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## **REGULATION ON EMPLOYEE INVENTIONS, INVENTIONS REALIZED WITHIN HIGHER EDUCATION INSTITUTIONS AND INVENTIONS ARISEN FROM PROJECTS SUPPORTED BY PUBLIC AUTHORITIES**

### **INITIAL PROVISIONS**

#### **Purpose, Scope, Basis and Definitions**

##### **Aim**

**ARTICLE 1 - (1)** The purpose of this Regulation is to determine the procedures and principles regarding the fee schedule for the inventions of the employees, the arbitration procedure to be followed in case of dispute, the inventions made in higher education institutions, and the inventions made in the projects supported by public institutions and organizations.

##### **Scope**

**ARTICLE 2 – (1)** This Regulation;

a) The matters regarding the inventions of those working in the private and public sectors, those working in public institutions, and those working in state economic enterprises and their subsidiaries and affiliates, without prejudice to special regulations, and the determination of the price to be paid by employers to employees who have service inventions, and the arbitration procedure to be applied in case of dispute,

b) Issues related to notification obligation, right ownership, application, objection procedures and sharing of income from inventions regarding inventions made in higher education institutions,

c) Matters related to inventions emerging in projects supported by public institutions and organizations, covers.

##### **Rest**

**ARTICLE 3 – (1)** This Regulation has been prepared on the basis of Articles 113 to 122 of the Industrial Property Law dated 22/12/2016 and numbered 6769.

##### **Definitions**

**ARTICLE 4 – (1)** In this Regulation;

a) Price: The price to be paid to the employee in case the employer requests partial or full entitlement,

b) Employee: Persons and public officials who are in the service of another person pursuant to a private law contract or a similar legal relationship and are obliged to fulfill this service relationship against him in a personal dependency regarding a certain job indicated by the employer,

c) Employee invention: Service inventions or free inventions that can be protected by a patent or utility model made by the employee,

ç) Service invention: The inventions made by the employee during the business relationship, based largely on the experience and work of the business or public administration, within the fields of activity or in which the workplace operates, in a business or public administration,

d) Law: Industrial Property Law No. 6769 dated 22/12/2016,

e) Contribution share: If the service invention is realized by more than one employee, the share expressing the contribution of each employee in the realization of the invention as a percentage,

f) Institution: Turkish Patent and Trademark Office,

g) Client institution: A public institution and organization that determines the purpose and scope of a project financed by another public institution or organization in order to meet its own needs,

ğ) Free invention: Inventions that are not included in the service inventions within the scope of the First Part, and inventions outside the inventions made in higher education institutions within the scope of the Second Part,

h) Registry: Recording medium containing information about patent or utility model rights,

i) Incentive award: If the employer demands full entitlement, the amount given to the employee in return for the application to be made about his invention,

i) Higher education institution: Higher education institutions defined in subparagraph (c) of the first paragraph of Article 3 of the Higher Education Law dated 4/11/1981 and numbered 2547, and higher education institutions affiliated to the Ministry of National Defense and the Ministry of Interior, means.

## **PART ONE**

### **Fee Tariff for Employee Inventions and Arbitration Procedure in Case of Dispute**

#### **FIRST PART**

##### **Notice and Claim**

##### **Employee inventions and reporting obligation**

**ARTICLE 5 - (1)** When the employee makes a service invention, he is obliged to notify the employer of this invention in writing and without delay. This notification is made to the unit official determined by the employer or, if such authorization has not been made, to the unit officer of the employee who made the invention, in accordance with the procedures and principles determined by the employer, if any. If the invention is realized by more than one employee, this notification can be made together. The employer records this notification and notifies the person or persons who made the notification in writing, without delay, of the date of receipt of the notification.

(2) The employee has to explain the technical problem, solution and service invention in his notification. Other necessary information and documents are also given in order to better explain the invention.

(3) In his notification, the employee shall indicate the written and verbal instructions given to him regarding his work, the experience and work of the enterprise he has benefited from, the other employees, if any, who contributed to the realization of the invention, the type and scope of the contributions of these employees, as well as the contribution shares of himself and other employees in the invention.

(4) In case the notification is incomplete, the employer notifies the employee that the deficiencies are corrected within two months from the date of receipt of the notification. Otherwise, the notification shall be deemed to have been duly made.

(5) The employer assists the employee, if necessary, in eliminating the deficiencies of the notification. In the event that the employee does not correct the reported deficiencies within one month, it is deemed not to have been duly notified of the invention and the invention notification is duly made again.

(6) The provisions of Article 119 of the Law shall apply to the obligation to notify and to make offers regarding free inventions.

