice.

#### **4.4 Empirical Data and Their Collection**

The data are collected from the WIPO annual statistics comprising data of all trademark and patent application/grant numbers reported by the national patent offices of the reporting countries. The tables given are abstracted from the original tables available from the web site of WIPO to show the data relevant to Turkey, 10 candidate countries and EU resident states. These original tables are available until the year 2000 in application numbers indicating the country of the applicant and 2001 in grant numbers indicating the applicant as non residents / rest of the world.

Some data at these tables are shown as 'zero' since these data are missing in the original tables as well. The reason for these missing values is that reporting countries have not send their statistics to WIPO for the year concerned.

Although trademark data figure application numbers of the reporting countries, patent data of WIPO figure grant numbers. This difference between

trademark and patent data is due to the multinational registration systems related with these industrial property rights. There is one international system for trademark registration in several countries which is known to be Madrid System. However multinational patent application is available in several ways which are European Patent Convention (EPC) and Patent Cooperation Treaty (PCT). And since it is possible to designate all the countries while application and often further procedures are not applied for all that designated countries, thus the application numbers are not predictable when compared with the number of patent grants.

Another difference between Trademark and Patent data is that, the country of the applicant is defined in the trademark data separately while in patent data the country of the owner of the grants are only given as non-residents and thus covers the rest of the world.

The numbers related to the candidate states collected from WIPO although named to be 10 candidates, does not obligatory mean that these 10 states are the states announced to be the first group of candidates at Helsinki Summit, of which membership will be completed by 2004. Accordingly, Bulgaria and Romania are the two states that will be members of the Union by 2007 and there is not a time predicted for the membership of Turkey.

Turkey has been an EU candidate since 1999, but is the only country among 14 states that the accession negotiations have not begun yet.

In this study; Malta and Cyprus are excluded from most of the statistical tables firstly because the data related to these countries are not available for all the years concerned and besides these are small countries in terms of their economies.

However still not all the tables are uniform with respect to the reporting candidate countries they cover.

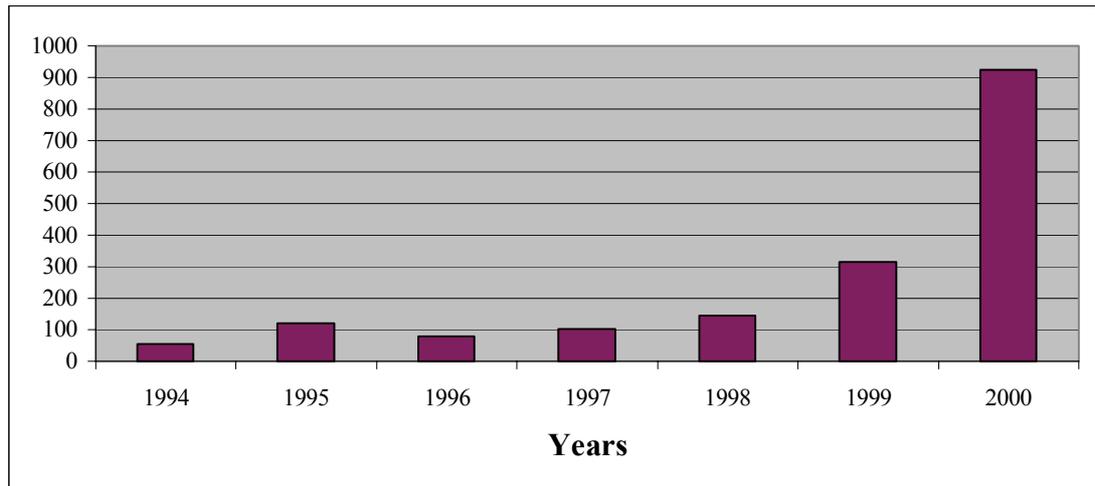
For the purpose of this study, patent, trademark and industrial design data are used and data related to geographical indications are omitted. This is firstly because these industrial properties patents, trademarks and industrial designs are relatively more powerful in terms of their importance to indicate the level of industrial development of the economies and the reputation of the market for investment. The second reason is that connected with this first reason stated above, statistics related to the geographical indications/signs are not as widespread as patents, trademarks and industrial design statistics.

The scope of the data in terms of the years and their inclusions they are related differs, since while the statistics for trademark registrations and applications are simply given, patent statistics are much more complex since they cover PCT, EPC and national applications and grants at the same time and although the original tables separates these numbers, there are missing years and country reports for different years.

Another problem for patent statistics of WIPO was that, PCT and EPC application numbers can not be handled as an indicator since designation of high numbers of countries while application do not have any cost and usually not all the designated countries are subject to further procedures in order to obtain patent grant. TPI data are used in order to fill this gap however these statistics divides numbers only as domestic and foreign application/grants.

#### 4.4.1 Trademark Statistics

Figure 1, derived from the Table 1 shows the trend of trademark applications of Turkey to EU countries in 1994-2000. The data in Table 1 is available until the year 2000.



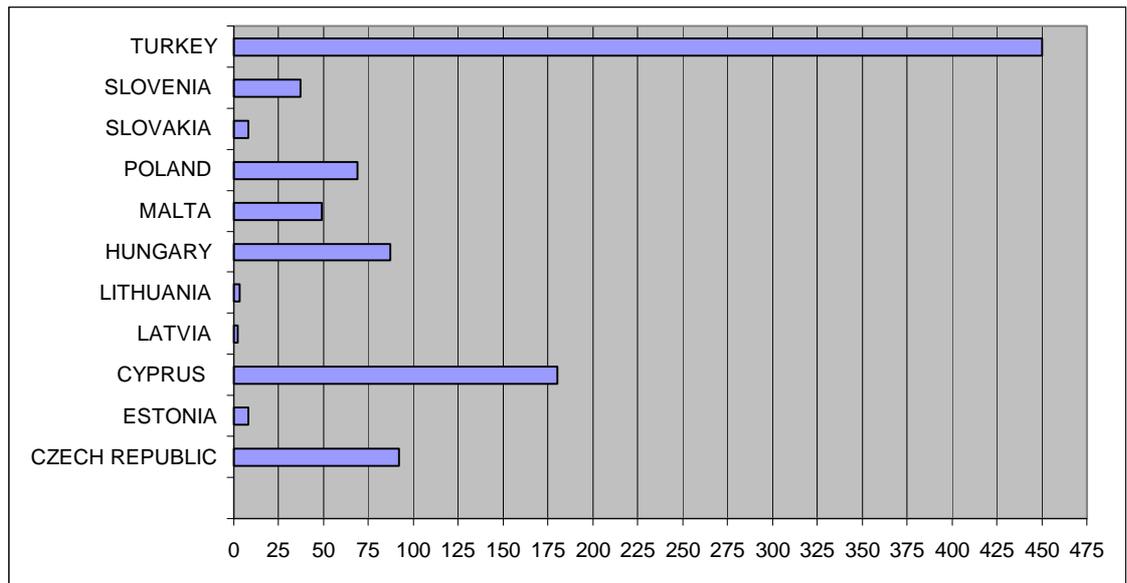
**Figure 1-Trademark Applications from Turkey to EU Countries**

**Source: WIPO**

Numbers show the trademark applications from Turkey made directly to the national patent offices of EU countries. It is observed from the graph that the trend of trademark application numbers of Turkey to EU countries which are made directly to the national patent office of the country concerned, while it was amounted around 150 during the years 1994 and 1998, it almost doubled in 1999 and tripled by the year 2000.

The fact that Turkey became a party to Madrid Protocol in 1999 and industrials and investors gained the opportunity to grant multiple foreign registrations by single filing procedure explains this rapid increase in trademark application numbers by the year 1999 and 2000.

On the other hand, Community Trademark application numbers comparison of Turkey and candidates are impressive. Table 2 illustrates statistics related to CTM application numbers from Turkey and 10 candidate countries<sup>59</sup> that were announced to gain membership by the year 2004.

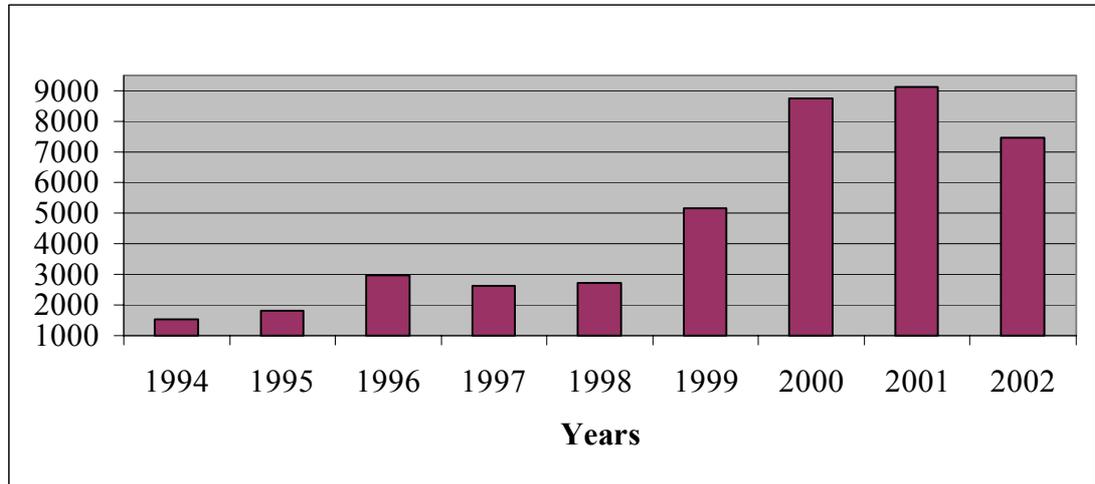


**Figure 2- CTM Applications of Turkey and 10 Candidates during 1996-2002**  
**Source: OHIM**

Figure 2 derived from Table 2 give the number of CTM applications of 10 candidate countries and Turkey in years between 1996 and 2002. It is impressing that, although not stated to be a candidate country with the other 10 states, unlike other candidate countries, however, Turkey is already a part of the EU Single Market in terms of industrial goods and processed agricultural products since the entry into force of the Association Council Decision (1/95) (Customs Union Decision) of 31 December 1995 and from the table, Turkey seems to be more interested in CTM and CD systems than other candidates.

