**REPUBLIC OF TURKEY**
**ANKARA UNIVERSITY**
**GRADUATE SCHOOL FOR SOCIAL SCIENCES**
**DEPARTMANT OF INTELLECTUAL PROPERTY,**
**TECHNOLOGY POLICIES AND INNOVATION MANAGEMENT**

# INTELLECTUAL PROPERTY IN THE DIGITAL AUTOMOTIVE SECTOR:

# A COMPETITION LAW ANALYSIS

**L.L.M Thesis**

**Sıla YALÇIN MELETLİ**

**Ankara, 2025**

**REPUBLIC OF TURKEY**
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**27.07.2025**

# DECLARATION

**REPUBLIC OF TURKEY**
**ANKARA UNIVERSITY**

**To the Directorship of Graduate School of Social Sciences**

I hereby, declare that all information in my master's thesis named "**INTELLECTUAL PROPERTY IN THE DIGITAL AUTOMOTIVE SECTOR: A COMPETITION LAW ANALYSIS (Ankara,2025)**" which has been prepared under the supervision of Assoc. Prof. Dr. Selin ÖZDEN MERHACI has been gathered and submitted in compliance with academic rules and ethical conduct principles and as required by these rules and principles, I have fully indicated and cited all sources that are not original to this work. I also declare that, I have acted according to scientific research and ethical rules during the study process and if it is proven otherwise, I will accept all legal consequences

**Tarih: 26.08.2025**
**Sıla YALÇIN MELETLİ**

## DEDICATION

This thesis examines the transformation of intellectual property rights in the automotive sector with the acceleration of digitalisation and the concerns that this transformation raises in terms of competition law. The integration of digital technologies into the sector is radically changing not only the production and service processes, but also the way in which intellectual property rights are defined and enforced. The analyses conducted in this context aim both to contribute to the legal literature and to provide guidance for policy makers and practitioners.

I would like to express my sincere gratitude to my esteemed advisor Assoc. Prof. Dr. Selin ÖZDEN MERHACI, who guided me with her knowledge and experience and contributed to my intellectual development with her critical approach during this intensive study process that lasted for about a year.

I am forever grateful to my late father and mother, whose love and sacrifices have been the greatest support throughout my education life and made this achievement possible. In addition, I would like to express my sincere thanks to my valuable sisters Nejla YALÇIN, Derya YALÇIN, Selda YALÇIN DOĞAN, Elif YALÇIN YAPA, especially my sister Prof. Dr. Seher YALÇIN, who made me feel their support in every period of my life.

I would like to thank my dear husband Adem MELETLİ, who inspired me in my work, facilitated this difficult process with his patience, understanding and love, and was always by my side, for his contributions to the study.

On the other hand, the Competition Authority, where I have been working since October 2022, has made a great contribution to the writing of this thesis and the development of this vision. I would like to take this opportunity to thank Dr. M. Ömür PAŞAOĞLU, Head of Department and my valuable colleagues at the Competition Authority for allowing me to share and develop my ideas during the thesis writing process.

Sıla YALÇIN MELETLİ

Ankara, 2025

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## LIST OF ABBREVIATIONS

**3D** : Three Dimension

**AI** : Artificial Intelligence

**ASTM** : American Society for Testing and Materials

**CJEU** : Court of Justice of the European Union

**CP9 Report** : Common Practice 9 Report

**EC** : European Community

**EU** : European Union

**IAF** : International Accreditation Forum

**IPR** : Intellectual Property Right

**ISO** : International Organization for Standardization

**SDS** : Selective Distribution System

**TCA** : Turkish Competition Authority

**TIPC** : Turkish Industrial Property Code No. 6769

**TPI** : Turkish Patent Instutıon

**TPTO** : Turkish Patent and Trademark Office

**TRIPS** : Agreement on Trade-Related Aspects of Intellectual Property Rights

**TSI** : Turkish Standards Instıtutıon

**USA** : United States of America

**USPTO** : United State Patent and Trademark Office

| | |
|---|---|
| **WIPO** | : World Intellectual Property Organisation |
| **ibid.** | : ibidem, in the same place |
| **Art.** | : article |
| **No.** | : number |

## INTRODUCTION

Digitalization in all areas of global markets has led businesses to restructure their production, supply and sales processes. This transformation has created a structure where competition is determined not only by product quality, but also by data management, speed, accessibility and level of technology utilization. The automotive industry has become one of the areas most affected by this digital transformation.

One of the most important components of the automotive industry is spare parts. A spare part for a vehicle is no longer just a physical component such as a steering wheel, bodywork, door, seat, brake pedal[1], etc., but a digital asset that includes software, sensor technology and connected systems. Therefore, the Intellectual Property Rights (IPRs) of spare parts play a critical role in the design, production and sales processes. Protecting these rights in the digitalizing automotive industry is important both in terms of increasing the competitiveness of manufacturers and preventing pirated production. In this context, the protection of spare parts with IPRs plays a critical role both in terms of providing competitive advantage and the effectiveness of legal protection mechanisms.

IPRs confer an exclusive right on the owner. By virtue of this right, the right holder will be able to apply any price policy it wishes to its intellectual product and prevent third parties from producing, placing on the market, selling, contracting to contract, distributing, importing, using for commercial purposes or possessing for these purposes for a certain period of time (except for the unlimited renewability of the trademark when

[1] **Cahit SULUK,** "Yedek Parça Tasarımlarıın Korunması ya da Otomotiv Yan Sanayiinin Var Olma Mücadelesi", *Ankara Barosu Uluslararası Hukuk Kurultayı Fikri Mülkiyet ve Rekabet Hukuku*, (2002); p.541-570, accessed: December 09, 2024, https://fikrimulkiyet.com/download/8-TR_FULL_Yedek_Parca_Tasarimlarinin_Korunmasi.pdf.

the term of the trademark is respected). In the automotive sector, intellectual property (IP) protection will in principle operate in a similar manner. Spare parts protected by IPRs are offered to the market at prices much higher than the cost of production.

The reasons for this include Research and Development (R&D) activities for such production, the expectation of a tangible return on intellectual labor and effort, recovery of investment costs and profit maximization. These expectations are based on the protection of IPRs on the spare parts produced and the exclusive authorizations arising from this protection. On the other hand, the fact that the part protected by IPRs cannot be produced by the subsidiary industry due to the exclusive rights granted by the protection also prevents price competition. If the sales price of a spare part protected by an IPR is determined only by the IPR holder, consumers may face high prices in accessing the spare part. However, even if consumers overcome the price barrier, they may have difficulty in accessing spare parts produced only by the IPR holder. Considering the consumers' desire to access spare parts as soon as possible, the time factor has also become a factor affecting competition. The consumer's inability to access the spare part quickly may lead the consumer to prefer repair rather than buying a new product. This situation has made repair important for the consumer and considering the situation of independent producers in the market, various flexibilities in production and repair have been granted under certain conditions. The most important of these is the repair clause. The repair clause is important in terms of enabling consumers to obtain their products more easily and cost-effectively, extending the life of the products and supporting the circular economy. This exception can be characterized as limiting some of the exclusive rights of the design right holder in case the spare part is protected by a design right. In this way, it can be ensured that the sub-industry can also produce the spare part protected by the design right under certain conditions. In the EU, before 2024, the repair exception was dealt with on a temporary

and limited basis in Art. 110 of the Community Design Regulation and its application was left to the discretion of the Member States. Therefore, there was no uniform and binding regulation. As of May 1, 2025, the repair exception is no longer a transitional provision and has entered into force as a permanent regulation. Detailed information on this will be provided below under the Chapter I heading.

In this study, the digitalization process of the automotive sector, the current situation of spare parts in the digitalized automotive sector, the protection of spare parts with IPRs in comparison with the EU, and the competitive concerns that may be caused by IP protection will be discussed. In addition, this study aims to contribute to the existing literature by analyzing the interactions and reflections of the IPRs of spare parts, which are the main component of the automotive sector, in competition law and to offer solutions to the implementation problems in the sector. All types of IPRs have characteristics that may essentially close the spare parts market to competition. However, some exceptions are envisaged due to these characteristics. These exceptions are open to discussion for each industrial property right; however, due to the existence of a special legal regulation, the evaluations will focus on the design right. This thesis deals with an area of law that requires the reader to have some background knowledge, especially in certain areas of competition law. Since it is assumed that the reader has sufficient knowledge of the fundamentals of competition law in order to limit the scope of my study, in-depth explanations on the basic concepts will not be provided in order to avoid exceeding the scope of the study.

This thesis aims to discuss the qualifications of the technologies brought by digitalisation as spare parts and whether they can benefit from IP protection in the automotive sector, where digitalisation is becoming increasingly important, to increase the awareness of spare part design right holders regarding competition law and to draw

conclusions on the circumstances in which the exclusive rights granted by this design right may lead to infringement, and to protect undertakings operating in the spare parts markets. The purpose of this article is to raise awareness of the fact that competitive inequalities that may disrupt the balance of the sector may lead to both consumer damage and loss of reputation and money of the undertaking and thus to advocate for competition in the sector, to reveal the dimensions of the ownership of spare part design rights in Turkish law in terms of competition in comparison with EU legislation and case law, and to reveal the limits within which the innovation efforts of the IPR holder, the time spent on innovation and the economy will be protected to some extent against consumer welfare and competitive inequalities that may arise in the sector.

Therefore in the thesis first part, the current status of the automotive sector and the concept and types of spare parts, which are the main components of the automotive sector, are evaluated in detail. In addition, the scope of protection of each IPR is discussed in comparison with the EU and explanations on how these rights may be encountered in the automotive sector are included.

In the second part, the relationship between TIPC and competition law is discussed and the competitive concerns that may arise from IPRs in the automotive sector are evaluated separately under Articles 4, 6 and 7 of the Law No. 4054 on the Protection of Competition (Law No.4054).

Finally in the third part, the legislation and decisions on the relationship between design rights and competition law in the automotive sector are discussed comparatively in the EU and Turkish law, and finally, some recommendations are compiled within the scope of the thesis. The study concludes with some final thoughts of the author.

# CHAPTER ONE

# THE IMPORTANCE OF THE AUTOMOTIVE SECTOR: DIGITALIZATION AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

## I. Digitalization of the Automotive Industry and Transforming Spare Parts

The automotive sector has a strategic position for the economies of countries. It has become one of the main dynamics of economic growth thanks to its strong links with other industries and its inherent multiplier effect.[2] The automotive sector in Turkey has experienced remarkable growth and transformation between 2013 and 2023. In 2024, Turkey ranks third in European automotive production and twelfth in global automotive production.[3] In this sector, production processes have evolved significantly with the use of automation technologies, shorter product life cycles and increased specialization. In addition, the widespread use of platform sharing and computer-aided design has accelerated this development.[4]

[2] **Mustafa Ildırar and Ersin Kıral**, "Piyasa Yapısı Ve Yoğunlaşma: Türk Otomotiv Sektörü Üzerine Bir Analiz", *Abant İzzet Baysal Üniversitesi Sosyal Bilimler Enstitüsü Dergisi*, 18(1) (2018): 98-117, accessed May 26, 2025, https://www.researchgate.net/publication/330733671_PIYASA_YAPISI_VE_YOGUNLASMA_TURK_OTOMOTIV_SEKTORU_UZERINE_BIR_ANALIZ.

[3] Data from the Investment and Finance Office of the Presidency of the Republic of Turkey, accessed January 21. 2025, https://www.invest.gov.tr/tr/sectors/sayfalar/automotive.aspx.

[4] **Fei Tao**, **Ying Cheng**, **Leven Zhang and Andrew Y C Nee**, "Advanced Manufacturing Systems: Socialization Characteristics And Trends", *Journal of Intelligent Manufacturing*, 18(5) (2017), accessed May 26, 2025, https://www.researchgate.net/publication/273501713_Advanced_manufacturing_systems_Socialization_characteristics_and_trends.

Its high export potential, capacity to create employment and enable technology transfer make the sector an indispensable element of national economic development. However, the sector also faces various challenges, such as intense global competition, rapid technological change and environmental regulations. Considering that road transport accounts for approximately 16% of global emissions and is one of the activities that contributes most to climate change, the transition to electric vehicles has significant economic, social and environmental implications.[5] In the last century, emissions stemming from vehicles powered by internal combustion engines have triggered significant challenges, not only in terms of environmental degradation but also by creating notable repercussions across economic and social domains.[6] These concerns have pushed the automotive sector into a comprehensive transformation process and increased interest in sustainable technologies[7] in parallel with Turkey's fossil fuel dependency and the goals of reducing greenhouse gas emissions[8] in terms of achieving

[5] **International Energy Agency**, "*Global EV Outlook 2023: Catching Up With Climate Ambitions*", 2023, IEA Publications, accessed March 12, 2025, https://iea.blob.core.windows.net/assets/dacf14d2-eabc-498a-8263-9f97fd5dc327/GEVO2023.pdf.

[6] **Farhad Farzaneh and Sungmoon Jung,** "Lifecycle carbon footprint comparison between internal combustion engine versus electric transit vehicle: A case study in the U.S.", *Journal of Cleaner Production*, Vol.390 (2023), accessed June 3, 2025, https://www.sciencedirect.com/science/article/abs/pii/S095965262300269X.

[7] For detailed information see. Çevre, Şehircilik ve İklim Değişikliği Bakanlığı, (2024), accessed February 19, 2025, http://www.sp.gov.tr/tr/temel-belge/s/241/Iklim+Degisikligi+Azaltim+Stratejisi+ve+Eylem+Plani+_2024-2030.

[8] Republic of Turkey Updated First National Contribution to the Paris Climate Agreement, accessed May 3, 2025, https://netsifirturkiye.org/ulusal-katki-beyani/.

the emission targets it has committed to within the framework of the Paris Agreement[9], developing transportation solutions based on alternative energy sources targeted by action plans and strategy documents put forward by various public institutions, and ensuring sustainable road transportation.

At the heart of this transformation lies the search for alternative fuel options. In line with the global transition to sustainable energy, there is a growing trend towards vehicles that do not run on fossil fuels. According to KPMG's report[10], the strategy to reduce carbon footprint is accelerating the transition from internal combustion engines to zero-emission vehicles, especially battery-electric vehicles.

The incorporation of digital technologies into the automotive industry has paved the way for the development of more intelligent and interconnected vehicles.[11] Today, the industry is focused on the production of connected, autonomous and electric vehicles. By integrating innovative technologies such as artificial intelligence (AI), the Internet of Things (IoT), robotic systems, connectivity systems and cloud computing into their business processes, automakers are achieving a more flexible, efficient and faster production structure, thus redefining their business models[12]. Similarly, the CMA added

[9] The Paris Agreement, adopted at the United Nations Climate Change Conference (COP21) held in Paris in 2015 with the participation of countries that account for a significant portion of global greenhouse gas emissions.

[10] For the 24th Global Automotive Executives Survey published by KPMG, see. accessed May 3, 2025, https://kpmg.com/tr/tr/home/gorusler/2024/01/kuresel-otomotiv-yonetici-anketi.html.