(7) The employee is liable for the damages against the employer due to the failure to fulfill the notification obligation pursuant to the first paragraph. Pursuant to the first paragraph, if a patent application is made or a patent is obtained regarding the service invention without notifying the employer, a lawsuit may be filed against the patent applicant or the patent owner in accordance with Articles 110 and 111 of the Law.

##### **The employer's claim on the service invention**

**ARTICLE 6 – (1)** The employer may claim full or partial rights regarding the service invention. The employer notifies the employee of this request in writing and within four months from the date on which the notification duly made pursuant to Article 5 is received.

##### **Full claim**

**ARTICLE 7 – (1)** In case the employer demands full rights regarding the service invention, all rights on the invention will be transferred to the employer as of the date the notification reaches the employee according to Article 6 . In this case, the employee may request compensation from the employer in return for benefiting from the invention.

(2) In the event that the employer claims full rights regarding the service invention, the employer gives an incentive award separately from the price specified in the first paragraph, without prejudice to the other rights of the inventor, regarding the full claim according to Article 6 . Employees in public institutions and organizations are not given incentive awards. The incentive award is paid to the employee within two months at the latest from the date on which the formal conformity notification regarding the application made to the Institution within the scope of Article 9 is received by the employer. The incentive award cannot be less than the net minimum wage. If the invention is realized by more than one employee, the incentive award is divided among the inventors in proportion to their contribution.

#### **Partial claim**

**ARTICLE 8** – (1) Regarding the service invention, the employer may claim partial rights to use the invention. In this case, the service invention becomes a free invention. The employer can use the invention based on partial right.

(2) In case the employer uses the invention based on a partial claim, the employee has the right to ask the employer to pay him a price in return for benefiting from the invention.

(3) If the employer's use of the invention based on a partial claim makes it difficult for the employee to evaluate his invention, the employee may request the employer to make a full claim or to waive his partial right of use. If the employer does not respond to the employee's notification regarding this request within two months from the date of notification, the employer's right to use the invention on the basis of partial right ends.

#### **Employer's obligation**

**ARTICLE 9** – (1) The provisions of Article 116 of the Law shall apply to the employer's obligation to file a patent application for the service invention for which he has claimed full rights .

(2) After the employer has made a full claim regarding the invention, he cannot avoid the payment of the price by claiming that the invention is not worthy of protection. However, if it is decided by the Institute that the invention is not protected, or by the court as a result of a lawsuit filed against the patent that is the subject of the invention, the employee cannot claim compensation, excluding the income obtained from the invention, until the decision date.

### **SECOND PART**

#### **Determination of the Price**

##### **General principles regarding the determination of the price**

**ARTICLE 10** – (1) In determining the price, especially the economic value of the service invention, the employee's role in the enterprise and the contribution of the enterprise to the realization of the service invention are taken into account.

in the table in the third paragraph of article 21, based on the income obtained from the invention and the groups to which the invention belongs according to the first paragraph of article 20.

(3) The income obtained from the invention is equal to the sum of the income obtained in case the invention is used by the enterprise and the income obtained by not using the invention by the enterprise, through license, transfer or barter.

##### **Determination of the price by the parties**

**ARTICLE 11** – (1) The price and payment method are determined by the contract signed between the employer and the employee or a similar legal relationship following the employer's claim for full or partial rights regarding the service invention.

(2) If the service invention is made by more than one employee, the price and the payment method are determined separately for each employee in accordance with the first paragraph. *If the parties cannot reach an agreement, the dispute is resolved through arbitration.* <sup>(one)</sup>

(3) The price to be paid to the employees in public institutions and organizations for their inventions cannot be less than one third of the net income obtained from the invention. However, if the subject of the invention is used by the public institution and organization itself, the price to be paid cannot be more than ten times the net salary paid to the employee for the month in which the price is paid, for once. The provision of the first paragraph of Article 10 shall be applied in determining the

price. The net income from the invention is calculated by deducting any expenses incurred for the work in which the invention is realized, from the income from the invention.

### **THIRD PART**

#### **Profit from Inventions Used by the Business**

##### **Methods for determining the gain from the invention**

**ARTICLE 12** – (1) The income determined to be used in the implementation of the Corporate Tax General Communiqué (Serial No: 1) published in the Official Gazette dated 3/4/2007 and numbered 26482 is considered as the income from the invention within the scope of this Regulation.

(2) For the inventions used by the enterprise, if the income obtained from the invention is not determined within the scope specified in the first paragraph, the income obtained from the invention is calculated by one of the following three different methods:

- a) Comparison.
- b) The identifiable benefit that the entity derives from the invention.
- c) Estimate.