<sup>59</sup> These 10 candidates became members of the union by 1<sup>st</sup> May 2004.

This should be seen partly as a result of historical background of the candidates' economic policies and mainly an impact of customs union between EU and Turkey speeding the convergence of the legislations and markets.



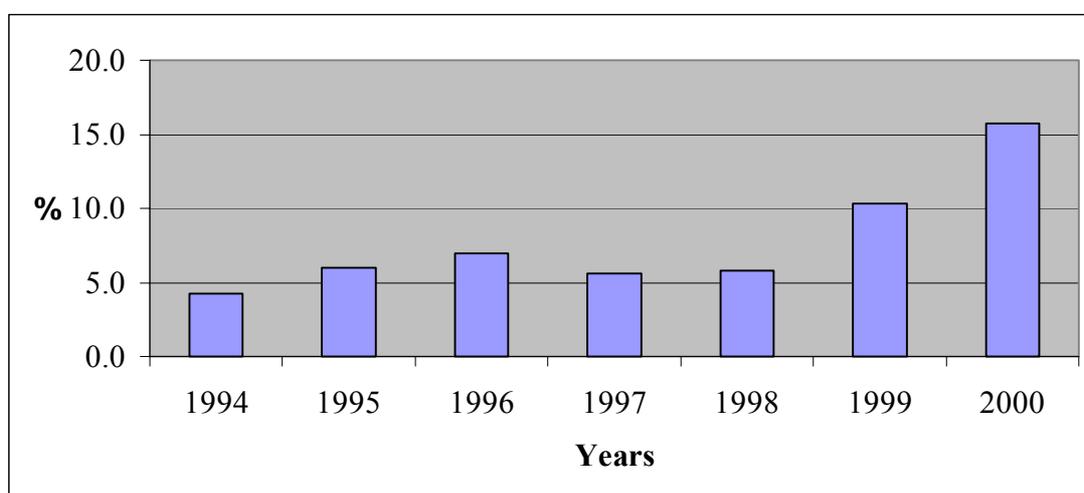
**Figure 3- Trademark Applications from EU Countries to Turkey**  
**Source: 1994-2000 WIPO, 2001-2002 TPI**

Figure 3 illustrates the number of applications from 15 EU countries to Turkey during the years 1994-2002. The data for 1994-2000 are collected from WIPO and the data in 2001 and 2002 are the numbers provided from TPI statistics and merged together. When we look at the trend in trademark applications from EU countries to Turkey, we observe a decrease in 1996 sustaining till 1998 and increasing by almost doubling in the year 1999. Although the registration procedures have been simplified and customs union commenced, the delay in the enforcement procedures may be the reason of this decrease in 1997.

The increase in applications in 1999 can be connected with the Madrid Protocol membership of Turkey in that year of 1999. The number of trademark

applications is doubled first in 1999 and one more time in 2000. However there is a decrease by the year 2002.

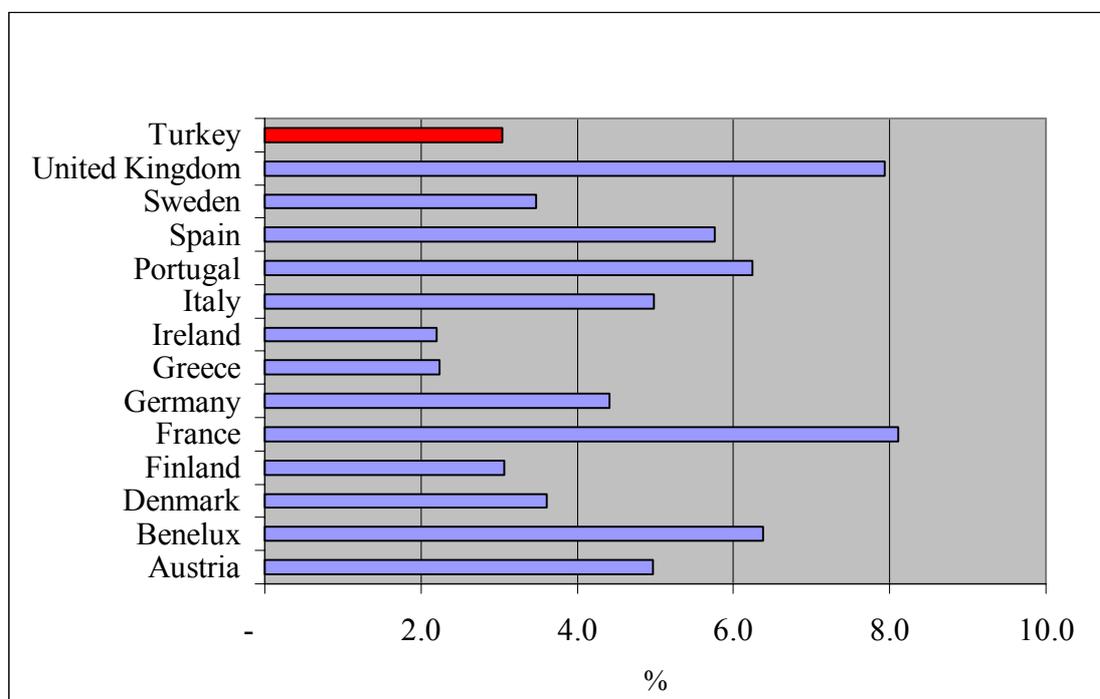
Graph shows that the increase in 1996 although not much impressive and was not sustained following two years, Customs Union Decision entered into force on 31 December 1995 had an impact on the interest in the importance of IP protection in Turkey. Later in 1999, the number of applications has nearly doubled and continued to increase in the year 2000.



**Figure 4- Pentage of Trademark Applications from EU Countries to Turkey**  
**Source: WIPO**

The increase in trademark application numbers in 1999 can also be visualised from the trend in the applications of EU countries to Turkey during the years 1994-2000. Figure 4 derived from the Table 1 and given in Table 3 gives the trend in the share of the trademark applications from EU countries to Turkey in the total sum of trademark application numbers of 15 EU countries, 10 candidates and Turkey during 1994-2000. In this figure the increase observed from the Figure 3 is reflected by the trend of trademark application numbers directed to Turkey

within the total numbers directed to 15 EU countries itself, 10 candidates and Turkey.



**Figure 5- Percentage share of Trademark Applications of EU Countries and Turkey in Total Sum of 15 EU Countries', 10 Candidates' and Turkey's during 1994-2000**

**Source: WIPO**

Figure 5 is also derived from the Table 1 giving the comparison of the share of trademark application numbers from EU countries and Turkey in total application numbers of 15 EU member states, 10 candidates and Turkey during the years 1994 and 2000. When compared with the EU countries it is seen from the figure that the trademark application numbers from Turkey in terms of an indicator to show the interest of the industry in EU market with registered brands and trademarks, goes beyond the member states such as Ireland and Greece of which Ireland is known to be an important industrial economy in the union.

#### 4.4.2 Patent Statistics

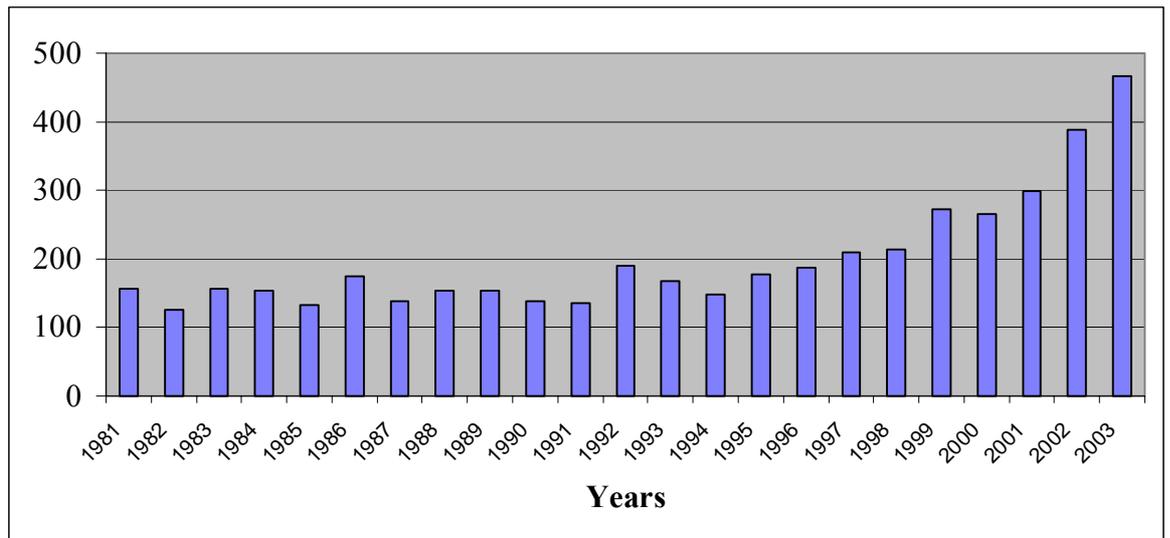
Patent Statistics can be used as an indicator for;

- Scientific and technological activities
- Technological trends
- Market\ investment and competition trends
- Technological profile of a country
- Potential innovation and activity of a country

However patent statistic analysis does not indicate short-term changes because of the long time period between filing and granting of a patent. The procedures may take 2 to 5 years.