[11] **Xinyu Zhang, Junxian Li, Jingyi Zhou, Shiyan Zhang, Jinngyuan Wang, Yi Yuan, Jiale Liu and Jun Li, "**Vehicle to Everything Communication in Intelligent Connected Vehicles: A Surveyand Taxonom", *Automotive Innovation,* (2025) 8: p.13-45, accessed June 05, 2025, https://link.springer.com/content/pdf/10.1007/s42154-024-00310-2.pdf

vehicle software to the definition of spare parts with the MVBEO, which came into force on 1 June 2023, and also regulated vehicle data in such a way that it could constitute a competition restriction in relevant agreements within the scope of the exclusion.[13]

In this context, electrification and digitalization in the automotive industry is now characterized by three key elements. These are electric vehicles, their mobility systems, and connected vehicles, which are important components of digitalization. These three elements have become the cornerstones that determine the future of the automotive industry and play a key role in creating a sustainable mobility ecosystem in the automotive world. In the motor vehicle sector, connectivity refers to the connection of vehicles to the internet, other vehicles (vehicle to vehicle - V2V), infrastructure (vehicle to infrastructure - V2I) and mobile devices, which will make vehicles smarter, safer and more user-friendly. Connectivity enables vehicle-to-vehicle communication of data such as speed information and braking status for safety, as well as real-time communication with traffic lights, roadside sensors and other infrastructure.

The basis of a sustainable ecosystem is the abandonment of non-renewable resources for today. However, there has been a shift from non-renewable resources[14] to "electrification", a non-renewable energy. This concept refers to the focus on electric vehicle technologies and driving assistance systems. These technological advances have enabled automobile manufacturers to make great progress in design, production, sales and

[13] CMA Guidance on Motor Vehicle Agreements, accessed May 25, 2025. https://www.gov.uk/government/publications/cma-guidance-on-motor-vehicle-agreements.

[14] A non-renewable technology for electric vehicles is mentioned here. Although electric vehicle batteries are obtained by using a number of minerals, the electricity used in the charging stations required to make them sing is not a renewable energy source.

marketing, and have increased their competitiveness by bringing strategic insights to their business models.[15]

A popular technology related to electrification that should be mentioned is batteries. Batteries consist of various components. These components are cells and modules made up of cells.[16] In LFP batteries, electrical energy is stored by converting it into chemical energy, and when needed, the chemical energy is converted back into electrical energy and made usable. Therefore, the energy capacity of batteries varies according to their chemical components.[17]

The internal parts of the batteries consist of the battery management system, which is a system that controls the cells in the battery, the cables that provide the connection between the modules and the batteries, the case that protects the battery from physical damage, and the fuses and breakers placed to prevent electrical faults, reduce the risk of fire, and protect the battery. This complex structure of the battery requires the use and therefore the production of many components.[18] As will be detailed below, battery technologies can also be protected by patents due to their potential as a technical solution to a problem.

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[15] **Turner Cotterman, Erica R.H. Fuchs, Kate S. Whitefoot and Christophe Combemale,** "The Transition To Electrified Vehicles: Evaluating The Labor Demand Of Manufacturing Conventional Versus Battery Electric Vehicle Powertrains" *Energy Policy 188,* (2024), accessed May 26, 2025, https://www.sciencedirect.com/science/article/pii/S0301421524000843.

[16] **PwC,** *Elektrikli Araç Şarj İstasyonu Sektörüne Genel Bakış* (2025), accessed April 12, 2025, https://www.pwc.com.tr/elektrikli-arac-sarj-istasyonu-sektorune-genel-bakis.

[17] **Yanying Lu and Tianyu Zhu, "**Status And Prospects Of Lithium Iron Phosphate Manufacturing In The Lithium Battery Industry", *MRS Communications*, Vol.14 Issue 5: p. 888-899, accessed May 31, 2025, https://link.springer.com/article/10.1557/s43579-024-00644-2.

[18] **PwC,** "Elektrikli Araç Şarj İstasyonu Sektörüne Genel Bakış", 17.

With the increasing trend towards electric vehicles, the search for sources for fuel cells for electric vehicle batteries continues. For this reason, battery types vary according to the sources of battery fuel cells. For example, hydrogen-fueled vehicles run on electricity generated using hydrogen gas. Although hydrogen is the most widely used fuel type for fuel cells, its synthesis is an energy inefficient process due to safety issues and the fact that hydrogen is only found in nature bound to other molecules. It is thought that hydrogen-fueled vehicles will become more popular in the future with a more efficient method of separating hydrogen.

In recent years, radical technological innovations have been implemented in the sector with the aim of producing safer, more comfortable and economical vehicles. In this process, traditional automobile components such as engines, fuel injection systems and conventional transmissions have been replaced by new generation components such as battery systems, electric motors and Light Detection and Ranging (LiDAR) sensors.[19] Accordingly, production of new generation components and employment in the supplier industry are expected to increase.[20] With this transformation, the production and innovation process has started on many elements such as battery technologies, LiDAR,

[19] **McKinsey&Company**, *Why the automotive future is electric*, (2021), accessed May 26, 2025, https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/why-the-automotive-future-is-electric.

[20] **Mario Rísquez and María Eugenia Ruiz-Gálvez, "**The Transformation Of The Automotive Industry Toward Electrification And Its Impact On Global Value Chains: Inter-Plant Competition, Employment, And Supply Chains" *European Research on Management and Business Economics*, 30 (1), (2024) accessed May 26, 2025, https://www.researchgate.net/publication/378478782_The_transformation_of_the_automotive_industry_toward_electrification_and_its_impact_on_global_value_chains_Inter-plant_competition_employment_and_supply_chains.

an environmental mapping system, and software for vehicle control mechanisms. In order to assess which IPRs can protect these mechanisms, it is first necessary to understand how these technologies work.

LiDAR operates as an active remote sensing method by calculating the distance to a surface or object through assessing the duration it takes for emitted laser signals to reflect back after reaching the target. In addition to improving target tracking capabilities, speed observation also helps to improve activity recognition and behaviour prediction, for example by detecting the different speeds of the limbs and bodies of cyclists and pedestrians.[21] LiDAR emits high-frequency laser pulses and calculates the return time of the reflected light back to the sensor. This return time measures distance based on the distance of the light's arrival and departure.[22] Since the speed of light propagation is constant in Lidar technology, the distance is directly calculated using the time-of-flight (ToF) method.[23] This makes it possible to model the environment as a three-dimensional (3D) point cloud. To summarize, the working principle of Lidar is the sending of laser beams, reflection from the object, measurement of the return time, and visualization by creating an environmental map with distance-based feedback from this measurement. IP

[21] **Jingmeng Zhou**, " A Review of LiDAR Sensor Technologies for Perception in Automated Driving", *Academic Journal of Science and Technology*, 3(3): p.255-261, (2022), accessed May 26, 2025, (PDF) A Review of LiDAR sensor Technologies for Perception in Automated Driving.

[22] **Emanuel P. Baltsavias**, "Airborne Laser Scanning: Basic Relations And Formulas" *ISPRS Journal of Photogrammetry and Remote Sensing*, 54(2-3): p.199-214, (1999), accessed December 11, 2024, https://www.sciencedirect.com/science/article/abs/pii/S0924271699000155.

[23] **Jie Shan and Charles K. Toth (Eds.),** "Topographic Laser Ranging and Scanning: Principles and Processing", CRC Press. (2008). accessed December 11, 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://api.pageplace.de/preview/DT0400.9781498772280_A34054036/preview-9781498772280_A34054036.pdf.

protection can be provided for these LiDAR sensors through patents. It will be discussed in more detail below under the heading "The Outlook of Patent Protection in Automotive".

The use of emerging technologies in the global automotive industry is also gaining importance in the field of customer experience. According to KPMG, trends such as digitalization, sustainability, autonomous vehicles, mobility-as-a-service, and autonomous vehicles will continue to trigger significant technological advancements, further enhancing the customer experience, which will have an upward impact on demand in the automotive sector, particularly for electric vehicles[24]. Companies that already have a strong reputation, such as Apple, and access to online users, such as Google, have begun to respond to these demands by taking advantage of an early advantage[25].

In addition to vehicle manufacturer brands in the automotive sector, players such as Google and Apple have also appeared in the automotive sector with the digitalization of the sector. The fact that technology giants such as Apple and Google, which are considered gatekeepers[26] according to the EU DMA Act, are strong in both hardware and

[24] For the 24th Global Automotive Executives Survey published by KPMG, see. accessed May 3, 2025, https://kpmg.com/tr/tr/home/gorusler/2024/01/kuresel-otomotiv-yonetici-anketi.html.

[25] **Thibault Schrepel and Alex Sandy Pentland**, "Competition Between AI Foundation Models: Dynamics and Policy Recommendations", *Amsterdam Law & Technology Institute*. 3-2023 MIT Connection Science Working Paper 1-2023, accessed November 18, 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ide.mit.edu/wp-content/uploads/2024/01/SSRN-id4493900.pdf?x41178.

[26] This regulation targets the dominant position of companies in digital ecosystems and their potential to prevent other businesses from reaching consumers.

software, may lead to monopolization of new vehicle platforms, as technology companies may impose their software platforms on vehicle manufacturers.

Due to the nascent nature of the sector, infringement allegations by undertakings without an established order are just emerging. Recently, Apple's CarPlay and Google's Android Auto systems are known to have undergone an investigation in Italy because the exclusivity of their software in many vehicles led to anticompetitive effects.[27]

Both in Turkey and globally, the importance of the automotive sector and its contribution to the gross domestic product is an undeniable fact. In such an important sector, IP protection can either provide competitive advantage or cause competitive concerns in the market. For this reason, there may be a need to evaluate the elements that can be protected as spare parts in the automotive sector, which has been transformed by digitalization and electrically oriented progress. Due to its importance, it is necessary to address spare parts in more detail.

## II. Overview of the Spare Parts Industry

Motor vehicles are produced and assembled by the production and assembly of around five thousand parts with different qualities, material structure, technology, production process and location.[28] The automotive industry consists of the main industry that manufactures vehicles, as well as components, modules and systems for both the production of vehicle manufacturers and the renewal of parts. Automotive sub-industry

[27] The relevant investigation will be discussed in more detail below under the heading "Jurisprudence Decisions".

[28] T.C. Başbakanlık Devlet Planlama Teşkilatı, 9.Kalkınma Planı, Otomotiv Sanayii Özel İhtisas Komisyonu Raporu, p.4, 2007, accessed April 4, 2025, https://www.iso.org.tr/file/9.kalkinma-oto_sanayii-485.pdf.

is a branch of industry that supplies spare parts and various components to the main industry. Organizations in the automotive sub-industry may operate as branches of larger vehicle producers, or function as independent firms that specialize in manufacturing a wide range of parts and components separate from the main automotive sector.[29] The vehicle manufacturer, on the other hand, manufactures a small portion of these parts itself, while the majority of the parts are supplied by the parts manufacturing enterprises, in other words, by the supplier industry, which produces within the framework of the designs and specifications provided by the vehicle manufacturer.[30] Therefore, in the automotive industry, there is interdependence between motor vehicle manufacturers, called the main industry, and parts, components and system manufacturers, called the sub-industry.[31]

The automotive sector is associated with many sectors due to backward and forward linkage effects both at the production and supply stage and at the after-sales stage. The raw material supply chain, parts and systems from the automotive sub-industry, and sectors such as sales, maintenance, insurance, and fuel represent only a portion of the broader ecosystem. [32]

[29] **Afsharipour, A., Afshari, Ö. and Sahaf, M**., *"*In The Automotive Industry, Most Oems Create 30 % To 35 % Of Value Internally And Delegate The Rest To Their Suppliers*," South African Journal of Industrial Engineering*, 17, no. 1 (2006): 5, accessed January 10, 2025, https://scielo.org.za/scielo.php?pid=S1815-74402011000100014.

[30] **Zhu, M., Zhibo, Z. & Xueqiao, W.** *"*Analysis of Typical 'Assembly-Components' Relationship Models in the Automobile Industry Chain*" E3S Web of Conferences* (2021), accessed August 8, 2024, https://www.e3s-conferences.org/articles/e3sconf/pdf/2021/68/e3sconf_netid21_03046.pdf .

[31] "Türkiye Parça Sektörü (Otomotiv Yan Sanayii) 2023 Vizyonu", *TÜBİTAK*, (2023), accessed April 11, 2025, https://tubitak.gov.tr/sites/default/files/2023-10/Ek6a.pdf.

[32] **Sutee ANANTSUKSOMSRI, Nattapong PATTANAPONG and Nij TONTISIRIN,** "Global Backward and Forward Multiplier Analysis: The Case Study of Japanese Automotive Industry"**,** *The 52nd*

As the automotive industry advances, it fosters progress in related supporting sectors, while improvements in those supporting areas help decrease dependence on imported components and enhance domestic production. In this way, the core industry and its auxiliary branches function in mutual reinforcement. Thanks to automotive sub-industry manufacturing capabilities, broad product range, and compliance with quality standards, these firms have attained the competence to supply approximately 85% of the spare parts required for vehicles manufactured within Turkey.[33] Parts and components manufactured within the country are sent abroad, contributing to approximately 9 billion US dollars in annual export revenue generated by Turkey's automotive supplier sector.[34] To keep pace with constantly evolving global competition, the sector's focus on improving quality, fostering innovation, and strengthening its workforce is expected to enhance the nation's overall competitive strength. This will lead to an increase in production and employment in the sub-industries.[35] In countries with companies that can compete on a global scale

*Annual Meeting of the Japan Section of the RSAI Conference,* (2015), accessed June 2, 2025, https://www.researchgate.net/publication/283153951_Global_Backward_and_Forward_Multiplier_Analysis_The_Case_Study_of_Japanese_Automotive_Industry

[33] **Uludağ İhracatçı Birlikleri** Genel Sekreterliği AR-GE Şubesi, Türkiye Otomotiv Endüstrisi Raporu (2021), accessed August 8, 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://uib.org.tr/tr/kbfile/turkiye-otomotiv-endustrisi-raporu.

[34] Ibid. p.4.

[35] **Ali Kemal Başbuğ and Umut Evlimoğlu,** "Otomotiv Sektörünün Türkiye Ekonomisini Makroekonomik Olarak Etkileme Mekanizmaları ve Sektöre Yönelik Bir Analiz", *Üçüncü Sektör Sosyal Ekonomi Dergisi*, 55 (1), (2020): p.134-154, accessed: January 12, 2025 https://www.researchgate.net/publication/358854163_Otomotiv_Sektorunun_Turkiye_Ekonomisini_Makroekonomik_Olarak_Etkileme_Mekanizmalari_ve_Sektore_Yonelik_Bir_Analiz.

in an industry such as automotive, where research and development activities are intensive and advanced production techniques are used, production diversity is high and connections with the outside world are strong.[36]

Given its scale, the automotive spare parts sector holds considerable economic and strategic value, as the economic output of numerous nations is closely tied to the overall performance of their vehicle industries.[37] As a result of the consumer's use of a product, spare parts may be needed for some reasons. Consumers can meet their spare parts needs sometimes with original spare parts and sometimes with equivalent parts. One of the most important factors affecting consumers' preferences for spare parts and equivalent parts is the cost of spare parts.[38] It is also possible for consumers to find substitutes at lower prices through equivalent parts.[39] However, IPR holders that provide exclusive rights, such as

[36] **Bilim, Sanayi ve Teknoloji Bakanlığı**, Türkiye Otomotiv Sektörü Strateji Belgesi Ve Eylem Planı (2016–2019), accessed March 20, 2025, https://www.sanayi.gov.tr/assets/pdf/plan-program/T%C3%BCrkiyeOtomotivSekt%C3%B6r%C3%BCStratejiBelgesiveEylemPlan%C4%B1(2016-2019).pdf

[37] **Verband der Automobilindustrie (VDA).** *"Automotive Industry Economic Report."* 2020. Berlin: VDA Publications, accessed: January 12, 2025, https://www.vda.de/dam/jcr%3A89579b0c-608a-44e4-9b16-0dda84ac1b51/VDA5193_JB_2020_Buch_EN_RZ2.pdf **Organisation Internationale des Constructeurs d'Automobiles (OICA).** *"World Motor Vehicle Production Statistics."* 2021. Paris: OICA, accessed: January 12, 2025, https://www.oica.net/category/production-statistics/2021-statistics/. Taşıt Araçları Yan Sanayicileri Derneği, *"Türkiye Otomotiv Yan Sanayi Raporu"* 2022, accessed: January 12, 2025, https://www.taysad.org.tr/Uploads/BilgiBankasi/1703202314291412022-yili-taysad-faaliyet-raporu.pdf.