##### **Determination of the profit obtained from the invention using the benchmark method**

**ARTICLE 13** - (1) Income derived from service inventions made in industry branches where license and sales contract applications related to similar products and procedures are common, can be determined by using the benchmark method in case there is a comparable free invention.

(2) In this method, the income obtained from the invention for comparable inventions is calculated by multiplying the unit value of the invention determined by taking into account the license or sales price in the comparable contract and the number of products, product weight or number of parts.

(3) In the absence of a comparable free invention, the income from the invention is calculated by considering the contribution of the invention to the selling price of the product.

(4) The calculation of the income obtained from the invention regulated in this article according to the comparison method is exemplified in Annex-1.

##### **Determination of the income obtained from the invention according to the benefit of the enterprise from the invention**

**ARTICLE 14** – (1) Income obtained from the invention can be calculated according to the identifiable benefit provided by the enterprise from the invention. This method is primarily applied to determine the profit obtained from service inventions that provide savings to the business. This method is also used to determine the income obtained from the invention only related to the product, machinery and devices used in the enterprise or the production methods applied in the enterprise, where the income from the sale of the product subject to the invention cannot be taken as a basis.

(2) The positive difference arising between the expenses and incomes of the enterprise as a result of the use of the invention is the identifiable benefit that the enterprise derives from the invention. This amount, which is found by comparing expenses and incomes according to business accounting principles, is the income obtained from the invention.

(3) The expenses incurred for the invention before the invention is realized are not deducted from the income obtained from the invention.

##### **Determination of the profit obtained from the invention by estimation method**

**ARTICLE 15** – (1) In cases where the income from the invention cannot be calculated by the comparison method and the identifiable benefit of the enterprise from the invention, the income obtained from the invention is determined by the estimation method. In this method, the reasonable price that the employer would have to pay if he wanted to buy the invention from a similar free inventor is taken as a basis in determining the income obtained from the invention.

### **CHAPTER FOUR**

#### **Profit from Invention for Inventions Not Used by the Business**

##### **license agreement**

**ARTICLE 16** – (1) In case the service invention is not used by the enterprise and is evaluated by issuing a license, the income obtained from the invention is equal to the net income obtained from the licensing.

(2) Net income is calculated by deducting the expenses incurred for the development of the invention after realization, the expenses incurred to make the invention usable, and the expenses related to licensing from the gross income from the licensing.

(3) In the determination of the net license income, any expenses incurred by the employer for the protection of the patent right as the licensor are deducted from the gross income. Costs related to preventing infringement of patent rights and providing security are also deducted from gross income.

#### **sales contract**

**ARTICLE 17** - (1) In case the service invention is evaluated by selling it without being used by the enterprise, the income from the invention is equal to the net income from the sale of the invention.

(2) Net income is the gross income obtained from the sale of the invention, less the expenses incurred for the development of the invention after its realization, the expenses incurred to make the invention usable, and the expenses related to the sale of the invention.

#### **barter agreement**

**ARTICLE 18** - (1) In case the service invention is evaluated by exchanging it without being used by the enterprise, first of all, this profit amount is tried to be determined in order to determine the share of the invention in the total profit obtained by the employer from the swap agreement. If this is not possible, the invention value is determined by the estimation method according to the provisions of Article 15.

### **CHAPTER FIVE**

#### **Using Multiple Inventions in a Product or Method**

##### **Profit from invention in more than one invention**

**ARTICLE 19** – (1) In a method or a product produced by using more than one service invention together, if this method or product constitutes an integrity that should be evaluated together, the total income obtained by using these inventions is determined in order to determine the income obtained from each invention. . This determined profit is allocated to the inventions used, taking into account the contribution of each invention to a method applied by using more than one service invention together or to a product produced.

### **CHAPTER SIX**

#### **Determination of the Group to which the Service Invention Belongs**

##### **The group to which the invention belongs**

**ARTICLE 20** - (1) The service invention is divided into three groups as follows, according to the inventor's job in the enterprise, the contribution of the enterprise to the realization of the service invention, and the situation in which the employee realizes the service invention:

a) 1st Group: Inventions that are made on matters that do not directly fall within the scope of duty in the enterprise, on the occasion of a task undertaken by the employee himself and in the absence of the contribution of the enterprise to the realization of the invention.

b) 2nd Group: Inventions that are not directly caused by the assignment in the enterprise, but are realized to meet the needs identified by the enterprise or to solve the problems, or in which the enterprise contributes to the realization of the invention.

c) 3rd Group: Inventions that are directly caused by the assignment given in the enterprise and where the enterprise has full contribution to the realization of the invention.