The application numbers of the designated countries give the information for what the country is seen as a market for the products subject to the patent. However, since applicants can designate many countries within the application but later most of these countries should be cancelled or withdrawn; there would be some problems with the interpretation of the data based on application numbers especially the designations in the PCT and EPC filings. For this reason, unlike trademark data, grant numbers are used for the patent statistics collected from WIPO.

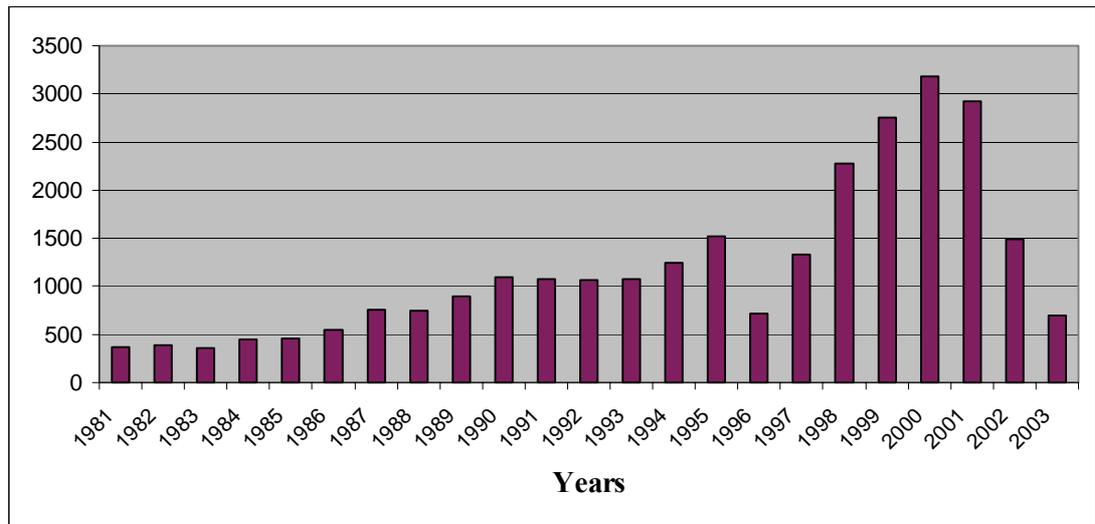
The data collected from TPI illustrates the application numbers however do not indicate the nationality of the applicant thus unlike the trademark figures grouping the applicant countries by EU countries, 10 candidates and Turkey; the foreign applicants in patent statistics expresses the rest of the world.



**Figure 6- Patent Applications made by Residents in Turkey during 1981-2003**  
**Source: TPI**

Figure 6 illustrates national (domestic) patent applications (except utility mode applications) in Turkey for the years from 1981 until 2003. While the yearly average of the patent applications till 1997 remains to be 150, number of applications started to increase gradually by the year 1994 until 1998 and the number of applications in 2003 became more than twice of the year 1998.

An important progress in June 1994 was the establishment of Turkish Patent Institute. The patent and utility model legislation was entered into force in 1995 and by this way, the appropriate environment relating to patent protection for technology transfer, upgrade the current technology and maintaining the continuity of them is created. Participation in international agreements related to industrial property protection, amendment and implementation of necessary legislation and increased awareness and importance of the need to catch up technological improvements are the driving forces in this development.



**Figure 7- Patent Applications made by Non-residents in Turkey during 1981-2003**

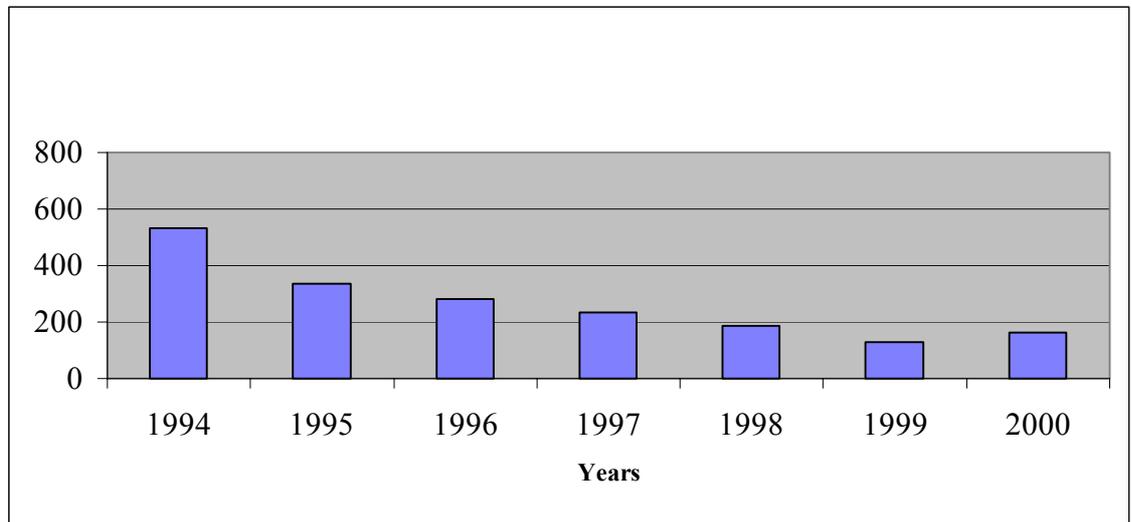
**Source:TPI**

When we look at the numbers of the foreign patent applications (applications by non-residents) made directly to TPI, an important increase is observed in 1998. The most important reason for this increase in 1998 in foreign patent applications the rise after 1998, is the participation of Turkey in PCT system in 1996 and EPC system in 2000.

These international treaties PCT and EPC are very important in terms of their guiding both the investors and inventors everywhere in the world to consider seeking for protection abroad and opening up their products subject to patents to foreign markets.

In order to compare the interest of EU industry in the markets of 10 Candidates and Turkey, the following Figures 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 have been established. Those figures give the numbers of the granted patents in

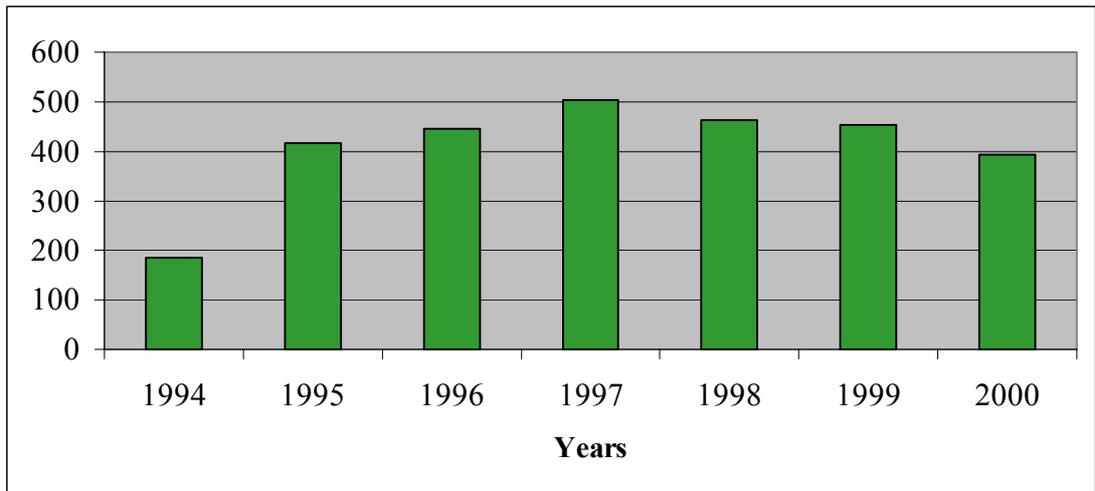
Turkey, Czech Republic, Poland, Hungary, Bulgaria, Latvia, Lithuania, Slovenia and Slovakia by the applicants from EU countries.