[38] **Zhang, S.,** "Spare Parts Inventory Management for Substitute Consumer Products Under Uncertainties" (2022). accessed: January 12, 2025, https://macsphere.mcmaster.ca/bitstream/11375/27922/2/Zhang_Shuai_202209_PhD.pdf

[39] Ibid., p.1.

design rights and, where applicable, trademark rights, to the original manufacturer of the part, the spare parts manufacturer, may feel that they can always restrict the sale of generic parts.[40] In this market, competition is essentially divided into two categories based on the target buyers for spare parts production: businesses that supply spare parts to motor vehicle manufacturers are called Original Equipment Manufacturers (OEMs), while businesses that supply spare parts to the market for refurbishment purposes are called Original Equipment Suppliers (OESs), and new entrants to the market that typically only produce spare parts, known as Independent Aftermarket Manufacturers (IAMs).[41] For products manufactured by independent manufacturers other than spare parts manufacturers, competition for spare parts creates a market by influencing consumers' purchasing choices. Consumers are mostly free to choose to buy spare parts from either of these parties. However, the after-sales services offered by the spare part manufacturer, such as warranty, maintenance and repair, depend on the use of original parts whose marketing is controlled by the manufacturer. At a time when manufacturers offer up to a ten-year corrosion protection guarantee, the sub-industry, which may not offer a

[40] Original manufacturers of complex products use a variety of tools to maintain control of the aftermarket, including technical means (e.g. computer codes for printer cartridges, wireless telematics technologies for connected vehicles), advertising, sales and marketing techniques, part numbering systems, access to part identification data and contractual arrangements with the distribution chain. In some industries, OEMs resort to business models of setting artificially low prices for original products, while overpricing component parts such as printer cartridges, electric toothbrushes and coffee machines.

[41] **Dana Beldiman, Constantin Blanke Roeserand Anna Tischner**, "Spare Parts and Design Protection – Different Approaches to a Common Problem. Recent Developments from the EU and US Perspective", *GRUR International*, 69/7, 2020, accessed Decemeber 23, 2024, Spare Parts and Design Protection – Different Approaches to a Common Problem. Recent Developments from the EU and US Perspective by Dana Beldiman, Constantin, Blanke-Roeser,, Anna Tischner :: SSRN.

guarantee or may not inspire confidence due to its brand image, is not on the same scale in the eyes of the consumer. Independent manufacturers therefore have this disadvantage. Another disadvantage is that independent manufacturers enter the market some time after a new model is released. The reason is that these manufacturers require a certain amount of time to carry out reverse engineering processes that allow them to replicate the original components. However, the products they create often lack the recognition and brand value tied to the "genuine part" designation. [42]

Due to the importance of spare parts for daily life in the mechanized world, the following section will discuss the technical definitions of spare parts, standardization of spare parts, types of spare parts and the functioning of spare parts in the sectors.

### A. Concept and Types of Spare Parts

Spare part is a concept that has many definitions. Spare parts essentially refer to parts that are required for any reason after the original state of a product, as well as components that are kept in inventory to support the maintenance of products and are used to maintain the working order of products.[43] The definitions of spare parts, original spare parts and spare parts of equivalent quality are defined in Art. 4 of the Group Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicles Sector No. 2017/3 (Communiqué No. 2017/3). Accordingly, spare parts refer to the goods that can be installed on or inside a motor vehicle in order to replace the parts of a motor

[42] CJEU, 5 October 1988, Maxicar v Renault, European IP Portal Maxicar accessed October 25, 2024, https://www.ippt.eu/sites/ippt/files/1988/IPPT19881005_HvJEG_Maxicard_v_Renault.pdf.

[43] **Zhang, S.,** *"*Spare Parts Inventory Management for Substitute Consumer Products Under Uncertainties*"*, 1.

vehicle, except fuel, which are necessary for the use of the motor vehicle.[44] Spare parts, a term that can be encountered in every sector where mechanization is present, is undoubtedly important for the functioning of the whole. Consumers can supply their spare parts needs sometimes as original spare parts and sometimes as equivalent spare parts. The most important factors in this preference are the cost of the spare part, future warranty and quality concerns.[45]

Spare parts competition on spare parts produced by independent manufacturers other than original parts manufacturers is important for consumers to have access to spare parts at more affordable prices.[46]

It was mentioned in the section above that electrification has come to the forefront in the transforming automotive sector. Accordingly, when the automotive sector undergoes a transformation, spare parts, which are its main components, are also transformed. In this context, with the sector's shift towards electric vehicles, we may now face the issue of whether the vehicle's battery and LiDAR sensor system can be preserved as spare parts. Considering the definitions above, although the battery provides the property of a good

[44] **TCA**, Group Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicles Sector, No. 2017/3 https://www.rekabet.gov.tr/Dosya/tebligler/2017-3-20180219095528050.pdf.

[45] **Gencer, C. ve Akkucuk, U.** *"*The Influence of After-Sales Service Determinants on Brand Loyalty Within the Premium Automotive Industry: An Empirical Comparison of Three Countries*"*, *Journal of Relationship Marketing*, accesed May 18, 2025, https://www.researchgate.net/publication/262369047_The_Influence_of_After-Sales_Service_Determinants_on_Brand_Loyalty_Within_the_Premium_Automotive_Industry_An_Empirical_Comparison_of_Three_Countries.

[46] **Tischner, A., & Stasiuk, K..** "Spare Parts, Repairs, Trade Marks and Consumer Understanding*"*, *International Review of Intellectual Property and Competition Law*, p.12.

that can be installed in a motor vehicle in order to replace the parts of a motor vehicle and is necessary for the use of the motor vehicle, since fuel is excluded, the discussion of whether the battery will be qualified as fuel in electric vehicles will come to the agenda. Art. 11.7 of the EU regulation[47] stipulates that Individuals or entities that introduce products with portable or LMT batteries into the market must guarantee that such batteries remain accessible as replacement parts—both to consumers and independent service providers—at fair and equal pricing, for a minimum of five years following the final release of that specific equipment model. Two conclusions can be drawn from the interpretation of this provision. Firstly, it can be concluded that the internal equipment of the battery consists of spare parts, and secondly, it can be concluded that the industry wants the battery to be available by creating a regulation that converges with the three-year period in the spare parts repair exception. While the battery itself may not be a spare part, it is debatable whether the fuel cell, which is a component of the battery, can be considered a spare part. If not the entire fuel cell system, some of its components - for example membrane electrode units (MEAs), compressors or air humidifiers - can be supplied as spare parts by the manufacturer. However, the replacement of the system as a whole is costly and subject to manufacturer-specific procedures, which may limit the spare part nature of fuel cells. For example, just as the replacement of a car body, which is a spare part, is carried out either by the original manufacturer or by the supplier industry, the replacement of a battery fuel cell is likely to be carried out by the supplier industry in the future. As it is still an emerging field, batteries are not yet being replaced by disassembly and assembly in every country, as the EU has stated that by 2027, batteries

[47] Commission guidelines to facilitate the harmonised application of provisions on the removability and replaceability of portable batteries and LMT batteries in Regulation (EU) 2023/1542.

should be easily removable by the end user.[48] Although there is no requirement for disassembly and assembly in the spare part definitions, a clearer spare part evaluation can be made perhaps after 2027 when the battery becomes a removable part.

One of the elements that has become widespread with the development of the automotive sector is the regenerative braking system. These are advanced braking technologies used to improve energy efficiency in electric and hybrid vehicles. In electric and hybrid vehicles, these mechanisms transform the motion-based energy produced while braking into usable electrical power.[49] In my opinion, although this system is not a single spare part, the parts in this system can be qualified as spare parts since they are capable of being installed in motor vehicles and may be regarded as essential items for the operation of the vehicle.

Another consideration is the LiDAR sensor system which helps autonomous vehicles and driver assistance systems obtain a 3D map of the road, is recognised as key to achieving full autonomy in vehicles. LiDAR sensors are often designed by the manufacturer to be modular and interchangeable. In particular, companies such as Volvo and Waymo define LiDAR as a separate unit and accept that the sensor can be calibrated

[48] Regulation (EU) 2023/1542, adopted by the European Union in 2023, clearly states that by 2027 portable batteries must be easily removable and replaceable by the end user: Art.11.5: "*Any natural or legal person that places on the market products incorporating LMT batteries shall ensure that those batteries, as well as individual battery cells included in the battery pack, are readily removable and replaceable by an independent professional at any time during the lifetime of the product*.".

[49] **Mehrdad Ehsani, Yimin Gao,, Stefano Longo and Kambiz Ebrahimi**, *Modern Electric, Hybrid Electric, and Fuel Cell Vehicles,* (New York: CRC Press, 2018), 377-392.

and replaced as needed.[50] Tesla does not use LiDAR in any of its vehicles; instead, the company relies entirely on camera-based, vision-only systems.[51] In the event that the LiDAR sensors in the vehicle break down due to their modular structure, going to the original manufacturer or sub-industry manufacturer to fix the relevant sensor seems to be compatible with the definition of spare parts.[52]

Spare parts will be a secondary market in a market where the original product constitutes the primary market. In addition to spare parts, "complementary products and services" or maintenance and repair services, which are other products and services needed after the purchase of a product, which increase the functionality of the main

[50] Waymo's related patent applications: US 12043242 and US 11899466, accessed May 25, 2025, https://ppubs.uspto.gov/api/patents/html/12043242?source=USPAT&requestToken=eyJzdWIiOiJiM2ZiZGZiZC01MzIzLTRjOWQtYTUyYS1lMDA3MjZkYjdkZTkiLCJ2ZXIiOiI4NWE3MzQzMi1mYmFkLTQ1Y2UtYTAzMy1hYjE1ZTExMjE3ZDYiLCJleHAiOjB9. Luminar Technologies has announced a partnership with automotive software maker Applied Intuition to help automakers test assisted driving systems. Luminar's latest lidar sensor, Halo, will be smaller than previous generation sensors and can be embedded in a vehicle's roofline or behind the windscreen. The company has also indicated that it has begun shipping lidar sensors to Volvo Cars ahead of production of the EX90, which is expected to be the first global consumer vehicle to standardise this technology. https://www.reuters.com/technology/luminar-unveils-new-compact-lidar-sensor-halo-tie-up-with-applied-intuition-2024-04-23.

[51] Reuters (2025) 'Why Tesla's robotaxi launch was the easy part', *Reuters*, 24 June, accessed June 25, 2025, https://www.reuters.com/business/autos-transportation/why-teslas-robotaxi-launch-was-easy-part-2025-06-24.

[52] Following these discussions, discussions on which intellectual property rights can protect these elements will be provided below under the heading of Elements that may be subject to Intellectual Property in the Automotive Sector.

product or maintain its use, are products and services that may appear as secondary markets.[53]

Some parts may be considered spare parts but do not qualify as such; consumables, which are used up during operation (e.g., oil filters, inks, batteries), are typically irreparable and discarded when spent, unlike spare parts which are intact components replaced or repaired as needed.[54] Such as the toner of a printer, the blade of a razor blade. Or accessories such as the headset, GSM installation, navigation system, charger, radio, vehicle kit, luggage rack, software of the phone cannot be considered as spare parts. It is also considered that if and only if the parts called accessories are added to the vehicle during the production process, those added parts can now be considered as spare parts.[55]

The prices of these products differentiated from the main product or the prices of substitutes for consumables will form the preferences of consumers, which in turn will form the pricing strategies of producers. Sometimes the real profitability is in the secondary market, because if the consumer can use the main product for a long time after purchasing it, the manufacturer can shift its product development policy to the secondary

[53] **Martin Theodore Farris, C. Michael Wittmann, Ronald W. Hasty,** "Aftermarket Support and the Supply Chain", *International Journal of Production and Logistics Management* (2019), 35(9): p. 6-19, https://www.researchgate.net/publication/266855364_Aftermarket_Support_and_the_Supply_Chain Accessed Date: 02.06.2025.

[54] **Thomas Willemain,** *Service Parts Planning: Planning for consumable parts vs. Repairable Parts*, November 2022, accessed June 4, 2025, https://smartcorp.com/blog/planning-for-consumable-vs-repairable-parts-spare-aftermarket.

[55] **European Commission,** *Proposal for a Regulation of the European Parliament and of the Council on the Union Customs Code*, 2018, accessed May 15, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?rid=1&uri=CELEX%3A52018PC0193.

market, making the consumer dependent on itself.[56] Especially if competition is high in the primary market, undertakings can use their market power in the secondary market. In the section on Competitive Concerns that may arise in terms of Abuse of Dominant Position, the indirect effects of these provisions on defining the market for spare parts, which is a secondary product market, will be analysed. some Competition Board decisions will be discussed. Other types of fragments and their explanations will be given below.

### 1. Original Spare Part

Components produced directly by the vehicle manufacturer, as well as those fabricated by suppliers specifically for integration into the manufacturer's vehicles, may be classified as original equipment parts. According to Communiqué No. 2017/3 Art.4/1 (i) original spare part is stated that: "*Refers to spare parts which are of the same quality with the parts used in the assembly of the motor vehicle and which are manufactured in accordance with the technical specifications and production standards introduced by the motor vehicle manufacturer for the production of the relevant spare parts"*. The importance of the parts also requires the inspection of whether a certain standard is complied with in the production of the parts. Pursuant to Art. 4/i of the Communiqué, verifying the authenticity of components manufactured in accordance with the technical requirements and quality standards set by the vehicle producer -but made available to independent markets- is a duty assigned to the spare part manufacturer rather than the supplying entity. Components made on the same production line as the original vehicle

[56] **Rainer Kleber, Joao Quariguasi Frota Neto, Marc Reimann**, *Proprietary Parts as a Secondary Market Strategy*, 2019/1, accessed May 30, 2025, https://www.academia.edu/101104181/Proprietary_Parts_as_a_Secondary_Market_Strategy.

parts are classified as genuine. These parts are recognized as original if the manufacturer affirms that they match the quality of those installed during the assembly of the vehicle and comply with the technical requirements and production criteria set by the automaker. However, this recognition is based on a standard assumption, and contrary evidence may be presented.