(2) The contribution of the enterprise, the technical tool and equipment support it provides to the inventor; energy, raw materials and the tools and devices of the enterprise that have contributed significantly to the realization of the invention.

(3) The workforce allocated for the realization of the invention is considered as technical tools and equipment.

(4) Overhead expenses incurred by the inventor for research, laboratory facilities and devices with his own workforce, independent of the invention, are not considered technical tools and equipment within the meaning of this article.

### **CHAPTER SEVEN**

#### **Calculation of the Price, Payment Method and Duration**

##### **Calculation of the price**

**ARTICLE 21** - (1) The fee to be paid to the employee for the service invention is calculated by multiplying the income obtained from the invention and the coefficients given in the table in the third paragraph, based on the groups to which the invention belongs according to the first paragraph of Article 20.

(2) The employer is not obliged to pay for the amount of the income obtained from the invention exceeding 150,000 times the net amount of the minimum wage.

(3) The coefficients to be used in calculating the price to be paid to the employee according to the groups to which the invention belongs and the income obtained from the invention are given in the table:

find out group to which he belongs	The net minimum wage amount of the income obtained from the invention						
	Coefficient for division up to 1,000 times	Coefficient for quantity between 1,000 and 5,000 times	Coefficient for quantity between 5,000 and 10,000 times	Coefficient for quantity between 10,000 and 25,000 times	Coefficient for quantity between 25,000 and 50,000 times	Coefficient for quantity between 50,000 and 100,000 times	Coefficient for quantity between 100,000 and 150,000 times
1st group	0.0060	0.0050	0.0040	0.0030	0.0020	0.0010	0.0006
2nd group	0.0040	0.0030	0.0020	0.0016	0.0012	0.0008	0.0005
3rd group	0.0020	0.0015	0.0012	0.0010	0.0008	0.0006	0.0004

(4) The calculation of the fee to be paid to the employee regulated in this article is exemplified in Annex-1.

#### **How the fee is paid**

**ARTICLE 22** – (1) Unless otherwise agreed in the contract, the price is calculated by taking into account the coefficients corresponding to the multiples of the net minimum wage amount in the period in which the income obtained by the enterprise from the invention is recognized and is paid annually. In case it is decided to make payments in periods exceeding one year, the net minimum wage amount for the period in which the payment will be made is collected.

(2) If the invention is made by more than one employee, the price to be paid for each employee is calculated by multiplying the employee's own contribution with the price calculated according to the coefficients given according to the employee's own invention group.

(3) In case the service invention is evaluated by issuing a license, the payment dates are adjusted to the dates of the license revenues.

#### **The period to be taken as basis for calculating the price**

**ARTICLE 23** – (1) As a rule, the period taken as a basis for the calculation of the price ends with the expiration of the patent right.

(2) If the invalidity of the patent is claimed according to Article 138 of the Law, the employer's obligation to pay the price continues until the final decision of the judicial authority regarding the invalidity of the patent. However, if the economic effect of the patent right has disappeared to such an extent that the employer's obligation to pay compensation has been lost, the employee cannot claim compensation.

## **CHAPTER EIGHT Dispute and Arbitration**

### **Dispute resolution**

**ARTICLE 24** – (1) Within two months from the date of granting the patent or utility model, if the employer has claimed full right on the service invention, on the amount and payment method of the price to be paid according to the provisions of this Regulation, or from the date the employer started to benefit from the invention if he claimed partial rights. In case of disagreement, the dispute shall be resolved *by arbitration* <sup>(1)</sup> within the scope of the calculations in this Regulation .

(2) Arbitration-related provisions of the Code of Civil Procedure dated 12/1/2011 and numbered 6100 shall be applied without the requirement of having an arbitration agreement in writing regarding arbitration. The International Arbitration Law dated 21/6/2001 and numbered 4686 is applied in disputes with foreign element.

(3) If the employment relationship between the employee and the employer has been terminated before the patent or utility model is granted, the provisions of the first and second paragraphs shall be applied in the resolution of disputes over the amount and payment method of the amount to be paid in accordance with the provisions of this Regulation.

(4) *Disputes arising between the employee and the employer and between the employees themselves according to the provisions of this Regulation are resolved through arbitration.* <sup>(one)</sup>

(5) Before resorting to arbitration within the scope of this article, the parties may also resolve the dispute within the scope of the Law on Mediation in Civil Disputes dated 7/6/2012 and numbered 6325.

