

PROTECTION OF THE UTILITY MODELS ON EU AND TURKISH LAW (I) – 2002

The protection of utility model is arisen from the necessity to legally protect the minor innovations in particular. An innovation having the conditions of the protection of patent could benefit from the protection of utility model and the necessity to protect the minor innovations which do not meet the conditions for the protection of patent, but even provide some improvements in technical area has caused serious discussions. It may be said here that the English and German approaches are on the opposite side and the law custom has effect on this. In the writing period of this study it is not easy to estimate on which way these two approaches affect the EU legislation.

With their research-development activities, SMEs or big companies are making useful processes in technical area. These developments may not meet the conditions for the protection of patent. The opinions advocating the necessity of utility model protection and the opinions advocating otherwise differ at this point. Even the authors who are approaching the protection of utility model with suspicion accept the existence of the innovation which could not be protected by patent. However, according to their opinion, the innovations which could not be protected by patent should be brought into free use for everyone since they do not meet the conditions of the protection. Because pursuant to this view, there is no answer to the question on what grounds the owner of an innovation which does not achieve the innovation level are rewarded with an exclusive right. According to the other opinion, it is not true for these studies, which are protected by patent but provide useful development, to be unreturned.

A cheap, simple and quick registration process should be accepted for utility models. The most proper solution for this may be to content with a formal examination as adopted in the Draft of the EU Directive. Having said this, a material examination could be made upon the applicant or the related person's request. Besides, in the court stage, in case upon the request an examination is not made before, this examination must be done. This system offered in the Draft of the Directive seems to be the most proper solution in terms of the cheapness, simplicity, time and legal security.