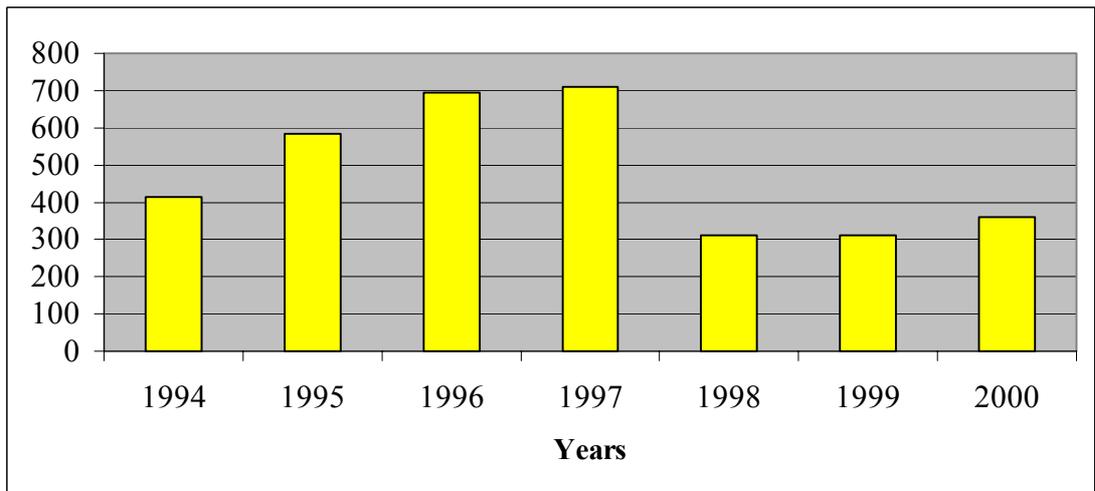
**Figure 8- Patents granted in Turkey by the applicants from EU countries during 1994-2000**

**Source: WIPO**

The figure 8 illustrates the number of granted patents in Turkey according to the years between 1994 – 2000. The decrease in grant numbers of patents by EU applicants in Turkey is quite impressive. The reasons of this fact can be explained that, although the patent legislation has been modernized, the basic legislation for foreign investment in Turkey is still not attractive and the economical crises lived in Turkey started from 1994 and repeated in 1999 and 2001.



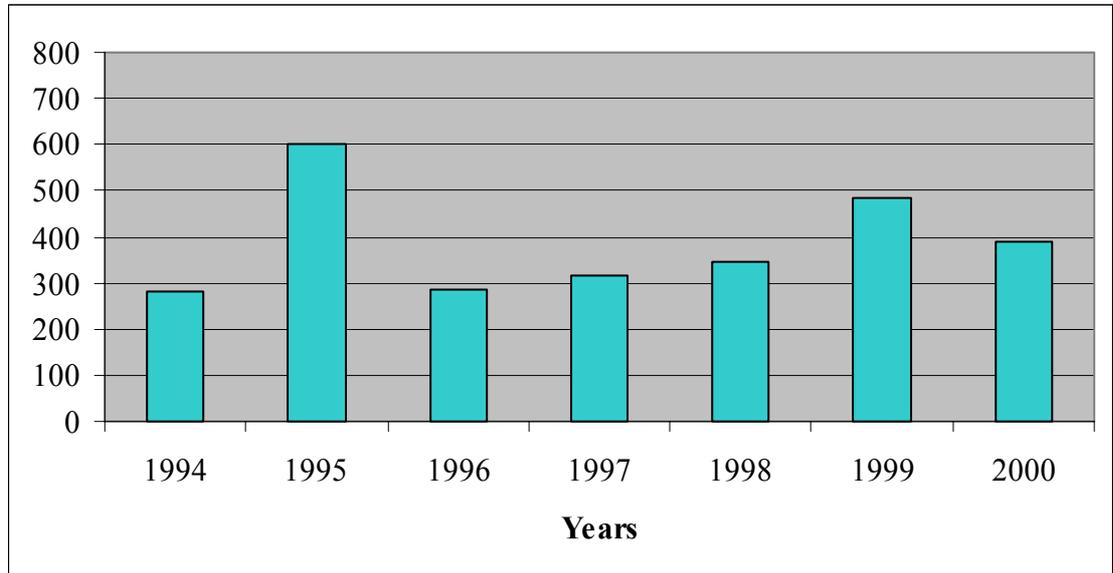
**Figure 9- Patents granted in Czech Republic by the applicants from EU Countries during 1994-2000**  
**Source: WIPO**



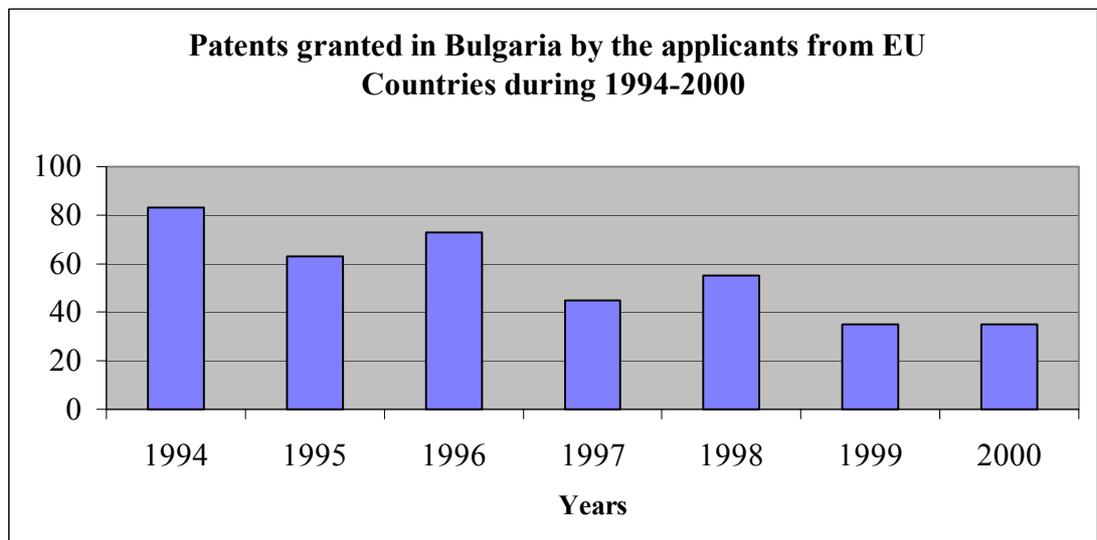
**Figure 10- Patents granted in Poland by the applicants from EU Countries during 1994-2000**  
**Source: WIPO**

The figures 9 and 10 shows that the granted patents in Czech Republic and Poland by the applicants from EU countries were decreased after 1997. The

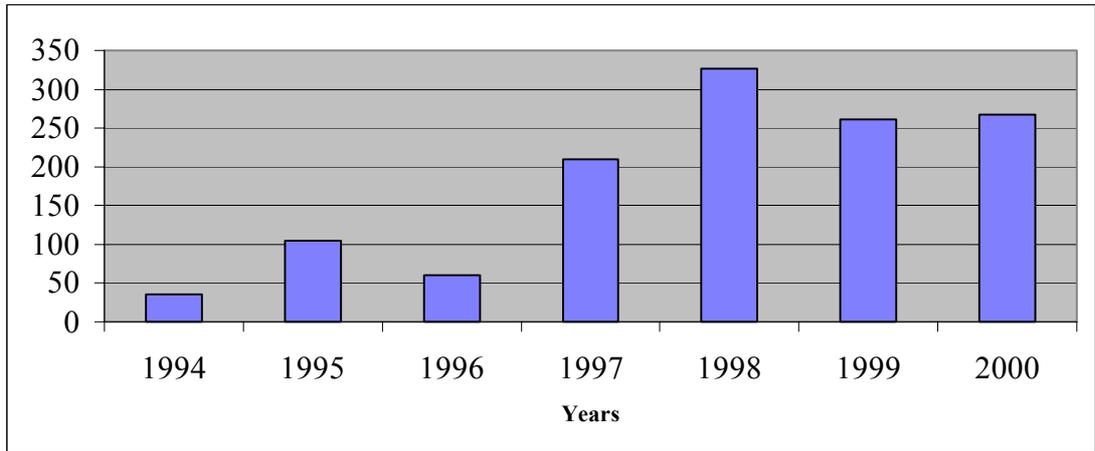
reverse trend is seen in Bulgaria, Hungary and Slovakia after 1997 (Figures 11, 12 and 13).