## **CHAPTER NINE**

### **Miscellaneous Provisions**

#### **Mandatory nature of provisions regarding employees**

**ARTICLE 25** – (1) The provisions of this Regulation regarding the employees are in the nature of a mandatory provision and cannot be changed to the detriment of the employees. In this regard, if there is a provision in the collective labor agreement or service contract applied in the workplace or if there is an established practice in the workplace, the provision or practice in favor of the employee is taken as basis.

(2) The freedom of the parties to conclude contracts regarding employee inventions begins after the patent application for service inventions, and after the employee fulfills his obligation to notify the employer for free inventions.

#### **Fairness condition**

**ARTICLE 26** – (1) Contracts made between the employer and the employee regarding service inventions and free inventions, even if they are not contrary to the mandatory provisions of the Law and this Regulation, are deemed invalid if they are not substantially in line with equity. This provision also applies to the price determined between the employer and the employee.

(2) Objections about the unfairness of the contract or the determined price may be raised in writing, within six months at the latest, from the date of termination of the employment contract.

#### **The priority of the employee's pre-emption right and receivables**

**ARTICLE 27** – (1) If the employer goes bankrupt and the bankruptcy administration wants to transfer the invention separately from the enterprise, the employee has the right to pre-purchase the invention for which the employer has claimed full rights.

(2) The employee's receivables arising from the invention are among the privileged receivables. The bankruptcy administration distributes multiple receivables of this nature among the creditors in proportion to their receivables.

## **PART TWO**

### **Inventions Made in Higher Education Institutions**

#### **Inventions within the scope of invention realized in higher education institutions**

**ARTICLE 28** – (1) Inventions made in higher education institutions are the inventions made as a result of scientific studies or researches made in higher education institutions defined in subparagraph (c) of the first paragraph of Article 3 of the Law No. 2547, and higher education institutions affiliated to the Ministry of National Defense and the Ministry of Interior. Inventions made on the basis of the experience and studies of the inventor in the higher education institution or using the tools and equipment of the higher education institution are included in this scope. Inventions other than these inventions are considered free inventions under this Section.

(2) The provisions regarding the inventions of the employees are applied for the inventions made by the employees of higher education institutions other than the instructors, interns and students defined in the subparagraph (l) of the first paragraph of Article 3 of the Law No. 2547.

(3) The provisions of other laws are reserved in determining the rightful ownership of the inventions, which are the result of the studies of the instructors, interns and students, as defined in the clause (I) of the first paragraph of Article 3 of the Law No. the terms of the contract shall be taken as basis.

#### **Notification obligation**

**ARTICLE 29** – (1) Inventions made as a result of scientific studies or research carried out in higher education institutions are notified in writing by the inventor to the relevant unit determined by the higher education institution without delay. If the higher education institution has not determined such a unit, the invention notification is made to the rector until it is determined by the higher education institution. The relevant unit is obliged to take all kinds of precautions regarding the confidentiality of the invention.

(2) In the notification of the invention, the subject of the invention, the technical problem, the solution of this problem and how the invention was realized are explained. Other necessary information and documents are also given in order to better explain the invention. In addition, whether the invention has the nature of a free invention and its justifications are also presented.

(3) If the invention is made by more than one person, this notification can be made together. In the notification, the names of the inventors and their contributions on the invention are stated. Otherwise, the contributions are considered to be equal.

(4) In case the invention is made by people from different higher education institutions, the inventors make the invention notification to their higher education institutions separately.

(5) If the inventors have made the invention by using the facilities of different higher education institutions other than their own higher education institutions, the inventors make the invention notification separately to their own higher education institutions and higher education institutions that benefit from their opportunities.

(6) The relevant unit of the higher education institution records the invention notification and notifies the person or persons who made the notification, in writing, without delay.

(7) In case the invention notification is made incompletely, the higher education institution notifies the inventor that the deficiencies are corrected within two months from the date on which the notification is received. Otherwise, the invention notification shall be deemed to have been duly made.

(8) The inventor corrects the deficiencies stated in the notification made pursuant to the seventh paragraph, within one month from the date on which the notification is received. Otherwise, the invention notification is deemed not made in accordance with the procedure and the invention notification is made again.

(9) The inventor is responsible for the damages incurred against the higher education institution due to failure to fulfill the notification obligation pursuant to the first paragraph or in accordance with Article 30. In case a patent application is made without notifying the higher education institution in accordance with the first paragraph, or a notification is not made regarding the invention made in higher education institutions, or a patent is obtained for the applications within this scope, a lawsuit can be filed against the patent applicant or the patent owner in accordance with Articles 110 and 111 of the Law.