### 2. Equivalent Part

According to 2017/3 Spare parts of matching quality is stated that, "*Refers to parts manufactured with the purposes of replacing the original parts used in the assembly of a motor vehicle, which is certified by an accredited organization to comply with mass, dimension, material and functionality criteria as determined by comparison to the original part according to testing and inspection methods specified by the relevant legislation*".

In equivalent parts, certification of parts by an accredited organization is important for reliability. Established in 1947 to align national standards, the International Organization for Standardization (ISO) operates across multiple domains, including supporting international trade, enhancing the quality of products, services, and systems, ensuring safety, safeguarding the environment, and advancing overall sustainable development.[57] In this context, ISO has developed more than 25,000 standards worldwide. In paragraph 16 of the Guideline Explaining the Group Exemption Communiqué in the Motor Vehicle Sector (Motor Vehicle Guideline), it is stated that certification bodies assessing spare parts of equivalent quality must be accredited in line

[57] **Dziak, M.** *International Organization for Standardization (ISO)*, 2025 accessed June 4, 2025, https://www.ebsco.com/research-starters/social-sciences-and-humanities/international-organization-standardization-iso.

with the ISO/IEC 17065 standard, either by the Turkish Accreditation Agency or by other accreditation bodies that have entered into a mutual recognition agreement under the relevant standards of the International Accreditation Forum.[58] For example, ISO 9001 quality management systems cover quality and production standards for spare parts.[59]

A spare part is a part that is produced according to the same production standards as the spare parts of the vehicle but does not have a brand logo.[60] In this situation, consumers may tend to use equivalent parts instead of spare parts due to their equivalent quality. In addition to the tendency of consumers to use equivalent parts, there may also be a tendency to use spare parts for reasons such as cost advantage and easy accessibility.[61] From the definitions and related explanations, it is understood that the determining criterion for the classification of spare parts into original and equivalent quality is their conformity to the standard specifically set by the motor vehicle manufacturer or to the more general ISO/IEC 17065 standard in terms of production and use. For example, ISO 9001 quality management systems cover the quality and production standards of spare parts. [62] However, the Undersecretariat of Treasury's Circular No. 2015/16 on the Principles of Certification of Original Parts without Logos in Motor Vehicle Insurances is a regulation that stands out in the sector and has explanatory provisions containing

[58] In Turkey, TSI is the organization that meets these conditions.

[59] **International Organization for Standardization**, *ISO 9001:2015 Quality Management Systems – Requirements*, 2015, accessed May 20, 2025, https://www.iso.org/standard/62085.html.

[60] **Avtoad**, *Selection of Spare Parts For the Car: Original vs Analogues*, 2025, accessed May 30, 2025, https://avtoad.com.ua/en/base/selection-of-spare-parts-for-the-car-original-vs-analogues.

[61] **Finmodelslab**, *Spare Parts Retail Porter's Five Forces*, 2025, accessed May 20, 2025, https://finmodelslab.com/products/spare-parts-retail-five-forces.

[62] ISO 9001:2015 Quality Management Systems – Requirements.

criteria regarding authenticity. With the Communiqué No. 2017/3, it was accepted that The Turkish Accreditation Agency is authorised in terms of accreditation, and pursuant to the Circular No. 2015/2 on the Principles of Certification of Equivalent Parts in Motor Vehicle Insurances issued by the Undersecretariat of Treasury on 13 June 2015, it is regulated that if it is not possible to repair the damaged part in motor vehicles not exceeding 3 years from the model year, it is possible to use the original spare part first, and if the original spare part cannot be found, only equivalent spare parts can be used.

Another organisation that provides international quality standards to many industries is the American Society for Testing and Materials (ASTM). The standards set by ASTM provide a framework for the production methods, physical and chemical properties of products and allow manufacturers, sellers, buyers, developers and users to express all the properties of products in a concise and clear manner.[63] This improves product quality, improves product safety, strengthens market access and trade, and sends a message to customers that products are reliable.

A spare part is a part that is produced according to the same production standards as the spare parts of the vehicle but does not have a brand logo.[64] In this situation, consumers may tend to use equivalent parts instead of spare parts due to their equivalent quality. In addition to the tendency of consumers to use equivalent parts, there may also be a tendency to use spare parts for reasons such as cost advantage and easy accessibility.[65] From the definitions and related explanations, it is understood that the determining

[63] ASTM International (2025) 'Detailed Overview https://www.astm.org/about/detailed-overview Accessed Date: 10.05.2025.

[64] **Avtoad**, "Selection of Spare Parts For The Car: Original vs Analogues".

[65] **Finmodelslab**, "Spare Parts Retail Porter's Five Forces".

criterion for the classification of spare parts into original and equivalent quality is the conformity of these parts to the standard specifically set by the motor vehicle manufacturer in terms of production and use or to the more general ISO/IEC 17065 standard.

### 3. Must Match

Part designs whose form is determined by the visual characteristics of the final assembled product are known as visually dependent designs.[66] SULUK has given the door, hood and fender of the automobile as examples of parts that must adapt to the appearance due to aesthetic concerns. This is because the bodywork and bumper of a vehicle must be in a position to complement the appearance in accordance with the dimensions of that vehicle; otherwise, parts such as the bodywork and bumper that do not match the appearance will show that the vehicle does not belong on the vehicle. If these parts, which cannot be produced in a different way from the original product, are protected by an IPR, they will need to be examined in terms of competitive concerns in the context of competition law.

According to Art. 59/4 of the TIPC, the use of the design for the purpose of repair in order to "*restore the original appearance of the combined product and provided that it is not misleading about the source of these parts, three years after the date of the first release of the design to the market will not be considered as an infringement of the design right*". Therefore, the use of the parts of the composite product that are of visual necessity, i.e. must match products, for the purpose of repair and in a manner that is not misleading,

[66] **Cahit SULUK,** "Yedek Parça Tasarımlarının Korunması ya da Otomotiv Yan Sanayiinin Var Olma Mücadelesi", 545.

is permitted three years after the date on which the design was first placed on the market.[67] Thus, it is desired to create a multi-player structure in the market. An exception has been introduced to the three-years protection period. With this exception, spare parts included in the list to be released by the Ministry of Science, Industry and Technology within the three-years period of protection can be produced in the market without the three-years protection period. More detailed information on this issue will be provided under Design Protection in Turkey.

### 4. Must Fit

Must fit parts are parts that must be produced in a certain form in order to perform their technical functionAccording to Art. 58/4 of the TIPC, design rights do not extend to the visual features of products that must be manufactured in specific forms and dimensions in order to enable mechanical assembly with, or connection to, another product. Therefore, it is not possible to protect connected spare parts with the design right. These parts, which are functionally obligatory (form follows function)[68], cannot benefit from protection by design because the tire is round, just as a wheel must be round, but the patterns and designs on the tire can be protected. SULUK states that the exhaust pipe and the connection parts of the brake pedal cannot be protected by design right since they are parts that must be made in a certain way for technical reasons.[69]

[67] **Feyzan Hayal Şehirali Çelik,** *Sınai Mülkiyet Kanunu'nun Tasarım Hukukuna Getirdiği Temel Yenilikler*, in: Banka ve Ticaret Hukuku Araştırma Enstitüsü (ed.), *6769 Sayılı Sınai Mülkiyet Kanunu Sempozyumu, 9–10 Mart 2017*, Banka ve Ticaret Hukuku Araştırma Enstitüsü: Ankara, 2017, pp. 255–302.

[68] **Cahit SULUK,** "Yedek Parça Tasarımların Korunması ya da Otomotiv Yan Sanayiinin Var Olma Mücadelesi", 544.

[69] Ibid., 544, 545.

It is important to clarify here that the form requirement does not arise from the requirement that the headset must fulfill its technical function, but from the requirement that the connection point must be in a form suitable for the connection point so that the product can be connected to the place where it needs to be connected, therefore, for the application of the must fit exception, it is important that the designs of the connection parts are not mandated by the technical function, but that the designs themselves are in the nature of connection parts. [70] In this framework, the must fit exception is related to whether the product has a connection feature.

With the fifth paragraph of Art. 58 of the TIPC, it is stated that, as an exception to the must fit exception, designs that enable these units to connect with each other in a modular system consisting of different or identical units in a finite or infinite variety of ways, provided that they are new and distinctive, may benefit from design protection. Accordingly, the connection parts in the modular system will be within the scope of design protection, and the production of these designs by third parties will constitute infringement of the design right.[71]

### B. Spare Parts Manufacturers

As in every sector, perhaps more so in the automotive sector, consumers want to know the source and quality of the product they buy at a price. A car owner may want to scrutinize and scrutinize while bearing the costs incurred by the car he/she buys by paying

[70] **Fatma Betül ÇAKIR ÇELEBİ**, "Tasarım Hukukunda Eşdeğer Parça İstisnası", (Doctor Thesis, Yıldırım Beyazıt University, 2021), accessed September 23, 2024, https://tez.yok.gov.tr/UlusalTezMerkezi/tezSorguSonucYeni.jsp.

[71] **Schovsbo, J. & Dinwoodie, G.B. (2018).** Design production for products that are dictated by function: the EU design approach. In: Kur, A., Levin, M. & Schovsbo, J. (eds.) *The EU Design Approach*. Elgar Online Press.

perhaps 100 times the price of a bodywork. Some consumers, on the other hand, may move away from the original manufacturer and prefer the spare parts produced by the Supplier-industry production, which has a lower price. At this point, what consumers pay attention to in their spare parts preferences becomes one of the important points that shape the market.

A study was conducted to examine the effect of factors such as quality perception, risk perception, price perception and consumer trust on consumers' intention to purchase sub-industry and original spare parts.[72] This research examined how price influences consumers' willingness to buy both original and sub-industry spare parts, considering three different price gap scenarios. The findings revealed that consumers' perceptions of risk and price significantly impact their preference for original parts, whereas only price perception affects their intention to choose sub-industry parts. Moreover, it was found that when a sub-industry product is offered at a lower price compared to the original, it negatively influences consumers' willingness to purchase the original parts, especially when the price difference between the sub-industry and original product is minimal and the original product has a negative effect on the intention to purchase the product produced by the sub-industry, and as a result of the increase in this difference, consumers' tendency to prefer the sub-industry product increases. As a result, it has been determined that when the prices of spare parts produced by the sub-industry are close to the prices of original spare parts, consumers prefer original spare parts; when the spare parts produced

[72] **Emre Yusuf POLAT**, "Tüketicilerin Otomobil Yedek Parça Tercihlerini Etkileyen Faktörler: Orijinal ve Yan Sanayi Karşılaştırması Üzerine Bir Çalışma", (Master Thesis, Okan University, 2020), accessed February 1, 2025, https://tez.yok.gov.tr/UlusalTezMerkezi/tezSorguSonucYeni.jsp.

by the sub-industry are much cheaper than the original spare parts, consumers will prefer sub-industry produced spare parts.

The first source of supply that comes to mind when consumers prefer spare parts is the distribution network of the manufacturers. This is because the consumer has confidence that he or she will be able to obtain the part immediately or within a short period of time. Automobile manufacturers in a given country have a very tight distribution network, at least in that country. [73] Moreover, the warranty provided by the manufacturer depends on the use of so-called original parts, the marketing of which is controlled by the manufacturer. According to Communiqué No. 2017/3, as mentioned above, original spare parts may be spare parts produced by motor vehicle manufacturers or spare parts supplied by independent spare parts manufacturers (OEMs) to motor vehicle manufacturers or directly to the market and having the same production standards as the parts used in the assembly. Generally, OEMs have design rights over spare parts designed and manufactured by OEMs. By investing in the design and development of these parts, they can protect their design rights and have exclusive rights to prevent competitors from copying their designs.

Another group of spare parts manufacturers is the group where the production of spare parts is carried out by third parties. Third parties can claim their own design rights on spare parts produced in this way. However, these rights may be valid provided that the spare part does not infringe the existing design rights of OEMs.

[73] **Mark Kunar**, "New Distribution Challenges In The Automotive Aftermarket", November 2015, accessed May 3, 2025, https://www.vehicleservicepros.com/home/article/21189203/new-distribution-challenges-in-the-automotive-aftermarket.

## III. Elements That May Be Subject To Intellectual Property In The Automotive Sector

In the automotive sector, IPRs play a critical role in protecting technological innovation and shaping competitive strategies.[74] TIPC is a branch of law that covers the creativity of the mind. IP holds significant importance in both cultural and economic spheres and is safeguarded through a range of legal frameworks. IP is constantly finding ways to express itself dynamically with technological progress.[75] Idea owners invest considerable time, financial resources and intellectual effort to realize their original ideas. In order for these actors to be compensated for their efforts and to continue to engage in similar initiatives, they need to have certain legal protections for the values they create. In this framework, the recognition of rights over intellectual products secures the economic and moral dispositive powers of individuals or institutions over the elements they develop.

IP is broadly classified under two main headings. The first group of IPRs includes patent protection for technical innovations, designs covering production and design aesthetics, trademark registrations representing businesses with distinctive symbols, and markings indicating the geographical origin of certain products. Copyright and related rights, on the other hand, aim to protect cultural production, including works, performances and publications in the fields of literature, art and science.[76] These two

[74] **Zirpoli, F.,** "Innovation Processes in the Car Industry: New Challenges for Management and Research." 2013, accessed May 12, 2025, https://www.academia.edu/112921739/Innovation_Processes_in_the_Car_Industry_New_Challenges_for_Management_and_Research.

[75] **David J. Teece,** "Profiting from Innovation in the Digital Economy: Enabling Technologies, Standards, and Licensing Models in the Wireless World," *Research Policy*, 47(8), (2018): pp. 1367-1387.

[76] https://www.wipo.int/publications/en/details.jsp?id=4528

categories have different but complementary characteristics in terms of providing legal security for abstract productions.[77] Under this heading, firstly, how some IPRs are protected in Europe and Turkey will be discussed and then how these rights may be encountered in the automotive sector will be addressed. Here, the legislation on IPRs will be included in a limited way only as a basis for the assessments to be made within the scope of the study.

## A. Patent Protection and its Overview in Automotive

Patent protection is a very common type of IP protection in the automotive sector.[78] In this section, firstly, the protection conditions and elements of the patent right in Europe and Turkey will be discussed, and then, by taking into account the conditions of patent protection in the automotive industry, what can constitute the subject matter of the patent right will be addressed.

### 1. Scope of Patent Protection

#### a) Patent Protection in EU

In the EU, the European Patent Convention (EPC) seeks to simplify, reduce costs, and increase the reliability of invention protection by establishing a unified European patent system that operates under a consistent independent patent law framework.[79] Thus,

[77] https://www.wipo.int/publications/en/details.jsp?id=4528

[78] **Roland Atilla Csizmazia, "**Identifying Automotive Industry Trends: Data Mining from Intellectual Property Databases", *Journal of Business and Management Studies*, (2021):3(2), accessed December 9, 2024, https://www.researchgate.net/publication/354429967_Identifying_Automotive_Industry_Trends_Data_Mining_from_Intellectual_Property_Databases.