**Figure 11- Patents granted in Hungary by the applicants from EU Countries during 1994-2000**  
Source: WIPO



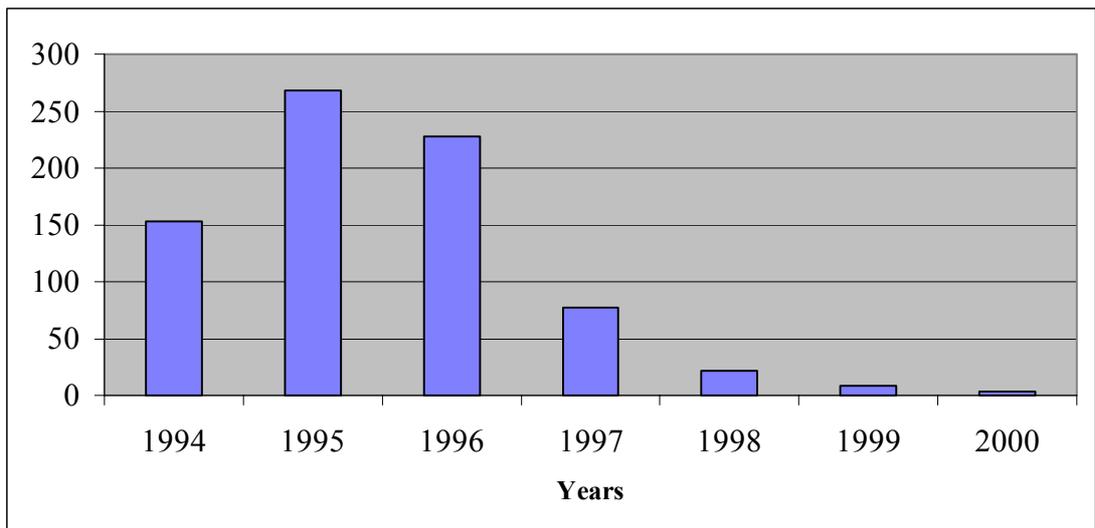
**Figure 12- Patents granted in Bulgaria by the applicants from EU Countries during 1994-2000**  
Source: WIPO



**Patents granted in Slovakia by the applicants from EU Countries during 1994-2000**

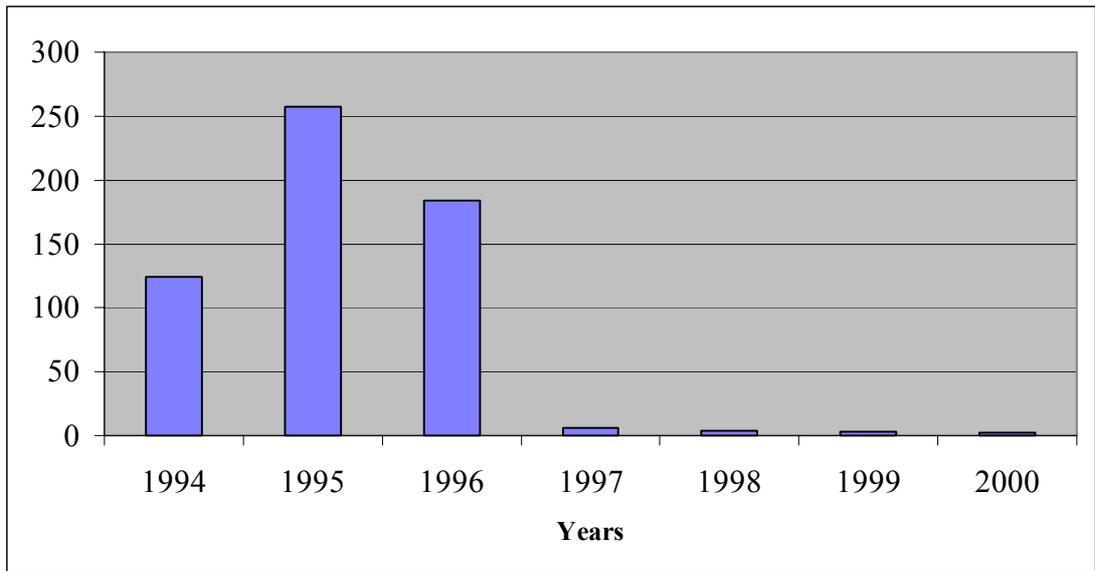
Source: WIPO

The figures 14, 15, 16 and 17 show the number of granted patents by the applicants from EU countries in Latvia, Lithuania, Romania and Slovenia has been decreased dramatically after 1997.