#### **Application notice**

**ARTICLE 30** – (1) If a patent application has been made without notification to the higher education institution in accordance with the second paragraph of Article 121 and Article 29 regarding the invention made as a result of scientific studies or research carried out in higher education institutions, the notification regarding the application shall be sent together with all the information and documents pertaining to the patent application. It is made to the higher education institution by the inventor within one month from the application date. Along with this notification, necessary information is also given within the scope of Article 29.

#### **Claim for entitlement**

**ARTICLE 31** – (1) Higher education institution may request entitlement regarding the invention upon notification made pursuant to Articles 29 or 30. The higher education institution has to notify the inventor of its decision regarding the claim for entitlement within four months from the date the



invention or application notification reaches the higher education institution. Otherwise, the invention is considered free invention.

(2) All rights on the invention are transferred to the higher education institution from the date of the decision regarding the claim for entitlement.

#### **Application obligation**

**ARTICLE 32** – (1) Upon the invention notification made within the scope of Article 29, the higher education institution; if he has made a claim for entitlement pursuant to Article 31, he has to apply for a patent within four months from the date of the decision regarding the claim for entitlement, and within six months from the decision date at the latest, in case of agreement between the inventor and the higher education institution. Otherwise, the invention becomes a free invention. The higher education institution submits its decision regarding the claim for entitlement to the Institute together with the patent application.

(2) If a patent application has been made within the scope of Article 30 and the higher education institution has requested entitlement according to Article 31, the higher education institution notifies the Institute that the patent application will be accepted and processed as its own application, adding the decision regarding the claim for entitlement, within the period specified in the first paragraph. Otherwise, the invention is considered free invention.

(3) The Institution records the change of applicant in the Registry as of the date of notification to the Institution of the decision of the higher education institution regarding entitlement. The inventor gives the higher education institution all the information and documents related to the patent application made regarding the invention, and the information and documents needed in the process of obtaining a patent for the invention and subsequent processes.

(4) Applications are made jointly by different higher education institutions for the inventions that are notified as specified in the fourth and fifth paragraphs of Article 29. The share of entitlement is determined by the contract to be signed between the relevant higher education institutions.

(5) If the higher education institution has requested entitlement, it may apply for the protection of the invention in a foreign country. The higher education institution is obliged to release the invention for foreign countries where the inventor does not want to obtain a patent upon the request of the inventor, and to provide the inventor with the opportunity to request a patent in these countries. The release of the invention is done within a reasonable period of time in order not to exceed the priority right period.

#### **Objection to entitlement decision**

**ARTICLE 33** – (1) The inventor may object to the higher education institution's decision regarding entitlement, within two months from the notification date of the decision, claiming that his invention is a free invention, together with the relevant documents, to the relevant unit determined by the higher education institution. If the higher education institution has not determined such a unit, the objection is submitted to the rectorate until it is determined by the higher education institution. The unit that will examine the objections must be a decision-making unit that is different from and hierarchically higher than the unit that decides on entitlement to the invention.

(2) The relevant unit determined by the higher education institution gives its decision on the objection within two months from the notification date of the objection. Otherwise, the invention becomes a free invention. The decision made is notified to the inventor without delay, together with its justifications.

(3) After the patent application is filed, if the invention becomes a free invention as a result of the decision made on the objection, all rights on the invention pass to the inventor as of the date of this decision. In this case, the inventor notifies the Institute that the application is accepted and processed as his own application, by adding the decision taken as a result of the objection, without delay. The Institution records the change of applicant in the Registry as of the notification date. The higher education institution gives all the information and documents related to the patent application made regarding the invention, which has become a free invention as a result of the objection, to the inventor.

#### **Transfer of right**

**ARTICLE 34** – (1) If the higher education institution wishes to waive the application or the patent right, it notifies the inventor of its proposal to take over the application or the patent right before making a waiver request from the Institute. If the inventor does not respond within one month from the date of the notification made to him on this subject or does not accept the offer, the patent application or the power of disposition on the patent belongs to the higher education institution and the higher education institution may waive the patent application or patent right. If the inventor accepts the offer, the rights are transferred to the inventor free of charge. The inventor notifies the Institute of the request for the application or patent to be registered in his own name. The provision of Article 148 of the Law is applied regarding the registration of the transfer transaction in the Registry. In this case, the higher education institution gives the information and documents necessary for obtaining and protecting the patent related to the invention subject to the right ownership change to the inventor.

(2) If the invention becomes a free invention after the patent application is made, the rights on the application or patent are transferred to the inventor free of charge. The inventor notifies the Institute that the application or patent is registered in his own name. The Institution records the application or change of beneficiary in the Registry as of the notification date. The higher education institution gives the inventor the information and documents necessary for obtaining and protecting a patent regarding the invention that has become a free invention.