[79] **Geiger, C.**,. *European Patent Law: Law and Procedure under the EPC and PCT*. (Oxford University Press, 2nd edition. 2012)

individual applications in the member states will continue to be available; in addition, if the applicant wishes to obtain European Patent protection in all EU member states with one application, it will be able to apply for this as well.[80] In Europe, patent rights are protected by the EPC and the Patent Cooperation Treaty (PCT). The PCT provides applicants with the option to submit patent protection applications in multiple countries over a period of time. The European Patent Office is among the authorized offices responsible for the international examination of PCT applications.[81]

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) member countries are required to harmonize their legislation with TRIPS, and considering that the EPC should be compatible with TRIPS, we can explain the patentability conditions through the regulations in the EPC. Art. 52 of the EPC defines what inventions can be patented and specifically identifies categories that are excluded from being considered inventions.[82] Patentability conditions are included in Art. 27.1 of the TRIPS. The requirements for obtaining a patent include "novelty", an "inventive step", and "industrial applicability". The novelty criterion is regulated in Art. 54 of the EPC. Accordingly, an invention is deemed to satisfy the novelty requirement if it is not in the state of the art. The invention must not have been disclosed to the public before, must not have been used and must not have been published. Here, it is necessary to understand

[80] **Fatma Esin BATAK YILDIRIM**, "Amerika ve Avrupa Patent Sistemi Işığında Biyoteknolojik Buluşlar Kapsamında Türk Hukuku'nda Kök Hücrenin Patentlenebilmesi", (Yüksek Lisans Tezi, Hacettepe Üniversitesi, 2019), accessed April 29, 2025, https://tez.yok.gov.tr/UlusalTezMerkezi/tezSorguSonucYeni.jsp.

[81] **WIPO**, *Patent Cooperation Treaty (PCT) – Guide*. (2023), accessed May 3, 2025, https://www.wipo.int/pct/en/.

[82] Please look for more information: https://www.epo.org/en/legal/epc/2020/api.html

what an invention is in an invention-based patent definition. An invention refers to a concept that provides a practical answer to a particular technological issue and is typically safeguarded through a patent.[83] Almost every country that provides legal protection to inventions, also known as “patents for invention”, provides this protection through patents.[84] In the context of product patents, the rights holder is exclusively authorized to produce, use, market, propose for sale, bring into the country, and send abroad any item that includes the patented invention.[85] Process patents grant the exclusive authority to apply the patented method and also cover the rights to produce, utilize, market, offer for sale, import, and export any products manufactured using that patented process.[86] As a rule, the patent right holder uses the product or method patent itself within the framework of these exclusive rights. With a compulsory license, as discussed in Art. 31 of TRIPS, the exclusive rights of the patent right holder may be transferred by a governmental authority to a third party. [87] Art. 31 of the TRIPS permits "compulsory licensing," which entails the right to manufacture or import a protected good without the actual approval of the patent owner. Nonetheless, certain prerequisites need to be fulfilled prior to the issuance of a compulsory license. So first of all, a license must be "restricted to the purpose for which it was permitted" and must only be issued if it would be used "predominantly for the supply of the domestic market." Additionally, one must present commercial proposal that are fair to both parties.

[83] **WIPO**, *Introduction to Intellectual Property Theory and Practice*, (Wolters Kluwer Second Edition, 2017) p.131-239.

[84] Ibid., p.11.

[85] Ibid., p.12.

[86] Ibid., p.12.

[87] Ibid., p.13.

If allowed by the law of the Member State, Art. 31, titled "*Other Use Without Authorization of the Right Holder*" states that when the government or an authorized entity uses the patent without the patent owner's consent, certain legal conditions must be fulfilled: 31/1(b): "such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time." In order to provide protection according to this provision, it is not sufficient to apply to the right owner alone. He must insist on his application, put forward reasonable conditions, and as a result, the right holder must reject it.

In this study, patent protection in Europe is discussed only at the framework level. The reason for this is that the patent law in Turkey is very similar to the regulations in Europe, especially within the scope of the legislative harmonization process with the EU. In addition, since Turkey is a party to TRIPS, it has a duty to harmonize its national legislation with TRIPS. There is no fundamental difference between the two systems in terms of the scope, duration, exceptions and remedies for infringement of patent protection. For this reason, it has been preferred to address the Turkish system directly instead of including detailed explanations on the European practice.

### b) Patent Protection in Turkey

Patents are regulated by the TIPC in Turkey. As with other IPRs, patents are not defined by way of definition in the TIPC. In some articles of the section of the Law on patents, it is seen that different results are attributed to patents related to products and procedures. Patents include two types as product and procedure according to the field in which they can be applied. In this context, it is useful to mention the two types of patents: product and procedural patents. In product patents, the invention, which is a technical

solution to a problem, appears in its concrete form as a product.[88] An invention such as a new alloy is considered a product invention.[89] Procedural patents, on the other hand, are solutions that can also create a product and by-product or produce non-product results, determining the order of technical and sequential phenomena and the substances used in this order and containing them.[90] An invention involving a new technique or procedure for producing a known or novel alloy is classified as a method/process invention.[91] Procedural patents can also be seen in two forms: production and result. In a production procedure, a patented or non-patented product is produced through the application of the procedure. In the result procedure, the main focus is not on the creation of a product. Although there is no definition in the doctrine regarding the result procedure, according to Tekinalp, in this type of patent, a result is obtained that has effects in the field of science, especially in the fields of physics and chemistry.[92]

The regulations in the TIPC regarding patents start with the patentability criteria in Art. 82. Art. 82 of the TIPC sets out the conditions of patentability and exceptions to patentability. Accordingly, the following three conditions are the cumulative requirements for a product or process to be granted patent rights:

- It must be a "new" invention,

[88] **Ünal Tekinalp**, *Fikri Mülkiyet Hukuku*, (İstanbul: Vedat Kitapçılık, 5.Baskı 2012) p.596.

[89] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.12.

[90] **Tekinalp**, "Fikri Mülkiyet Hukuku", p.596.

[91] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.12.

[92] **Hatice Armutçuoğlu**, "Doğrudan Yabancı Sermaye Yatırımları ve Patentler Arasındaki Ilişki: Türkiye Uygulaması (1970-2013)", (Yüksek Lisans Tezi, Dokuz Eylül Üniversitesi, 2014), accessed February 18, 2025, https://avesis.deu.edu.tr/yonetilen-tez/e0b2c54a-8c8a-4a46-958b-c456623f44ea/dogrudan-yabanci-sermaye-yatirimlari-ve-patentler-arasindaki-iliski-turkiye-uygulamasi-1970-2013.

- Must include an “invention step”[93]

- It should be “industry-applicable”.

One of these qualities, invention, can be applied to any field of technology.[94] The term “invention” in the text of the article is not defined in the text of the law, but its difference from discovery, which is one of the most confused terms, is mentioned in the preamble[95] of the article. Accordingly, discovery cannot be patented as it refers to the discovery of objects or events that exist in nature but are not yet known. However, the use of a discovered substance in solving a technical problem may be the subject of a patent. Scientific theories, on the other hand, cannot be protected as patents unless they express a technical rule, since they are the broad form of discoveries.[96]

In the same article, mathematical methods, as one of the things that cannot be protected by patents, cannot be protected by patents due to their abstract nature and the fact that they are only related to mental processes. For example, a method for performing a classical arithmetic operation faster is not subject to protection as it does not constitute

[93] The difference between a utility model and a patent is that it does not include the inventive step criterion. It is possible to protect innovative technical developments with a utility model.

[94] Preamble of the Law No: 6769 Turkish Industrial Property Code, accessed, April 29, 2025, https://www5.tbmm.gov.tr/develop/owa/kanunlar_erisim.tutanak_hazirla?v_meclis=&v_donem=&v_yasama_yili=&v_cilt=&v_birlesim=&v_sayfa=&v_anabaslik=KANUNLAR&v_altbaslik=6769&v_mv=&v_sb=&v_ozet=&v_kelime=&v_bastarih=&v_bittarih.

[95] Ibid., p.43.

[96] According to the example given in the preamble of the Article, a physical theory of semiconductivity would not be patentable, but new semiconductor devices and processes for their manufacture would be patentable.

a technical invention. However, a mechanism that physically performs such calculations can be patented if it has technical characteristics. [97]

Similarly, plans, methods and rules for mental processes, commercial activities or game fictions are not patentable unless they provide information for solving technical problems. For example, while learning techniques developed for language teaching or puzzle solving cannot be considered within this framework, a device that embodies these techniques can be protected if it makes a technical contribution. [98]

Another example listed in the same article is computer programs. As stated in the preamble of the Article, computer programs, which are essentially a set of commands for the functioning of a computer, cannot benefit from patent protection in terms of source codes, object codes, problem or system analysis, program flow plan, coding stages, and can be protected according to the Law on Intellectual and Artistic Works. Although this example, which is explained in detail in the preamble of the article, may lead to physical transformations in the processor and memory when run or loaded with hardware, it is stated that these ordinary technical effects alone will not be considered sufficient for patent protection, and that if the effect in question offers an effect beyond ordinary technical results or if it is presented with a device, it may be entitled to patent protection.

Again, products that have only aesthetic aspects - for example, an architectural drawing, sculpture or painting, works of literature and art, and works of science - cannot be patented as they are not considered inventions. Although the Article is limited to enumeration, the preamble to the Article clarifies this, and states that technical means or

[97] Preamble of the Law No: 6769, p.40.

[98] Ibid., p.41.

methods used in the production of these aesthetic products (pattern on fabric) may be covered by patents if they are technical inventions (pattern-applying machine).

Likewise, methods related to the presentation, organization or transmission of information and not having a technical aspect will not meet the criteria for patentability. However, technical systems or devices that perform or facilitate these operations may be protected by a patent to the extent that they present a technical novelty.

Art. 83 of the TIPC defines the novelty criterion, which is one of the necessary conditions for patent protection. Accordingly, "An invention that is not included in the state of the art is considered to be new." While defining the novelty criterion, the term "state of the art" appears to clarify the concept of novelty. The state of the art is defined in the preamble of the article. According to this: "*includes direct or indirect written or oral information that is accessible to the public, as well as anything accessible to the public that is used, produced or sold, or disclosed in any other form*." An invention that does not belong to the state of the art will be considered new.[99] The novelty of the invention is universal, i.e. absolute novelty, in that it encompasses everything accessible to society.[100] Thus, it is intended to prevent the opportunism of filing a patent or utility model application for information that has already reached public knowledge in any way.

The inventive step[101], which is another one of the patentability criteria of an invention, is considered to have been achieved if it has emerged as a result of a solution

[99] Ibid., p.43.

[100] Ibid., p.43.

[101] The inventive step was addressed in the US in 2007 in the KSR v Teleflex case (U.S. Supreme Court, KSR Int'l Co. V Teleflex Inc, 550 U.S. 398. 2007. In the decision rendered as a result of this case, it was stated that the inventive step can be evaluated under four main headings. Accordingly, it is stated that the

that the expert[102] in the relevant technical field cannot easily reach by examining the current technical situation. It has been added to the text of the preamble of the Article that the existence of this element will be shaped in practice. Therefore, whether this condition is met or not will be determined by the competent authorities and concrete assessments to be made in practice.

In the last paragraph of Art. 83, the criterion of industrial applicability, which is the last condition of patentability, is explained. Accordingly, the requirement of industrial applicability implies that an invention should possess the potential for production or practical use within various sectors of industry and must be suitable for enabling or enhancing industrial operations. Although the industrial applicability of the invention means that it can be produced, no efficiency is expected in this production.[103]

Art. 85 sets out the limits of patent protection. Art. 85/3 sets out the boundaries of the rights conferred by the patent or utility model. In subparagraph (a) of the third paragraph, the utilization of the patent by third parties for individual or non-commercial

inventive step can be evaluated based on four criteria: what is the scope and subject matter content in the state of the art, what are the differences between the state of the art and the claims in the patent application, the level of knowledge of a person of average ability in the relevant technical field, and whether the subject matter is obvious or not according to whether the person of average ability in the relevant technical field can reconcile the conditions in the state of the art with the claims of the patent. (**Fatma Esin BATAK YILDIRIM**, "Amerika ve Avrupa Patent Sistemi Işığında Biyoteknolojik Buluşlar Kapsamında Türk Hukuku'nda Kök Hücrenin Patentlenebilmesi", p.44)

[102] As stated in the preamble of the Article, an expert is defined as "a careful practitioner who has general knowledge in the relevant field of the technique and has access to everything that is known in the state of the art, has the capacity to carry out routine research and applications, and does not have the ability to invent".

[103] **Tekinalp**, "Fikri Mülkiyet Hukuku", p.546.

without any industrial or commercial purpose is excluded from the scope, as it will not affect the commercial interests of the patentee. Subparagraph (b) of the third paragraph removes experimental use of patented inventions from the protection conferred by the patent, grounded in the reasoning that such use may contribute to the progress of technology. In the majority of countries, patent rights are safeguarded for a period of twenty years from the filing date of the application, in line with the minimum protection term set out in Art. 33 of the TRIPS. Similarly, Art. 101 of the TIPC follows a comparable approach by providing a twenty-year term of protection for patents and a ten-year term for utility models, both commencing from the application filing date. The shorter duration granted to utility models is justified by the fact that the innovations concerned typically involve incremental improvements, which may diminish in relevance or economic value within a decade.[104]

Inventors apply for patents to prevent their products from being used without their permission. The patentee may prevent the production of spare parts for twenty years, which is the protection period of the patent right registration. In certain instances, subject to the inventor's consent, the right to utilize a patent may be granted to a third party through a licensing arrangement. The legal framework governing such licensing is outlined in Art. 125 of the TIPC, which explicitly provides that both the patent application and the exploitation of the patent may be covered by a license agreement. Owing to this regulation, a right holder who is either unable to implement their invention directly or seeks to maximize the economic return from the technological innovation may generate income by authorizing third parties to exploit the invention through a licensing arrangement. Within the framework of the relevant provision, the types of licenses and

[104] Preamble of the Law No: 6769, p.53.

the scope of the powers and obligations of the licensor and the person who is authorized to use under the contract in case of transfer of these rights are defined in detail. Although the inventor can transfer the patent right through licensing, in some cases, the license can be granted without the consent of the patentee. This situation is regulated as compulsory license in the TIPC. A compulsory license refers to a situation in which the government mandates that the exclusive holder of a right must allow another party to use that right under terms imposed by the government.[105] Under TIPC, a request for the issuance of a compulsory license can be submitted either to the court or, as stated in Art. 129/2 of the TIPC, to the Competition Authority. the application for a compulsory license based on item (e) of the first paragraph must be submitted to the Competition Authority.

It is recognized that patent rights grant the holder a monopolistic right of use. Although patent stimulates monopoly and overpricing, patent protection is necessary to ensure innovation. For patent rights, in return for the monopoly right granted, an obligation to pay an annual fee has been introduced as a price for this right, taking into account the economic gain it will bring to the owner. It is also stipulated that these annual fees shall be paid starting from the third year.

Consequently, patent rights are characterized by exclusivity, grant the holder a legally protected monopoly over the invention, remain effective for a limited time period, and are subject to the territoriality principle, meaning their legal effect is confined to the jurisdiction in which they are granted.

### 2. The Overview of Patent Protection in Automotive

[105] **Tarun Jain**, "Compulsory Licenses Under TRIPS And Its Obligations For Member Countries," *ICFAI Journal of Intellectual Property Rights,* 8(1), February 2009.