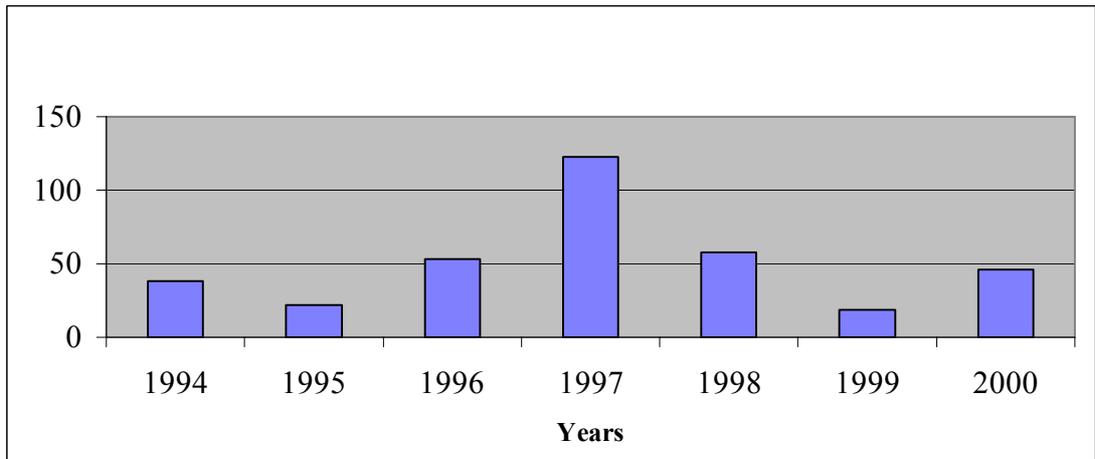


**Figure 14- Patents granted in Latvia by the applicants from EU countries during 1994-2000**

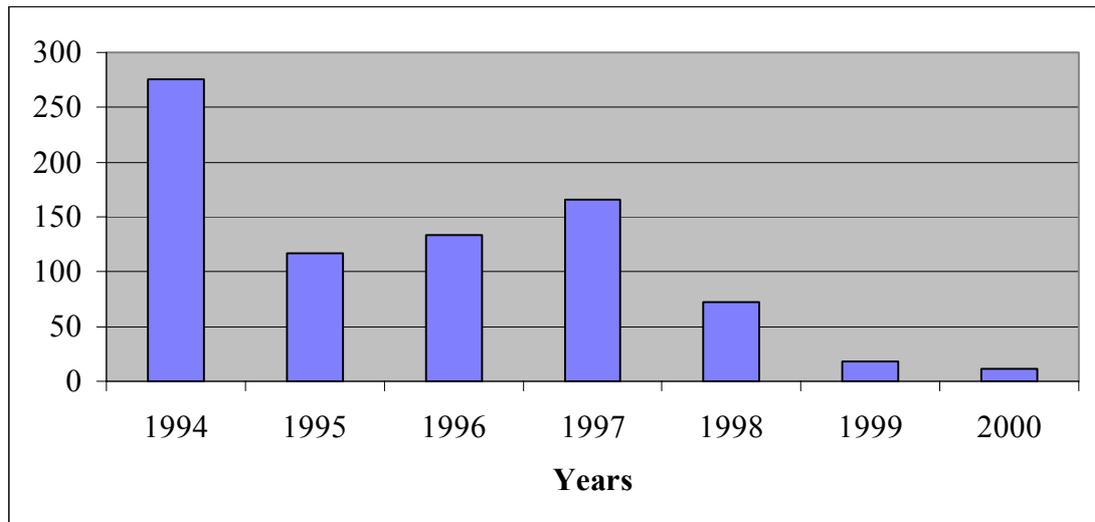
Source: WIPO



**Figure 15- Patents granted in Lithuania by the applicants from EU countries during 1994-2000**  
**Source: WIPO**

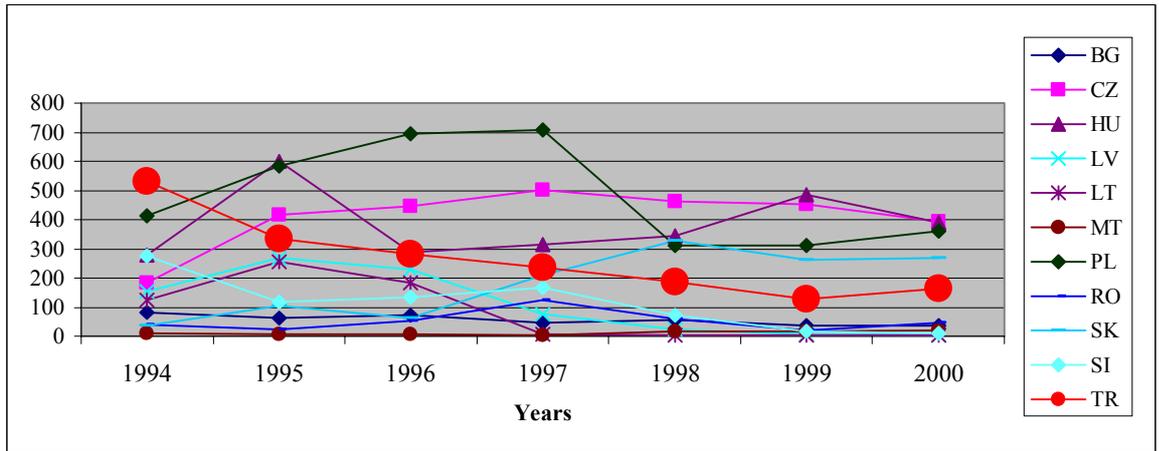


**Figure 16- Patents granted in Romania by the applicants from EU countries during 1994-2000**  
**Source: WIPO**



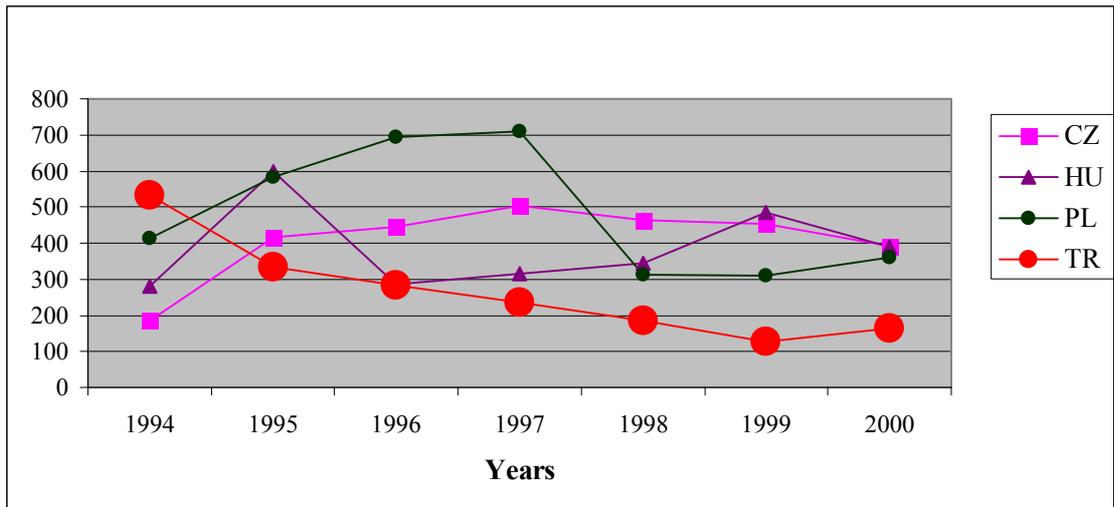
**Figure 17- Patents granted in Slovenia by the applicants from EU countries during 1994-2000**  
**Source: WIPO**

Figure 18 shows the trend of patents granted in Turkey and 10 candidates by the applicants from EU countries. This figure is divided into two groups in order to illustrate the comparison of grant numbers of Turkey firstly with the countries of which patent grant numbers are above of Turkey and secondly with the countries of which patent grant numbers are below of Turkey as shown below in Figures 19 and 20.



**Figure 18- Patents granted in Turkey and 10 Candidates by the Applicants from EU Countries**  
**Source:WIPO**

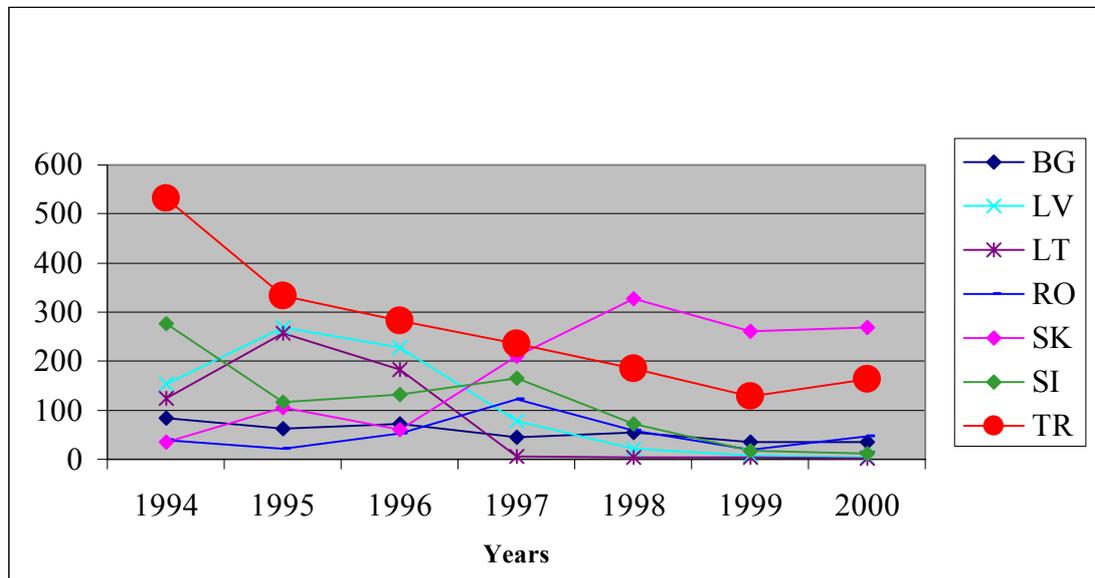
Following two figures illustrate a comparison of the patents granted in Turkey by the applicants from EU countries with two groups of candidate countries. The first group of candidates compared is the countries of which grant numbers are above that of Turkey.



**Figure 19- Patents granted in Czech Republic, Hungary, Poland and Turkey by the Applicants from EU Countries**  
**Source: WIPO**

In Figure 19, when matched up to these three countries' trends, Turkey stands far behind of the grant numbers of EU originated patents in Czech Republic, Hungary and Poland. By 1994, the grant numbers in Turkey is above all three countries however starts to decline in a steady way in 6 years time.

Although a decrease starting from 1996 in each country except Poland is observed, the declining trend of Turkey is quite impressive and by the year 2000 the grant numbers in Turkey is half of the other three countries.



**Figure 20- Patents granted in Czech Republic, Hungary, Poland and Turkey by the Applicants from EU Countries**  
**Source: WIPO**

In Figure 20, the trend of patent numbers granted in Turkey is matched up to second group of candidate countries, of which economies are relatively smaller than Turkey. When compared with Bulgaria, Latvia, Lithuania, Romania, Slovakia and Slovenia; although the gap starting by the year 1994 is very high, it is narrowed in 6 years time and even stayed behind of Slovakia in year 2000.

These figures reflect the fact that the customs union established in 1996 had no impact on the investment from European Union in terms of protection in patented industry. The newly independent East European countries seem to be the new popular market for European countries.

#### **4.4.3 Industrial Design Statistics**

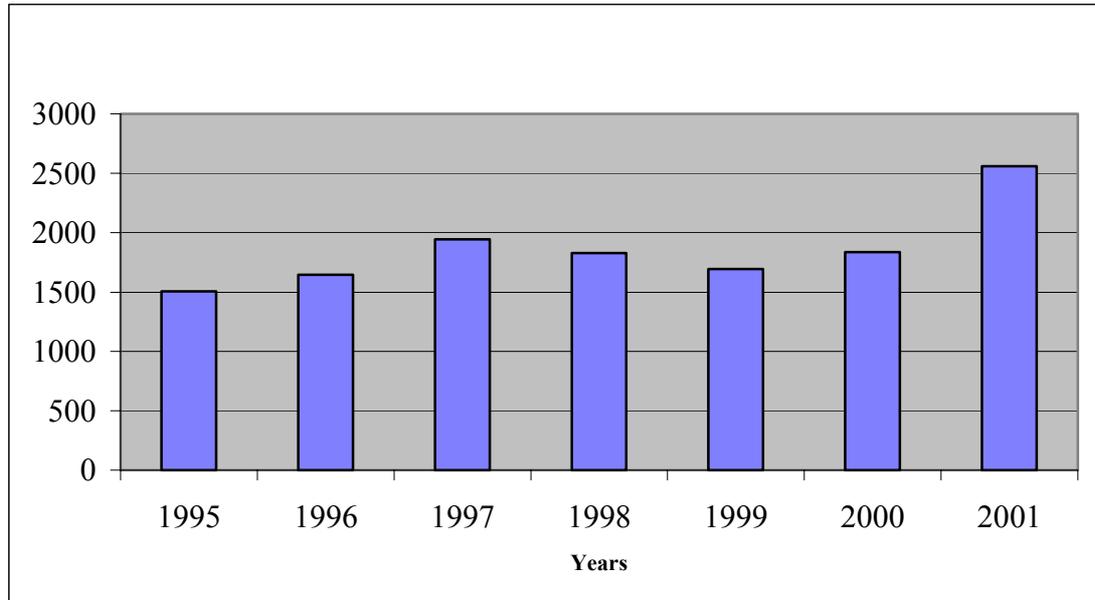
Consumers attach particular importance to the visual appeal of the goods they buy. Thus the appearance of an article certainly counts in marketing at first impression and plays a decisive role in the final decision to buy or not. Therefore, industrial designs make a critical contribution to marketing strategy and success.

Statistics related to industrial design applications are important since they give important information about the reputation of the market designated. Less strictly regulated market would not be profitable for the articles having special aesthetic feature which can easily be imitated when entered in the market. Protection of valuable designs prevents the look of the product from becoming an ordinary commodity and freely imitated, less expensive look-alike products.

Since Community Design enjoys the advantage of single filing and registration in OHIM and being effective in all EU countries from April 2003, there is no data collected recently.