#### **Sharing the income from the invention**

**ARTICLE 35** - (1) Income from the invention is all of the income from the use, licensing, transfer or commercialization of the invention by other means.

(2) The sharing of the income obtained from the invention between the higher education institution and the inventor is determined so that at least one third of the income is given to the inventor. The price and payment method are determined by the contract signed between the higher education institution and the inventor, or by the provisions of a similar legal relationship, following the higher education institution's request for entitlement to the invention made in the higher education institution. In case the inventor is more than one, the amount given to the inventor is shared in proportion to the contributions on the invention.

(3) Regarding the invention made in the higher education institution, if the parties cannot agree on the amount of the price or the payment method within two months from the date of the higher education institution starting to benefit from the invention, the dispute is resolved by court.

(4) The share of the higher education institution of the income obtained from the invention is recorded as an income in the budget of the relevant higher education institution and is used to meet the needs of the higher education institution, especially scientific research. It is essential that the amount remaining from the income obtained from the invention to the higher education institution is primarily used for the financing of the expenditures made for research and development and the application, registration and commercialization of inventions.

(5) Unless otherwise stated in the contract, the income obtained from the invention is calculated at the end of each financial year and the share of the inventor is given to the inventor. Higher education institution notifies the income obtained from the invention to the Institution within one month following the end of the financial year.

(6) If the higher education institution causes the termination of the application process or the patent right due to its fault, it is obliged to compensate the inventor for the damage suffered. The inventor is obliged to provide the information needed by the higher education institution in order to maintain the application procedures or the patent right.

### **PART THREE**

#### **Inventions Emerged in Publicly Supported Projects**

##### **publicly funded project**

**ARTICLE 36** – (1) Publicly supported project; are activities carried out by real or legal persons, financed by public institutions and organizations, supported by a cooperation agreement, protocol or

any kind of contract signed for grants, scholarships or any support, covering experimental studies, research and development and similar activities, the purpose and scope of which are defined in the project .

(2) Public institutions and organizations, which are client institutions in publicly supported projects, have a free license right to use the invention directly for their own needs. This license right covers the production, production, use or importation of the product subject to the invention, limited to the needs of the public institution and organization, and the use of this method if it is a method that is the subject of a patent, or the use of the products obtained directly by the method.

#### **Notification obligation**

**ARTICLE 37** – (1) Inventions that emerge during experimental studies, research and development and similar activities carried out within the scope of publicly supported projects are considered as inventions that emerge in publicly supported projects. It is obligatory for the real or legal person benefiting from the project support to notify these inventions in writing and without delay to the public institution and organization providing the support.

(2) In the notification of the invention, the subject of the invention, the technical problem, the solution of this problem and how the invention was realized are explained. Other necessary information and documents are also given in order to better explain the invention.

(3) If the public institution and organization providing support detects a deficiency in the invention notification, it notifies the inventor within two months from the date of receipt of the notification to correct the deficiencies. Otherwise, it is considered that the invention notification has been duly made.

(4) The beneficiary of the project support shall correct the deficiencies identified pursuant to the third paragraph within one month from the date on which the notification is received. Otherwise, the invention notification is deemed not made in accordance with the procedure and the invention notification is made again.

(5) The client institution, if any, acts together with the public institutions and organizations that provide support on whether the notification is duly made.

(6) The beneficiary of the project support is responsible for the damages arising against the public institution and organization providing support and the customer institution, if any, due to failure to fulfill the notification obligation in accordance with the first paragraph.

#### **Claim for entitlement**

**ARTICLE 38** – (1) In accordance with Article 37, the person benefiting from the project support within one year from the date of the invention notification to the supporting public institution and organization, shall notify the public institution and organization in writing of his/her preference on whether or not to claim right ownership on the subject of the invention . If the beneficiary of the project support declares in writing that he/she does not claim entitlement within this period or does not notify his/her preference for entitlement in writing, the public institution or organization providing the support may obtain the entitlement for the invention free of charge. If the beneficiary of the project support requests entitlement, no fee is charged.

(2) Until the person benefiting from the project support notifies the public institution and organization of his preference as to whether he claims right ownership on the invention, or if he has not made such a notification, until the end of one year from the date of duly notifying the invention in accordance with Article 37, granting a patent or utility model to the invention . cannot make any statements that affect it.

(3) The public institution and organization and, if any, the client institution are obliged to keep the information regarding the notified invention confidential during the continuation of the legitimate interests of the person benefiting from the project support.