When the above-mentioned EU and Turkish legislation are evaluated together, it is seen that these regulations are largely compatible with each other. This stems from Turkey's obligation to align its national IP legislation with international standards -particularly the EU acquis communautaire- arising from its membership in the WTO and its status as a party to the TRIPS Agreement. As stipulated in the legislation, patents can be applied for new inventions, innovative technologies and designs. In the automotive sector, digitalization has brought new products or processes subject to patents. Accordingly, inventions such as detection sensors, battery technologies, charging systems for autonomous driving systems are also subject to patent protection.[106]

Various systems and applications -including LiDAR sensors [107], an electric vehicle charging capacity and instantaneous consumption analysis application for apartment management [108], regenerative braking system [109], IoT access control systems [110], charging reservation methods for electric vehicles [111], wireless charging systems for electric vehicles [112], a system designed to enhance batteries[113] cooling capacity- have been developed and submitted to TPTO. In addition, numerous patent registrations[114] have

[106] WIPO (2022). *WO2022106971A1 - Electric vehicles with battery management and sensors*. Accessed April 3, 2025, https://patents.google.com/patent/WO2022106971A1/en.

[107] Application no. 2022/021702 obtained from TPTO patent database.

[108] Application no. 2024/018406 obtained from TPTO patent database.

[109] Application no. 2024/017982 obtained from TPTO patent database.

[110] Application no. 2024/017264 obtained from TPTO patent database.

[111] Application no. 2024/016403 obtained from TPTO patent database.

[112] Application no. 2024/016403 obtained from TPTO patent database.

[113] Application no. 2023/019829 obtained from TPTO patent database.

[114] For more information: https://www.turkpatent.gov.tr/arastirma-yap?form=patent.

been made, covering technologies such as advanced battery technologies[115] and charging infrastructure[116].

The increasing value of software as well as mechanical hardware is evident from the inclusion of CMA in the definition of spare parts. In this direction, it will also give independent services the ability to send software/instructions and software updates as a kind of temporary or permanent solution for mechanical failures to a vehicle via remote access.[117] Software technologies brought about by digital transformation are also patentable inventions. For example, anti-lock braking system software (ABS), algorithms that accelerate data transfer between mobile devices or software that works with advanced encryption protocols are examples of patentable software. [118] In contrast, software based on mental processes, commercial arrangements or pure information presentation will be excluded from protection as long as it lacks technical contribution.[119]

A study[120] based on search results from WIPO's IPC portal regarding electric vehicles and batteries highlights that patent applications submitted to WIPO in these fields have shown a consistent rise since 2004, with the number peaking at nearly 4,000

[115] TPTO patent with registration number 2021-009267.

[116] TPTO patent with registration number 2018-09350.

[117] **Christian Plappert, Andreas Fuchs,** "Secure and Lightweight ECU Attestations for Resilient Over-the-Air Updates in Connected Vehicles", *ACSAC '23: Proceedings of the 39th Annual Computer Security Applications Conference*, (2023):p.268-282, accessed March 18, 2025, https://dl.acm.org/doi/10.1145/3627106.3627202.

[118] Preamble of the Law No: 6769, p.42.

[119] Ibid., p.42.

[120] **Lorenzo Biancolini**, "Patent Landscape Analysis of Batteries for Electric Cars", (Master Thesis, Politecnico di Torino, 2023-2024), accessed May 27, 2025, https://webthesis.biblio.polito.it/31417/1/tesi.pdf.

in 2020 and remaining[121] relatively steady between 2019 and 2023[122]. The large volume of patents and the trend over the years reflect both rapid market expansion and growing global interest in electric mobility.

In addition, when the trend regarding geographical factors is analyzed, it is concluded that applications from China constitute 57% of total patent applications, followed by the USA and Japan. This suggests that IP protection may have an undeniable role in China's leading role in battery technologies and, accordingly, in electric vehicle production.

In this sense, Toyota, which has an important share in alternative technologies in the automotive sector, has more patents than other companies and is one of the first companies to invest in electric vehicles.[123] On the other hand, the study shows that Aulton, which developed the solution of replacing an empty battery with a charged battery - a method that is not yet popular in Turkey but is said to be faster compared to charging - is the leader in this technology and the company with the most patents after Toyota.[124]

Another important result obtained in the study is the results showing a technological trend and therefore the elements subject to patents. In this context, patents are classified under 4 headings: energy storage units such as batteries, hydrogen fuel cell technologies, charging infrastructure, battery management mechanisms, and their coordination within

[121] This is estimated to be due to the Covid-19 pandemic.

[122] The large increase since 2017 can be explained by the growing market interest in electric vehicles, spurred by the ratification of the Paris Agreement in 2016.

[123] **Lorenzo Biancolini**, "Patent Landscape Analysis of Batteries for Electric Cars", p.39.

[124] Ibid., p.57.

the vehicle system. It is seen that 39% of the patent protection is related to batteries, 34% to charging systems, 18% to vehicle control systems and finally 8% to battery fuel cells.[125]

In addition to digital transformation and electrification, spare parts can also be protected as patents if they require a solution to a technical problem.[126] This protection of spare parts may also lead to some disputes. One of the first known disputes regarding spare parts in the automotive sector is the Ford-Selden case. In 1895, George Selden obtained a U.S. patent covering a gasoline-powered car. The core claim of his patent centered on the application of a lightweight internal combustion engine powered by gasoline.[127]Although the patent clauses were general and did not detail many important details about the motor, the Patent Office granted the patent application, and then the district courts twice upheld it[128], despite arguments that the motor referred to in the claim was a specific type[129] that did not cover all allegedly infringing motors.

[125] **Lorenzo Biancolini**, "Patent Landscape Analysis of Batteries for Electric Cars", p.48.

[126] *CN109816297A - A kind of automobile spare parts supply chain management system*, accessed May 30, 2025, https://patents.google.com/patent/CN109816297A/en.

[127] In 1895, George Selden was granted a wide-ranging patent covering fundamental components of the early automobile—such as the carriage, transmission system, and engine—which secured him a dominant role in the rapidly growing automotive industry. See U.S. Patent No. 549, 160, issued Nov. 5, 1895; Columbia Motor Car Co. v. C.A. Duerr & Co.

[128] **Robert P Merges, Richard R. Nelson**, **"**The Complex Economics of Patent Scope", *Columbia Law Review*, 90(4), May 1990, accessed February 20, 2025, https://www.researchgate.net/publication/247031321_The_Complex_Economics_of_Patent_Scope.

[129] It was mentioned that it does not cover electric vehicles.

This entitled him to a share from all automobile manufacturers in the US for the use of the patent.[130] In 1903, George Selden and the executives of the Electric Vehicle Company (EVC) established the Association of Licensed Automobile Manufacturers (ALAM), providing a straightforward mechanism for automakers to pay Selden and EVC licensing fees in exchange for IP protection.[131] That same year, when Henry Ford founded the Ford Motor Company, he applied for ALAM membership but was rejected. Undeterred, Ford continued manufacturing automobiles and was soon confronted with a patent infringement lawsuit. Ford appealed the 1909 decision in favor of ALAM in the US, arguing that the Selden patent referred to the use of a Brayton cycle engine, while his vehicles operated with an Otto cycle engine; Ford's appeal was accepted with the decision taken in 1911.[132] As a result of the lawsuit, the monopoly established by Selden and ALAM was ended and automobile manufacturers gained the freedom to produce.[133] In the end, the court significantly narrowed the clauses, stating that the patent claims covered only the specific type of gasoline engine used by Selden.[134]

### B. Trademark Protection and its Overview in Automotive

In the automotive sector, trademark protection is as common as patent protection. In fact, the verbal trademarks and logos of automobile manufacturers are the most well-known types of trademark protection in the market. In this section, firstly, the conditions

[130] **Benson Ford Research Center**, "Selden Patent Lawsuit Collection, 1898–1955: Finding Aid", November 2016, accessed March 10, 2025, https://www.thehenryford.org/collections-and-research/digital-collections/archival-collections/420803.

[131] Ibid., p.5.

[132] Ibid., p.5.

[133] Ibid., p.6.

[134] Robert P Merges, Richard R. Nelson, "The Complex Economics of Patent Scope", p.5.

and elements of trademark protection in Europe and Turkey will be discussed, and then, taking into account the conditions of trademark protection in the automotive sector, what can constitute the subject matter of trademark rights will be discussed.

### 1. Scope of Trademark Protection

A trademark allows a business to signal the presence of its branded goods to potential consumers, capture their interest once they recognize the products, and ultimately differentiate them from similar items available in the marketplace.[135] In doing so, a business can establish a reputation for the products it markets under a specific trademark, which helps safeguard and grow consumer demand for those goods and allows the business to effectively compete with others offering similar products.[136] By utilizing and promoting trademarks, consumers become informed about the goods and services offered in the marketplace. By employing and actively promoting trademarks, consumers gain awareness of the goods and services present in the marketplace, facilitating easier recognition of trademark origins and enabling informed decisions among comparable products and services—factors that collectively foster competitive dynamics. [137] In the long term, this development may contribute to a greater diversity and quantity of consumer goods available in the market, ultimately resulting in a reduction in their

[135] **Wolfgang Sakulin**, "Trademark Law and Freedom of Expression – An Inquiry into the Conflict between Trademark Protection and Freedom of Expression under European and German Law", (Master Thesis, University of Amsterdam, 2010), accessed May 21, 2025, https://pure.uva.nl/ws/files/1515239/75293_thesis.pdf.

[136] Ibid., 6.

[137] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.16.

prices.[138] Simultaneously, the use of distinctive signs can foster competition, ultimately driving improvements in the quality of goods and services over time.

### a) Trademark Protection in EU

A trademark is a type of IPR that essentially has two functions. One of these functions is to indicate the origin of the product, while another is to communicate a specific quality or feature and to differentiate goods with those attributes from other comparable items.[139] However, not all trademarks can fulfill this function, as not all consumers may yet know the designation of the business or its products coming from the same company, which means that trademarks are not obliged to indicate the source of the goods or services they identify. [140]

Trademarks can signify a service as well as a good. Indicators that allow consumers to differentiate between various services—such as those offered by car rental or insurance companies—are referred to as service marks. [141] It is also possible to distinguish between "collective marks" and "certification marks".[142] A collective mark can be held by an organization or association that itself does not engage in direct use of the mark but grants its members permission to employ it. Such associations are generally formed to ensure

[138] **Schmalensee, R.** 'Product Differentiation Advantages of Multiproduct Firms', *Journal of Economics & Management Strategy*, (1982) 1(3), pp. 249–265.

[139] TRIPS Agreement Art. 15.1., accessed January 18, 2025, https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.

[140] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.200.

[141] **Graeme B. Dinwoodie**, "Trademarks and Territory: Detaching Trademark Law from the Nation-State", *Houston Law Review*, 41(3), (2008): 885–934, accessed March 10, 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=616661.

[142] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.201.

that their members adhere to specific quality standards.[143] Typically, such trademarks are granted by associations or professional bodies to guarantee that members adhere to specific quality and ethical standards and to notify the public about the particular features of the product associated with the trademark.[144] Certification marks are marks that indicate the conformity of a product or service to certain standards and are not used by the trademark owner itself.[145] The main difference with collective trademarks is that collective trademarks can only be used by certain businesses, for example only by members of the association that owns the collective trademark, whereas with certification trademarks the open shop principle applies. [146]

After the types of trademarks, it is also important to consider what can be protected by trademarks. Invisible signs such as words, letters, numbers, devices, logotypes and labels, colored signs, 3D signs, audible signs, scent signs, woven printing can be protected by trademark. [147]

[143] **Kalliopi Dani,** *Community Collective Marks: Status, Scope and Rivals in the European Signs Landscape*, (Washington, DC: Nomos, 2014), 15.

[144] Ibid., 16.

[145] **Jeffrey Belson,** *Certification and Collective Marks*, Law and Practice, (UK, Edward Elgar, 2017, Third Edition, s.1).

[146] **Harper James**, "A Guide to Collective and Certification Trademarks" May 2024, accessed April 24, 2025, https://harperjames.co.uk/article/collective-and-certification-trade-marks/.

[147] **Sandro Mendonça, Tiago Santos Pereira, Manuel Mira Godinho**, "Trademarks As An Indicator of Innovation and Industrial Change", Research Policy 33 (9), (2004): 1385-1404, accessed May 12, 2025, https://scholar.google.com/scholar?hl=tr&as_sdt=0%2C5&q=3d+signs+audible+signs+scent+signs+numbers+logos+can+be+protected+by+trademark&btnG=#d=gs_qabs&t=1751034304930&u=%23p%3DTTKihSUCNtQJ.

Distinctiveness, which is one of the most important elements that trademarks need to be protected against, is a subjective criterion. A sign is deemed "distinctive for the goods" it is applied to when the registrant recognizes it as identifying, or capable of identifying, products from a specific commercial source; however, this is not absolute and distinctiveness ratings may vary even between products. For example, fanciful trademarks such as IBM, which have no meaning for Apple computers, may have strong legal protection due to their high distinctiveness, whereas a sign is considered to lack distinctiveness if it is merely descriptive.[148] The WIPO Model Law and EC Harmonization Directive[149] Art.3 explain how distinctiveness should be assessed when justifying the refusal of a trademark registration application. On the other hand, Art. 15.1 of the TRIPS allows WTO members to register signs subject to their acquiring distinctiveness through use.

Some signs are completely devoid of distinctiveness. For example, some jurisdictions argue that generic signs, which are signs identifying the type or category to which the product belongs, should not be monopolized and should not be registered, even if they have developed a secondary meaning, taking into account the need for the use of such signs to enable trade to be carried on.[150] Another situation where the assessment of distinctiveness becomes sensitive is the use of identifying marks. Identifying marks serve

[148] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.205.

[149] In the EU, the main regulation aiming to harmonise trademark law between the Member States is Directive 2015/2436, which is generally referred to as the 'EU Trademark Directive' in the literature. European Parliament and Council, 2015. Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks. Official Journal of the European Union, L336, pp.1-26.

[150] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.205.

to denote characteristics such as the category, quality, purpose, geographic origin, or other distinctive features of the goods to which the mark is affixed or intended to represent.[151] What is important in this case is whether consumers will see this product as a reference to its origin or geographical origins, so distinctiveness assessment becomes more difficult for descriptive products.[152]

Signs may not be registered in the absence of distinctiveness and may not be registered as trademarks for reasons of public interest.[153] According to Art. 7(1)(g) of the European Union Trade Mark Regulation (EUTMR), trade marks which are "*likely to deceive the public as to the nature, quality or other characteristics of goods or their geographical origin are not eligible for registration*" in the public interest.[154] Therefore, when trademarks are registered, both the distinctiveness assessment and whether there is an inappropriate situation against the public interest are considered. On the other hand, when signs that describe or indicate geographical origin are used for products not originating from the designated region, subparagraph (g) still applies because such use is misleading, especially if there is a special situation attributed to the region. For example, Champagne, Swiss Chocolate, Swiss mountain scenery, even the use of foreign words

[151] **European Union Intellectual Property Office,** *Trade Mark Examination Guidelines*, accessed June 30, 2025, https://euipo.europa.eu/ohimportal/en/trade-mark-examination-guidelines.

[152] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.205.