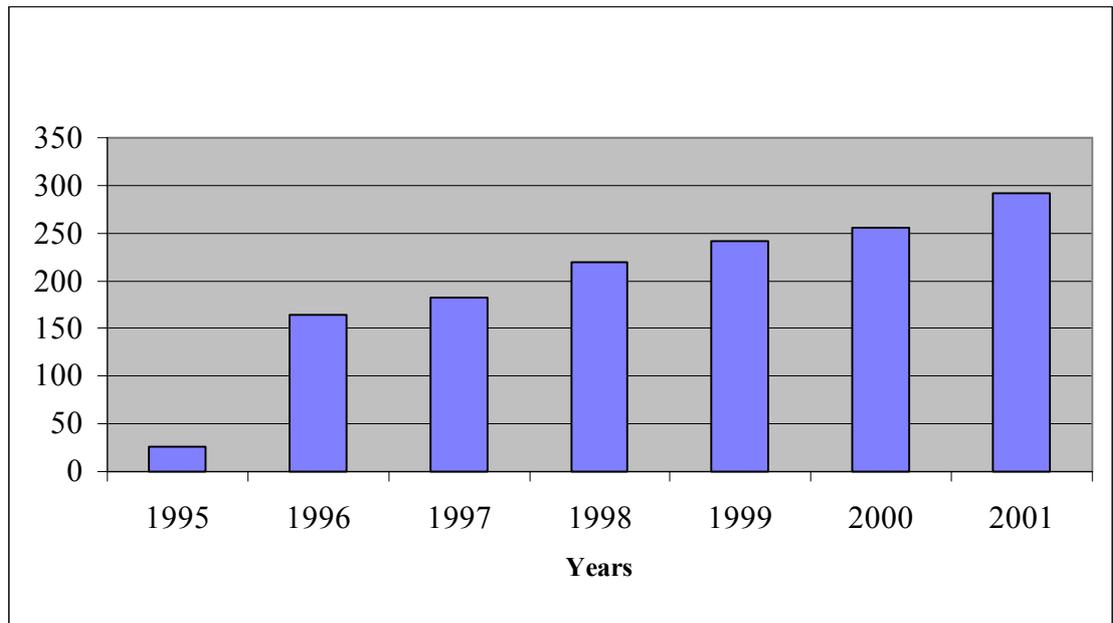
The International Deposit System for Industrial Designs has been established by the Hague Agreement. But Turkey is not member of this system until April 2004. For this reason there is no data for design applications of Turkey through the international application systems. Turkish Parliament decided to participate in the agreement on 08 April 2004.

The figures given below related to the national (domestic) and foreign industrial design protection applications are derived from the Table 6 abstracted from WIPO annual statistics on Industrial Designs.



**Figure 21- Applications for Industrial Design Registration to Turkey filed by Applicants from Turkey**  
**Source: WIPO**

Figure 21 illustrates the industrial design application numbers made to TPI by the residents during 1995-2001 and Figure 22 illustrates the application numbers made by non residents during same years. The increase in applications of the foreigners in from 1995 to 1996 is quite impressive about % 500 in one year.



**Figure 22- Applications for Industrial Design Registration to Turkey filed by Applicants from Foreign Countries**  
**Source: WIPO**

Until 1995, the protection of industrial design was provided through law on intellectual and artistic works and especially through unfair competition of Commercial Code.

The introduction of new legislation, completion with all obligations arising from the CU and TRIPS Agreement and modification of the laws accordingly had such a huge impact on the foreign application to increase the application numbers approximately by % 500 and from 26 to 164 in one year time and this higher numbers of applications sustained following years.

## **CHAPTER V**

### **CONCLUSION**

The use of economy in law is gradually increasing. “Law and economics” has its roots in Adam Smith, in 18th century. In 1776 in his book “Wealth of Nations” Adam Smith argues that in order to understand the human behaviour, one should look at relationship between the aim and the conclusion. Depending on the aim of the behaviour is purposing an economic conclusion or distortion of the market, the law regulates the market. So one should look at the economic – rational- behaviour in order to indicate whether the behaviour is legal or not.

Law examines the legal aspects of the case, whether there is an infringement to the law; it is the economy to evaluate the degree and the outcomes or the potential outcomes of this infringement.

IP has one feature, which distinguishes it from other areas of law; its main purpose is not to regulate but to reward the creator and promote economic and technological progress. In Europe, as well as in the world and in Turkey, a developed trading block has started to move from basic manufacturing and industrial state to a sophisticated manufacturing and post-industrial stage long time ago. In this regard the importance of IP cannot be overestimated since

information, ideas and innovation constitute the basic tools of post-industrial economy.

For this end, industrial property and the competition law are dealing with both sides of law and economy. IPRs have its roots in creative and innovative talent and result with an economic outcome, which have to be regulated so as not to cause any infringement. And it is a fact that law is never static, has to be amended, revised, reinterpreted and restated parallel with the economic developments. Where there is a speedy shift in the technology requiring a corresponding shift in the law, this need is even more explicit.

The importance of this issue is also stated in The Association Council Decision for Custom Union between Turkey and EU that the Turkish law must be harmonised in order to secure a level of protection equivalent to that existing in the EC. Turkey has adopted a large part of the necessary legislation to ensure that intellectual property rights are respected since it has been in force from the beginning of 1996. Also the necessary institutionalisation in this area is completed successfully and a system is devised whereby the public is made aware of and responsible for the recognition and protection of IP rights which also constitute and important dimension of economic development and human rights as well.

When we look at the data collected and composed in order to reflect the comparison of Turkey with both EU countries and candidates ( new members as of today), we observed that the participation of Turkey in the international treaties effects the statistics in a considerable extent implying that there has been a potential for the investors and the inventors and the need of application of these international treaties.

When compared, Turkey is well beyond some EU countries such as Ireland and Greece, and most of the candidate East European countries such as Romania, Bulgaria, Slovakia, Slovenia, Latvia and Lithuania in terms of the popularity of IP protection abstracted from the application numbers in the country concerned.

Apart from statistics, in Turkey, there are many products that can be considered as geographical indication/sign; therefore may have an important comparative advantage in the market with these products. Similarly, there are plenty of brands, benefiting international trademark protection and having reputation more and more in international market in recent years, which is also a source of a comparative advantage and rising market share.

The statistics show that IPR protection in Turkey gained importance reflecting the legislative improvements and agreements. When compared with the other candidates (Figure 2), the difference between the CTM applications of Turkey which goes far beyond the others is quite impressive. Considering that Turkey is the only country that established Customs Union before accession, there should be a compromise in terms of benefiting uniform IP protection in EU.

To be in a customs union relation is a highly primitive form of economic integration; however it is a game of give and take. Sharing the market and having the legislation approximated and harmonised in the same line to a great extent, Turkey and EU may seek for an outcome that will revise Turkey within the unified registration and protection system of the union. This participation may even be a prestep towards full membership of Turkey to the EU and a driving force for the catch up of the economy as well.

The legislation is already harmonised with EU to a great extent and Turkey is still working on harmonisation procedures. Having established the CU, Turkey is a part of the common market and may be accepted to the unique registration systems of the EU concerning the protection of IPRs. Within the framework of Customs Union, there may be found a way to accept Turkey in regional registration systems CTM and Community Design, which are in force now and expected community patent system.

## APPENDICES

### APPENDIX A

**Table 1 Trademark Applications of EU Countries to EU, 10 Candidate Countries and Turkey**

<b>Reporting Country</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>1994-2000 TOTAL</b>
<b>Austria</b>	1084	1269	8586	8395	7689	7277	7562	<b>41862</b>
<b>Benelux</b>	2267	2303	10880	10089	9506	9220	9434	<b>53699</b>
<b>Denmark</b>	3712	4205	3144	4575	4652	4869	5173	<b>30330</b>
<b>Finland</b>	2904	3440	2723	3967	4132	4077	4524	<b>25767</b>
<b>France</b>	11494	15312	8322	7852	10169	5679	9427	<b>68255</b>
<b>Germany</b>	0	3316	8508	6807	6654	5451	6395	<b>37131</b>
<b>Greece</b>	3526	3809	2441	2291	2242	2054	2431	<b>18794</b>
<b>Ireland</b>	3685	3991	3062	2311	2586	2854	0	<b>18489</b>
<b>Italy</b>	761	0	9993	7336	7103	7028	9734	<b>41955</b>
<b>Portugal</b>	10831	7687	7465	7130	6453	6324	6680	<b>52570</b>
<b>Spain</b>	2371	2802	10087	9278	9088	5571	9300	<b>48497</b>
<b>Sweden</b>	3581	4296	3054	4480	4637	4003	5132	<b>29183</b>
<b>United Kingdom</b>	9407	12504	8669	9415	9139	8190	9495	<b>66819</b>
<b>EU TOTAL</b>	<b>55623</b>	<b>64934</b>	<b>86934</b>	<b>83926</b>	<b>84050</b>	<b>72597</b>	<b>85287</b>	<b>533351</b>
<b>Bulgaria</b>	3823	3986	3405	3548	3432	3227	3532	<b>24953</b>
<b>Czech Republic</b>	7474	7721	6074	6900	6618	6109	6984	<b>47880</b>
<b>Estonia</b>	1331	1467	1280	1341	1352	2300	3041	<b>12112</b>
<b>Hungary</b>	5847	1337	5699	6239	6080	5748	7015	<b>37965</b>
<b>Latvia</b>	1185	2412	2786	3119	3367	2993	0	<b>15862</b>
<b>Lithuania</b>	1196	1314	1118	1263	2214	4291	3250	<b>14646</b>
<b>Poland</b>	1423	1536	6935	7776	7663	7218	8557	<b>41108</b>
<b>Romania</b>	2784	2858	3670	3990	4003	3690	4248	<b>25243</b>
<b>Slovakia</b>	5442	5565	4733	5295	5001	5063	5362	<b>36461</b>
<b>Slovenia</b>	4005	0	4098	4644	4496	4350	4886	<b>26479</b>
<b>CANDIDATES TOTAL</b>	<b>34510</b>	<b>28196</b>	<b>39798</b>	<b>44115</b>	<b>44226</b>	<b>44989</b>	<b>46875</b>	<b>282709</b>
<b>Turkey</b>	1530	1803	2969	2630	2728	5167	8760	<b>25587</b>
<b>ALL TOTAL</b>	<b>91663</b>	<b>94933</b>	<b>129701</b>	<b>130671</b>	<b>131004</b>	<b>122753</b>	<b>140922</b>	<b>841647</b>