(4) In the determination of right ownership regarding inventions resulting from joint projects carried out within the framework of cooperation with foreign institutions and organizations, the contract or special arrangements made between the partners carrying out the relevant project are taken as basis.

### **Application obligation**

**ARTICLE 39** – (1) In case the beneficiary of the project support requests entitlement regarding the invention, the person benefiting from the project support and the public institution and organization providing the support shall be notified within four months following the notification of the entitlement request to the public institution and organization pursuant to the first paragraph of Article 38. In case of agreement, it is obliged to file a patent application for the invention within six months at the latest from the date of decision.

(2) If a patent application has not been made within the period specified in the first paragraph, the public institution and organization providing support may take the right to the invention and apply for a patent.

(3) If a patent application is made after the period specified in the first paragraph, the public institution and organization that provides support may take the right ownership for the invention and request that the patent application be processed as its own application. In this case, the public institution and organization providing support shall notify the Institution without delay of the request for the application to be accepted and processed as its own application. The Institution records the change of applicant in the Registry as of the notification date. The beneficiary of the project support gives all the information and documents related to the patent application to the public institution and organization that provides support.

(4) The name of the public institution and organization that provides support in the application is indicated in accordance with the second paragraph of Article 122 of the Law .

### **The right to use public institutions or organizations**

**ARTICLE 40** - (1) In case the beneficiary of the project support requests right ownership on the invention, the public institution and organization providing the support shall have the right to a free license for the use of the invention directly for their own needs. This license right covers the production, production, use or importation of the product subject to the invention, limited to the needs of the public institution and organization, and the use of this method if it is a method that is the subject of a patent, or the use of the products obtained directly by the method. The use of the rights listed here by other public institutions and organizations other than the customer institution can only be in accordance with the legislation or with the permission of the public institution and organization that provides support.

(2) In order to meet the needs of public institutions and organizations that are not directly their own, the last sentence of the fourth paragraph of Article 122 of the Law is applied.

## **PART FOUR**

### **Miscellaneous and Final Provisions**

#### **Application for utility model**

**ARTICLE 41** - (1) The provisions of this Regulation are also applied to the utility model in accordance with the first paragraph of Article 145 of the Law.

#### **Force**

**ARTICLE 42** – (1) This Regulation enters into force on the date of its publication.

#### **Executive**

**ARTICLE 43** - (1) The provisions of this Regulation are executed by the President of the Turkish Patent and Trademark Office.

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(1) *With the decision of the Tenth Chamber of the Council of State, dated 4/7/2018 and numbered 2017/3748, it was decided to stay the execution of the second sentence of the second paragraph of Article 11, the phrase "by way of arbitration" in the first paragraph of Article 24 and the fourth paragraph of the Regulation. .*

**EXAMPLES**

**EXAMPLE 1** – The calculation of the income obtained from the invention according to the 13th article of this Regulation by comparison method is exemplified below:

Let's assume that for a product with a sale price of 1000 TL in a business that produces construction equipment, the contribution of the invention to the sales price of the product is 10 TL, and 1 million of the products containing the invention are sold. In the calculation of the profit obtained from the invention; Instead of 1000 TL, which is the sales price of the product, the amount found by multiplying the 10 TL that contributes to the sales price of the invention and the number of products sold (10 TL X 1 million units) is taken as basis. The income obtained from the sale of the product that is the subject of the invention is calculated as 10 million TL.

**EXAMPLE 2** – The calculation of the compensation to be paid to the employee in accordance with Article 21 of this Regulation is exemplified below:

In the event that an engineer working in the research and development department of an enterprise producing construction equipment makes an invention in line with the instructions given by the employer, if the net minimum wage is 1,400 TL for the year, and the income from the invention is 10 million TL, the amount to be paid to the employee is calculated as follows:

a) First of all, the group to which the service invention belongs is determined as the third group for the given example.

b) Then, the amount of the net minimum wage of the income obtained from the invention

- For the part up to 1,400,000 TL, which is up to 1,000 times; 0.0020

- For the portion of 5,600,000 TL between 1,000 times and 5,000 times; 0.0015

- For the portion of 3,000,000 TL between 5,000 times and 10,000 floors; 0.0012

coefficients will be determined. The price to be paid, calculated using these coefficients, is as follows.

- 0.0020 times the 1,400,000 TL earnings: 2,800 TL

- 0.0015 times the earnings of 5,600,000 TL: 8,400 TL

- 0.0012 times the earnings of 3,000,000 TL: 3.600 TL

TOTAL: 14.800 TL.