[153] According to EUTMR Art. 7/1 (e): "*signs which consist exclusively of: (i) the shape, or another characteristic, which results from the nature of the goods themselves; (ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result; (iii) the shape, or another characteristic, which gives substantial value to the goods*;" Therefore, such applications cannot be registered.

[154] European Union Trademark Regulation, accessed April 18, 2025, https://eur-lex.europa.eu/eli/reg/2017/1001/oj.

may create an impression that the product comes from a certain origin. [155] In such instances, consumers may be misled, particularly if the country in question holds a recognized reputation for producing the relevant goods.

Trademark right protection can be provided both through registration and use. In order to ensure the registration of the trademark, there is the "Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks", signed under the leadership of WIPO, which determines "*an international classification of goods and services*" for the registration of trademarks, which is an important agreement in international trade.[156] This system is now divided into 45 classes, with the first 34 classes divided into goods and the remaining 11 classes divided into services.[157] The Nice Classification, adopted not only by WIPO member states but also by many other countries, provides a common framework that ensures comparability and consistency in national and international trademark registration practices.[158]

With the proper registration of the trademark, the right holder obtains certain rights. Especially, the owner of the right is entitled to stop others from utilizing the trademark.[159]

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[155] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.209.

[156] **WIPO**, *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, (2023), accessed April 13, 2025, https://www.wipo.int/classifications/nice/en/.

[157] **WIPO**, *Nice Classification–About the Nice Agreement*, accessed June 5, 2025, https://www.wipo.int/treaties/en/classification/nice/index.html.

[158] **WIPO**, *About Nice Classification*, accessed June 5, 2025, https://www.wipo.int/en/web/classification-nice/preface.

[159] TRIPS Art. 16.1: "*The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where*

According to TRIPS Art.16.1, the proprietor of a registered trademark "has the exclusive right" to exclude the use during commercial activities, if third parties use "identical or similar signs for goods or services" that are the same or similar to those covered by the trademark registration absent the proprietor's authorization, and this application may result in consumer confusion. The trademark right grants the owner the authority to prohibit unauthorized third-party use of the mark in connection with the sale or promotion of goods and services.[160] According to the Article, using the "identical sign for the same goods or services" creates a "presumption of likelihood of confusion". The rights outlined above do not affect existing priority rights and do not prevent Members from granting rights based on use.

According to the EU Trademark Directive entitled Limits to the effects of the trademark right, Art.14: "*A trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade: (a) the name or address of the third party, where that third party is a natural person; (b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; (c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular, where the use of the trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.*" provision of the law.

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*such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use*."

[160] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.223.

Special emphasis should be given to Art.14/1 (c). The fundamental rule of trademark law is that the trademark provides exclusive rights to its owner; however, these rights are not absolute; in particular, certain legitimate reference uses are excluded from the trademark owner's power to prohibit.[161] Art. 14(1)(c) of the European Union Trade Mark Directive is important in this context. This provision permits the informative use of a trademark, especially when it is required to indicate the intended purpose of the trademark in promoting complementary products like accessories or spare parts. The basic condition here is that the use: i) "necessary" (e.g. to indicate which parent trademark the product is compatible with), ii) is made in accordance with the principles of fair trade (e.g. without misleading the consumer, without causing confusion with the original product). This has been confirmed in various decisions of the Court of Justice of the European Union (CJEU).[162] The provision takes into account not only the distinctive function of trademarks, but also their informative function. The use of such marks may be necessary for consumers to understand whether products, in particular accessories or spare parts, are compatible with a particular trademark. However, such uses must be within the framework of fair trade practices. This means that when third parties use the mark, they must not create a misleading impression on consumers, exploit the unique qualities of the mark in an unfair manner, and bring the mark into disrepute. For example, an automobile parts manufacturer may use the trademark of a particular brand to indicate that its product is compatible with that brand. However, this use may infringe the trademark owner's rights if the product is presented as if it were the original product of that trademark or if it misleads consumers. In this context, in Audi AG v. GQ, the CJEU determined that the Audi logo was used solely as an aesthetic choice and that such use was not necessary for

[161] Ibid., p.226.

[162] CJEU BMW v. Deenik, C-63/97; Opel v. Autec, C-48/05.

the functionality or compatibility of the product. Therefore, such use of Audi's trademark did not fall within the informative use exception. [163] According to EUTMR Art.52, "*EU trade marks shall be registered for a period of 10 years from the date of filing of the application. Registration may be renewed in accordance with Article 53 for further periods of 10 years." So, if the renewal fee is paid at 10-year intervals, trademark protection will be available indefinitely.*

**aa) Double Identity Clause**

Double identity occurs when a trademark is applied to the same goods or services by both the goods/service provider and the trademark owner, but is not produced and controlled by a single entity. In this case, the "origin function" of the trademark will be jeopardized as there are different sources, even though the consumer thinks that the product comes from a single source.

**bb) 3D Shape Trademark Protection**

In the EU, 3D shapes can be protected by trademark rights. Distinctiveness assessments for 3D shapes are more difficult than for verbal trademarks.[164] Therefore, it must be reviewed under a distinct category. The CP9 (Common Practice 9) initiative was introduced in October 2017 to set a minimum standard for the distinctiveness of shape

[163] More detailed information on this case can be found under C. Jurisprudence Decisions.

[164] **EUIPO,** "Distinctiveness of Three-dimensonal Marks (Shape Marks) Contaning Verbal And/Or Figurative Elements When e Shape Is Not Distinctive In Itself", accessed November 13, 2024, https://eupo. europa.eu/tunnel-web/secure/webdav/guest/document_lbrary/ News/cp9/CP9_en.pdf.

marks when the shape alone lacks distinctiveness.[165] The CP9 Report, a joint practice report, sets out the elements necessary for the registration of a shape mark and reiterates Art. 4(1)(e) EUTMR.[166]

In the CP9 Report, some thresholds are envisaged for the assessment of trademark protection in the case of non-distinctive shapes. Considering that most of our trademark legislation is prepared on the basis of EU trademark legislation, it may be useful to take into consideration the CP9 Report, which assesses that the registration of certain signs with low distinctiveness as trademarks may jeopardize the stability of competition by disrupting the integrity of the market.

The report highlights that the varying practices of IP authorities across Member States raise the risk of registering marks with low distinctiveness, potentially undermining competitive stability by compromising the integrity of the EU's internal market. It further underscores the critical importance of enhanced cooperation among the relevant authorities. Furthermore, the objectives of the report include encouraging more consistent decision-making, streamlining the process for examiners and harmonizing practice in this area, encouraging innovation by creating a more open commercial environment for

[165] **Sıla Yalçın**, "Üç Boyutlu Şekil Markalarının Pazarda Yarattığı Etkiler Üzerine Bir Değerlendirme", *Ankara Barosu Fikri Mülkiyet ve Rekabet Hukuku Dergisi*, 2023/2: p.129-165, accessed November, 18, 2025, https://ankarabarosu.org.tr/upload/duyuru/fmr_2023_2_cumhuriyet_ozel.pdf.

[166] EUTMR Art. 4 (1) (e), It states that "*a sign consisting of '(i) a shape or other characteristic arising from the nature of the goods themselves; (ii) a shape or other characteristic of the goods which is necessary to achieve a technical result; (iii) a shape or other characteristic which adds significant value to the goods' cannot be registered as a trade mark*." More detailed information on this case is given under the heading C. Jurisprudence Decisions.

producers and consumers, maximizing the fairness of competition and minimizing confusion among buyers.[167] It is considered sufficient for a sign to be regarded as distinctive overall if a generally non-distinctive shape incorporates an element that stands out due to its distinctiveness. Moreover, when a verbal or semantic component is clearly recognizable as distinctive and has a notable influence on the total impression of the sign, the sign in its entirety may be deemed distinctive.

In the evaluations made in the relevant report regarding the other features of the shape, it is stated that when a generally non-distinctive shape includes verbal or figurative elements that themselves lack distinctiveness—such as when one part describes the relevant goods and the other merely features a basic geometric form—the overall sign will not be considered distinctive.

The Report discusses a number of variations on distinctiveness. For example, if a figurative element is not clearly identifiable in the representation, this will not be sufficient for the sign, in its entirety, to be seen as distinctive. Similarly, the placement of the mark within the illustration holds significance, as does its color, since an unconventional position does not bestow distinctiveness upon an otherwise clearly non-distinctive element, resulting in the overall mark lacking distinctiveness. Again, as mentioned in the report, a color that is widely used in the market will not make a non-

[167] "*The public is not in the habit of making assumptions about the origin of a trade mark on the basis of the shape of the products or the shape of their packaging. Therefore, in the absence of any graphic (including colours) or word elements, the relevant shape must deviate significantly from the norms or customs of the industry or, on the other hand, such graphic or word elements become necessary to give distinctiveness to a shape mark. Otherwise, the shape may not be eligible for registration*." The strictness of the EUIPO's trade mark protection requirements for three-dimensional trade marks makes protection difficult, but appropriate protection can be granted if the shape is exceptional and significantly different from its product counterparts and fulfils all the criteria for the registration of a shape trade mark.

distinctive product distinctive. The report emphasizes that the primary concern in assessments is ensuring the ongoing competitive dynamics within the relevant market, and that even if certain short-term efficiency improvements occur when competition is entirely removed from that market, these efficiency gains will not compensate for long-term negative effects such as reduced innovation, increased prices and inefficient use of resources.

In March 2012, the USA released a report examining the role of IP within the USA economy, with particular attention given to industries classified as "IP-intensive." The Office of the Chief Economist[168] seeks to work with policymakers and collaborate with academics to conduct research on "*understanding the nature, role, and impact of IP on innovation, entrepreneurship, and economic performance; understanding the economic impact of domestic and international laws and policies related to IP; and understanding the economic aspects of the USPTO's initiatives*".[169]

### b) Trademark Protection in Turkey

In Turkey, trademark is regulated under the TIPC. Since Turkey is a party to TRIPS, it has a duty to harmonize its national legislation with TRIPS. There is no fundamental

[168] Concern about the lack of sophisticated economic analysis of the impact on innovation, productivity and welfare has been raised in the United States (US), and in response to this concern, the US Patent and Trademark Office established the Office of the Chief Economist in March 2010. The role of this office is to initiate and oversee economic analysis in the area of intellectual property protection and enforcement, and to feed into the US Patent and Trademark Office's advisory role by advising the President of the United States (through the Secretary of Commerce) and the administration on the economics of intellectual property rights. For more information, see https://www.uspto.gov/about-us/organizational-offices/office-policy-and-international-affairs/office-chief-economist

[169] **Yalçın**, "Üç Boyutlu Şekil Markalarının Pazarda Yarattığı Etkiler Üzerine Bir Değerlendirme", p.140.

difference between the two systems in terms of the scope, duration, exceptions and remedies for infringement. The EUTMR and the TIPC agree on the signs that may be entitled to trademark protection; these sections will be omitted to avoid repetition.

The initial paragraph of the provision within the TIPC that outlines the scope and limitations of the rights arising from trademark registration stipulates that legal protection for a trademark is acquired upon its registration. However, exceptional provisions regulating the legal status of unregistered trademark owners are also included in the article. An individual who falls within the scope of these exceptions may assert opposition to a trademark during its registration stage or, if the mark is already registered, may seek its invalidation by initiating the appropriate judicial process.[170]

The fifth paragraph of the article introduces limitations to the trademark proprietor's exclusive entitlements. According to Art. 7/5 (c), the trademark holder is not entitled to restrict usage of the mark by third parties in good faith and in the ordinary course of commercial life in certain circumstances. These situations are where the sign indicates the personal name or residential address of an individual, the trademark owner cannot prevent this. Another aspect is that the trademark owner cannot prohibit the use of goods or services when the sign conveys information regarding the "nature, quality, quantity, intended purpose, value, geographic origin, production or presentation date, or other defining attributes of those goods or services". Another issue, as mentioned in the EU regulation, is a provision on spare parts, which is important for this study. Therefore, a trademark owner is not entitled to prevent the use of a sign if that use is essential for specifying the intended function of a product or service, especially concerning accessories, spare components, or items with equivalent functionality.

[170] Preamble of the Law No: 6769, p.19.

In line with EU regulations, the protection period granted to a registered trademark is established as ten years, commencing from the date of the application, with the possibility of renewal in successive ten-year periods.

The trademark owner's authority to grant licensing rights is governed by Art. 24 of the TIPC. In this context, the licensor is obligated to implement measures that guarantee the quality of products manufactured or services rendered by the licensee. Given the significance of the topic, this thesis does not delve further into the legal framework, as greater emphasis is placed on the automotive sector.

## 2. The Overview of Trademark Protection in Automotive

In today's economic conditions, monopolistic competition, which is closer to economic life, can only be achieved through trademarks. Invisible signs such as words, letters, numbers, devices, logotypes and labels, colored signs, 3D signs[171], audible signs, odor signs, woven printing can be protected by trademark. In this type of IPR, we generally encounter the protection of words[172], letters [173], logotypes[174] and slogans[175] of undertakings within the scope of trademark rights. Furthermore, it may be feasible to

[171] For example Volvo's Y headlights.

[172] For example Toyota, Tesla, Ford etc.

[173] For example BYD.

[174] BYD's trademark with registration number: 019043171. https://branddb.wipo.int/en/similarname/brand/EM500000019043171?sort=score%20desc&start=0&rows=30&asStructure=%7B%22_id%22:%22bb18%22,%22boolean%22:%22AND%22,%22bricks%22:%5B%7B%22_id%22:%22bb15%22,%22boolean%22:%22OR%22,%22bricks%22:%5B%7B%22_id%22:%22bb16%22,%22key%22:%22appNum%22,%22value%22:%22019043171%22%7D,%7B%22_id%22:%22bb17%22,%22key%22:%22regNum%22,%22value%22:%22019043171%22%7D%5D%7D%5D%7D&fg=_void_&_=1749333858720&i=0

[175] For example Audi's "Vorsprung durch Technik" slogan trademark.

extend trademark protection to spare parts. The manufacturing of such spare parts protected by the trademark right by independent manufacturers may be an issue here. According to TIPC 7/5(c), in some cases, if these uses are made honestly, then this will not constitute infringement of the trademark. In this case, which may arise especially in verbal trademarks, when it is essential to specify the intended purpose of the product in the context of spare parts manufacturing, the production of the independent manufacturer will not be considered trademark infringement. However, if the image is created that the product produced by the independent manufacturer has a connection with the original parts manufacturer, the trademark infringement may be evaluated since honesty cannot be mentioned here.