Source: WIPO (This table is abstracted from WIPO annual statistics available at [www.wipo.org](http://www.wipo.org))

## APPENDIX B

**Table 2 Community Trademark Applications of Candidates**

States parties	Applications 1996-2001	%	% World	Applications 2002	%	% World	Total	%	% World
<b>CZECH REPUBLIC</b>	68	0.07	0.03	24	0.16	0.05	92	0.09	0.03
<b>ESTONIA</b>	7	0.01	0	1	0.01	0	8	0.01	0
<b>CYPRUS</b>	144	0.15	0.06	36	0.24	0.08	180	0.17	0.06
<b>LATVIA</b>	2	0	0	0	0	0	2	0	0
<b>LITHUANIA</b>	3	0	0	0	0	0	3	0	0
<b>HUNGARY</b>	74	0.08	0.03	13	0.09	0.03	87	0.08	0.03
<b>MALTA</b>	44	0.05	0.02	5	0.03	0.01	49	0.05	0.02
<b>POLAND</b>	55	0.06	0.02	14	0.09	0.03	69	0.06	0.02
<b>SLOVAKIA</b>	8	0.01	0	0	0	0	8	0.01	0
<b>SLOVENIA</b>	19	0.02	0.01	18	0.12	0.04	37	0.03	0.01
<b>TURKEY</b>	418	0.45	0.17	32	0.21	0.07	450	0.42	0.15

Source: OHIM (Table is abstracted from Statistics of Community Trade Marks Situation at the end of 2002, available at <http://oami.eu.int/pdf/diff/statapplication2002.PDF>)

## APPENDIX C

**Table 3 Percentage of Trademark Applications from EU to 10 Candidates and Turkey**

	1994	1995	1996	1997	1998	1999	2000
<b>Bulgaria</b>	10.6	13.3	8.0	7.6	7.3	6.4	6.3
<b>Czech Republic</b>	20.7	25.7	14.2	14.8	14.1	12.2	12.6
<b>Estonia</b>	3.7	4.9	3.0	2.9	2.9	4.6	5.5
<b>Hungary</b>	16.2	4.5	13.3	13.3	12.9	11.5	12.6
<b>Latvia</b>	3.3	8.0	6.5	6.7	7.2	6.0	0.0
<b>Lithuania</b>	3.3	4.4	2.6	2.7	4.7	8.6	5.8
<b>Poland</b>	3.9	5.1	16.2	16.6	16.3	14.4	15.4
<b>Romania</b>	7.7	9.5	8.6	8.5	8.5	7.4	7.6
<b>Slovakia</b>	15.1	18.6	11.1	11.3	10.7	10.1	9.6
<b>Slovenia</b>	11.1	0.0	9.6	9.9	9.6	8.7	8.8
<b>Turkey</b>	4.2	6.0	6.9	5.6	5.8	10.3	15.7
	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: WIPO, derived from Table 1 abstracted from WIPO annual statistics available at [www.wipo.org](http://www.wipo.org))

## APPENDIX D

**Table 4 Patent Grants of EU, 10 Candidates and Turkey to the Rest of the World**

Reporting Country	1995	1996	1997	1998	1999	2000	2001
<b>Austria</b>	16090	14748	14740	13626	13063	10144	12982
<b>Belgium</b>	18597	17130	16713	15361	14752	11372	14223
<b>Denmark</b>	10986	11142	11688	10747	10401	8171	10275
<b>Finland</b>	1487	1345	1225	1365	23	2532	5281
<b>France</b>	40382	37285	37215	34145	32787	26101	2209
<b>Denmark</b>	36906	35674	35532	32414	30737	24684	28965
<b>Greece</b>	8726	8404	8551	7852	10221	6056	7859
<b>Ireland</b>	3826	4087	6434	6693	7040	5882	8054
<b>Italy</b>	29211	29670	27259	25400	25995	1177	24248
<b>Luxembourg</b>	10365	9179	8879	7937	7422	5838	7409
<b>Netherlands</b>	22300	20951	21009	19439	18443	14232	17668
<b>Portugal</b>	3020	4791	7202	8886	8405	6305	8518
<b>Spain</b>	19381	19033	19518	18444	18223	14079	17928
<b>Sweden</b>	19212	17327	17297	16082	15123	11730	14396
<b>United Kingdom</b>	43108	40013	40205	38343	36218	29586	35674
<b>EU TOTAL</b>	283597	270779	273467	256734	248853	177889	215689
<b>Bulgaria</b>	207	293	261	349	329	337	293
<b>Czech Republic</b>	722	883	1177	1160	1254	1339	1478
<b>Estonia</b>		19	106	80	97	83	243
<b>Hungary</b>	1376	678	520	538	1581	1429	564
<b>Latvia</b>	442	510	260	123	254	550	1006
<b>Lithuania</b>	410	313	73	64	347	714	1135
<b>Poland</b>	989	1160	1151	1242	1214	1524	1171
<b>Romania</b>	69	118	295	221	157	455	843
<b>Slovakia</b>	232	120	419	715	698	811	957
<b>Slovenia</b>	180	262	389	256	675	1091	1662
<b>Turkey</b>	668	554	451	764	1089	1131	2076

Source: WIPO (This table is abstracted from WIPO annual statistics available at [www.wipo.org](http://www.wipo.org))

## APPENDIX E

**Table 5 % Distribution of Patent Grants of 10 Candidates and Turkey**

Reporting Country	1995	1996	1997	1998	1999	2000	2001
<b>Bulgaria</b>	3.9	6.0	5.1	6.3	4.3	3.6	2.6
<b>Czech Republic</b>	13.6	18.0	23.1	21.0	16.3	14.1	12.9
<b>Estonia</b>	0.0	0.4	2.1	1.5	1.3	0.9	2.1
<b>Hungary</b>	26.0	13.8	10.2	9.8	20.5	15.1	4.9
<b>Latvia</b>	8.3	10.4	5.1	2.2	3.3	5.8	8.8
<b>Lithuania</b>	7.7	6.4	1.4	1.2	4.5	7.5	9.9
<b>Poland</b>	18.7	23.6	22.6	22.5	15.8	16.1	10.2
<b>Romania</b>	1.3	2.4	5.8	4.0	2.0	4.8	7.4
<b>Slovakia</b>	4.4	2.4	8.2	13.0	9.1	8.6	8.4
<b>Slovenia</b>	3.4	5.3	7.6	4.6	8.8	11.5	14.5
<b>Turkey</b>	12.6	11.3	8.8	13.9	14.2	12.0	18.2

Source: WIPO (This table is derived from Table 4 abstracted from WIPO annual statistics available at [www.wipo.org](http://www.wipo.org))

## APPENDIX F

**Table 6 Applications for Industrial Design Registration to Turkey filed by Non-residents during 1994-2001**

	1994	1995	1996	1997	1998	1999	2000	2001
<b>Austria</b>	3055	2932	2725	2839	2676	2761	2992	2456
<b>Benelux</b>	968	981	1170			1539	1535	1334
<b>Denmark</b>	663	736	772	770	1345	812	805	688
<b>Finland</b>	360	469	458	509	487	547	536	482
<b>France</b>	124	1435	1326	1633	1541	1612	1896	1701
<b>Germany</b>	1941	2028	2042	2347	2583	2552	13131	10510
<b>Ireland</b>	361	367	281	388	420	576		291
<b>Italy</b>	228		769		825	768	1057	
<b>Portugal</b>	598	451	391	433	442	460	508	428
<b>Spain</b>	750	759	735	832	856	918	1073	1033
<b>Sweden</b>	864	791	864	995	881	910	1041	910
<b>United Kingdom</b>	5840	6247	6281	6165	5408	5625	5747	5072
<b>Bulgaria</b>	16	30	29	28	519	529	563	601
<b>Czech Republic</b>	171	180	288		292	290	304	267
<b>Hungary</b>	101	64	138	176	187	145	150	133
<b>Latvia</b>	12	18	33	33	24	26	31	33
<b>Lithuania</b>	13	17	28	37	28	40	27	26
<b>Malta</b>	16	2	23	19	12	16	27	6
<b>Romania</b>	510	518	623	772	879	34	45	464
<b>Slovakia</b>	141	142	112	140	121	107	116	89
<b>Slovenia</b>	41	30	43	21	35	44	51	22
<b>Turkey</b>		26	164	183	220	242	256	292
<b>Applications for Industrial Design Registration to Turkey filed by Residents during 1995-2001</b>								
	1994	1995	1996	1997	1998	1999	2000	2001
<b>Turkey</b>		1507	1646	1944	1829	1695	1837	2560

Source: WIPO (This table is abstracted from WIPO annual statistics available at [www.wipo.org](http://www.wipo.org))

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