In cases involving parts distributed under the repair clause, the relevant audience is a specific and narrowly defined group of end-users, comprising professionals, retailers, and workshops to whom the repair clause supplies spare parts—thus representing a very limited segment.[176] As these are specialized people, their perception will not be at the same level of attention and perception as that of the "end users of the complex products in which the parts are assembled". Therefore, if consumers perceive that a trademark is applied to the same goods or services by both the supplier of the goods/services and the trademark owner, the 'source function' of the trademark will be compromised, even if the goods or services are perceived to come from a single source, as they will not be produced and controlled by a single party. This situation is referred to as 'double identity,' and it is important to fulfil the obligation to provide information in order to prevent the trademark's origin function from being compromised and to ensure that consumers have access to accurate information. Furthermore, the obligation "to provide information

[176] **Tischner, A., & Stasiuk, K.**. "Spare Parts, Repairs, Trade Marks and Consumer Understanding*",* p.27.

imposed by the repair clause and the general conditions of the right to repair can significantly reduce confusion".[177]

Although the repair clause has faced criticism, allowing competition in the spare parts market does not necessarily imply that the trademark's investment function will be negatively impacted, when evaluating whether the quality function is at risk, it is important to consider if the quality level has deteriorated to such a degree that the trademark's reputation is significantly damaged. [178]

The viewpoint of professional circles, retailers, and workshops should be pivotal in assessing whether the trademark of the "original manufacturer" is understood as an indication of origin. In this context, Tischner and Stasiuk carried out an empirical study motivated by the necessity to investigate shifts in consumer perceptions regarding the use of the "original manufacturer's" trademark within the framework of spare parts commercialization in Poland.[179] The study concentrated on the interpretation of commercial communications concerning spare parts within the automotive industry, the sector that gains the most from the repair clause. This study was carried out in Poland, which remains the only EU Member State to have incorporated the repair clause into its national design law as of 2007. The main aim of the study was to investigate the perceptions and assessments of consumers—namely, vehicle owners acquainted with a specific brand who may be potential buyers of spare parts for that trademark—and to contrast these findings with the perspectives of professional spare parts retailers and repair workshops that apply the repair clause as intended.

[177] Ibid., p.8.

[178] Ibid., p.12.

[179] Ibid., p.17.

The study aimed to evaluate the impact of the original manufacturer's mark on a spare part, as well as its connection to commercialization, on perceptions related to "the commercial origin of the part and the quality expectations" associated with it. Furthermore, the questionnaire was designed to examine how the use of the trademark influences participants' views on the quality of spare parts and their likelihood of purchasing them.

In the first part, the participants were both asked to evaluate an alloy wheel specific to certain Audi models and in the second part a grille; the analysis showed that there were no significant differences between the variants in the evaluation of product quality. Moreover, the study revealed no significant variation in participants' willingness to purchase or recommend the part to others. Consumers' evaluations of the part remained consistent regardless of the grille's graphic design, even after being informed that the spare part was not produced by Audi. Professionals within the industry, including retailers and repair workshops, are well aware of the price and quality distinctions among spare parts produced by OEMs, OES, and IAM. The inclusion of a figurative trademark on or adjacent to the spare part notably elevated the proportion of respondents who recognized AUDI as the manufacturer. Conversely, it was concluded that professional retailers and workshops are generally not susceptible to being misled regarding the origin of the parts.[180]

### a) Shape Signs

A shape sign is regarded as a "secondary" trademark, as it is typically not recognized by consumers as a primary trademark. This interpretation has been affirmed by key rulings from the CJEU, as well as the highest courts in the USA and Germany.

[180] Ibid., p.27.

Registered trademarks can function as a means of safeguarding the shape or configuration of certain products or spare parts and may also be embedded within such components, as illustrated by the example of the Audi emblem.

**Table 1:** Sample Decisions About Shape Signs

| Yargı | Case/Decision | Key Point |
|---|---|---|
| CJEU | Gömböc (C-237/19)[181] | Secondary distinctiveness based on consumer perception |
| USA | TrafFix Devices (2001) | Functionality bar + secondary meaning requirement |
| Germany | Ritter Sport (I ZB 42/19, 43/19) | Shape not "essential characteristic," recognized through consumer association |
| **Source**: It is composed of decisions. | | |

### b) Verbal Trademark and Logo Usage

Motor Vehicle Guide[182] states that motor vehicle manufacturers can obtain certain original spare parts to be used in vehicles from independent manufacturers, and that these products can be used both for assembly and for maintenance and repair services. The original spare parts provided by independent spare parts manufacturers to motor vehicle manufacturers are generally drivetrain components, brake systems and parts, complete engine and engine parts, suspension parts, hydraulic and pneumatic components, chassis components and parts, safety components, auto glass, rubber and tyre parts, forged and cast parts, batteries, electrical equipment and lighting systems.[183] In this context, it is considered that the product range diversity of independent spare parts manufacturers is high. In the definition of original spare parts, since parts that are of the same quality as

[181] CJEU C-237/19 the Gömböc Case https://curia.europa.eu/juris/liste.jsf?language=en&num=C-237/19.

[182] This regulation is discussed in more detail under a separate heading in Chapter 3.

[183] It's mentioned in Automotive Suppliers Association of Turkey's websıte.: accessed January 21, 2025, https://taysad.org.tr/tr/hakkimizda.

the parts used in the assembly of the motor vehicle and produced in accordance with the technical specifications and production standards determined by the motor vehicle manufacturers can also be original spare parts, it is considered that the importance of the use of trademarks and logos has increased in the sub-industry with such a high product range.

It has been stated above that verbal use of trademarks and use of logos are possible in the automotive sector. The use of verbal trademarks and logos on spare parts is subject to some special regulations. Paragraph 10 of the Guide states that parts of the same quality as those used in the assembly of motor vehicles and manufactured in accordance with the technical specifications and production standards set by motor vehicle manufacturers may also be considered original spare parts. it is noted that in this sub-sector with such a wide range of products, authorised distributors and authorised service centres are dependent on original spare parts, the use of equivalent quality spare parts in the sector is limited, and this problem stems from issues related to the definition and registration of equivalent quality spare parts. As a solution, attention is drawn to the importance of regulations regarding the use of brands and logos.

The application of trademarks and logos in spare parts manufacturing takes two forms. The first involves the use of the motor vehicle manufacturer's trademark and logo on spare parts produced by or provided to the vehicle manufacturer. The second pertains to the use of the OEM manufacturer's trademark and logo on spare parts manufactured by the OEMs themselves. Pursuant to 6/1 (h) of Communiqué No. 2017/3, agreements where OEMs are prohibited from using their own brands and logos are excluded from the scope of group exemption. On the other hand, paragraph 33 of the Motor Vehicle Guide

states that the use of trademarks and logos by OEMs shall not create a barrier to the utilization of the trademark and logo of the motor vehicle manufacturer.[184]

According to paragraph 5 of Art. 7 of the TIPC, holder may not obstruct third parties from using the mark in good faith and within the ordinary course of business, especially in cases involving accessories, spare parts, or functionally equivalent components, where specifying the intended use of the goods or services is essential. It is not clear whether the spare part mentioned in this text covers spare parts within the scope of the design or whether it refers to all spare parts. In our opinion, since the limitation imposed on the design in spare parts is not imposed for trademark protection, trademark protection may come into question for parts that are not observable during normal vehicle use. Thus, the invisible parts of the vehicle may be protected by the trademark right, which is a more favorable IPR in terms of protection period compared to the design. In order to prevent this, it is considered that the legislator should understand the parts expressing the use of the trademark as all spare parts.

As can be seen, it is possible for OEMs to place their trademarks and logos on original spare parts. Since the spare parts produced by OEMs within the framework of the standards set by the motor vehicle manufacturer are also accepted as original spare parts, the originality of the spare part will not be prejudiced. On the other hand, the general perception in the sector is that only products bearing the brand and logo of the motor

[184] TCA, Guideline Explaining the Group Exemption Communiqué in the Motor Vehicle Sector, Ankara (2017), p. 18, accessed December 21, 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.rekabet.gov.tr/Dosya/sektor-raporlari/9-motorlu-tasitlar-sekt.

vehicle manufacturer constitute original spare parts.[185] The issue to be addressed within the framework of this perception is the certification of the conformity of the products manufactured by OEMs to the standards set by the motor vehicle manufacturer. In fact, there is no provision in Communiqué No. 2017/3 regarding the certification process, nor is there any explanation on this issue in the Motor Vehicle Guide.

The regulation that may come to the agenda in this context is the Circular No. 2015/16 issued by the Undersecretariat of Treasury on the Principles of Certification of Original Parts without Logos[186] in Motor Vehicle Insurances (Circular).[187]

It is understood from the content of the Circular that insurance companies are required to request "Original Spare Parts Quality Declaration" from OEMs. It is suggested that the products manufactured by OEMs can be used to declare that they comply with the standards set by the motor vehicle manufacturer. It is also suggested that

[185] **Özge Ay,** *Otomotiv Sektöründeki Dağıtım Sözleşmelerine İlişkin Rekabet Hukuku Düzenlemeleri,* (Ankara, Onikilevha Yayıncılık, 2017) s. 347; Within the scope of the sector review currently being conducted in line with the Competition Board's decision dated 19.01.2022 and numbered 22-04/59-M, it is observed that the undertakings have also submitted responses to this effect.

[186] The authenticity of spare parts produced by OEMs is a matter of course for products that do not use trademarks and logos.

[187] **T.C. Başbakanlık Hazine Müsteşarlığı**, 2015/6 sayılı Motorlu Araç Sigortalarında Logosuz Orijinal Parça Belgeleme Esaslarına İlişkin Genelge, accessed January 23, 2025, https://ms.hmb.gov.tr/uploads/2018/11/Motorlu-Ara%C3%A7-Sigortalar%C4%B1nda-Logosuz-Orijinal-Par%C3%A7a-Belgeleme-Esaslar%C4%B1na-%C4%B0li%C5%9Fkin-Genelge-201516.pdf.

the contract to be concluded for the supply of spare parts to the motor vehicle manufacturer will also fulfill this certification requirement.[188]

In trademark disputes in the automotive sector, it may be encountered that the spare parts manufacturers may cause trademark infringement on the spare parts produced by the sub-industry in a way to create confusion. As a matter of fact, Maysan Mando's registered trademarks “M. TYPE” or “M. TYPE” may be infringed by a spare parts manufacturer's use of “M. TYPE” or "M. TYPE“ in the advertisements and product lists on the website, and the abbreviation ‘MAYS’ in the invoice, the defendant's use of the plaintiff's trademark in addition to its own trademark may lead to the association of both trademarks and the thought that there are administrative-economic connections between the trademarks or manufacturers.

”M. “ is a trademark in itself, the phrase ”M.“ used by the defendant, on the other hand, beyond showing a technical feature, gives the impression that the product has the same feature and is of the same quality as the ”M.“ branded products, the feature of the plaintiff's shock absorbers is that they are adjustable, and many words such as ”adjustable" etc. can be used to express this feature, the use of the trademark as an internet domain name and in advertisements is also unfair use and the plaintiff's trademark rights are violated.[189]

One of the recent applications, Tesla has filed trademark applications for terms such as “Robotaxi” and “Cybercab”. These applications are intended to be registered as word trademarks. The term “Robotaxi” was trademarked by the U.S. Patent and Trademark

[188] **Ayça Güntülü Alkan,** “2017/3 Sayılı Motorlu Taşıtlar Sektöründeki Dikey Anlaşmalara İlişkin Grup Muafiyet Tebliği İncelemesi”, (Master Thesis, İstanbul Bilgi Üniversitesi, 2018), p.53.

[189] Court of Cassation of Turkey (11th Civil Chamber), Case No. 2014/8138, Decision No. 2014/12838.

Office as "*The attached evidence from Wikipedia demonstrates that the term 'ROBOTAXI' is used to describe an "autonomous car... operated for a ridesharing company.*" *Additional evidence from The Verge and Zoox show that this term is used to describe similar goods and services by other companies. Therefore, the mark is merely descriptive, and registration is refused pursuant to Section 2(e)(1) of the Trademark Act*." However, the decision is not finalized and the appeal process is ongoing[190]

As for the application for Cybercab, it was rejected on the grounds that "Since the marks of the parties create the same general overall commercial impression and the services of the parties are related and share the same trade channels, there is a likelihood of confusion between the marks.".[191] Similar to Robotaxi, the decision has not been finalized for cybercab as the appeal period is still ongoing.

### c) 3D Shape Trademark Protection

3D marks and their validity have always been controversial because they necessarily interact at the production level and restrict competition, which is not the general purpose of EU trade mark law.[192] The problems that arise when the subject matter of the trademark is a word or a slogan have been discussed above. The fact that the trademark belongs to a 3D shape may raise other concerns. In cases where the spare part is protected as a trade mark, it may be possible to close the spare part market with the unlimited renewal of the

[190] For more information: https://tsdr.uspto.gov/#caseNumber=98795392&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch accessed May 27, 2025.

[191] For more information: https://tsdr.uspto.gov/documentviewer?caseId=sn98806788&docId=NFIN20250424120257&linkId=1#docIndex=0&page=1 accessed May 27, 2025.

[192] **Annette Kur, Martin Senftleben**, *European Trademark Law*, (Oxford University Press, 2017), par. 1.01.

protection period.[193] However, this would not be a desirable situation in terms of competition law.

The aim of the undertakings' branding strategies is mostly to create a certain brand image by providing distinctiveness in the area where they want to obtain trademark protection and to benefit from the results of trademark protection.[194] With the trademark right, the undertaking will be able to establish itself in the market and distinguish its goods or services from the goods or services of other undertakings. This is a requirement of one of the main functions of a trademark. For example, undertakings may wish to make themselves distinguishable from their competitors through verbal trademark protection, or they may obtain trademark protection for a slogan or a logo in order to create a difference from their competitors. These may be important aspects that will enable undertakings to distinguish themselves from their competitors in the market in which they operate. However, some types of trademarks may not only enable undertakings to be distinguished from their competitors in the market, but may also pave the way for a monopoly in the relevant market. This may lead to competitive concerns for applications that may become a product and create a separate market, such as 3D shapes, as opposed to trademark types such as words, colors, letters, numbers, sounds, two-dimensional shapes, etc..[195]

As a matter of fact, the term shape refers to all kinds of drawings, pictures, icons (symbols); emblems; expressions with concrete, line or color/colors, word picture, graphic and color mix or combination arrangements and compositions. In reality, average consumers are not in the habit of assuming the origin of goods on the basis of their shape

[193] **Yalçın**, "Üç Boyutlu Şekil Markalarının Pazarda Yarattığı Etkiler Üzerine Bir Değerlendirme", p.151.

[194] Ibid., p.132.

[195] Ibid., p.138.

or packaging in the absence of any graphic or textual elements, and therefore it may be more difficult to identify the distinctive character in the case of a 3D trademark than in the case of a word or shaped trademark.[196] In this context, both the product itself and 3D shapes independent of it can be registered as trademarks.

Art. 23 of the TIPC regulates "the term of protection and renewal of the trademark", which is validly registered pursuant to Art. 22 of the TIPC; according to the relevant article, "the term of protection of the registered trademark is ten years from the date of application, and this term may be renewed in periods of ten years". It is understood that the renewal of the trademark registration is possible if the trademark owner makes an application and pays the renewal fee during the six-month period preceding the expiration of the term of protection of the registered trademark; in cases where the renewal request is not made within the term or the information that the renewal fee has been paid is not notified to the TPTO, renewal can also be made by paying an additional during the six-month period preceding the expiration of the term. It is noted that the renewal of a trademark, akin to its original registration, becomes effective from the day directly succeeding the expiry of the previous protection term, following its announcement in the Official Bulletin. Furthermore, it is established that the trademark right shall be terminated ex officio if the proprietor fails to apply for renewal within the prescribed period and in accordance with the relevant legal provisions. Consequently, it is understood that if the applicant fulfills the necessary conditions, the trademark protection will continue indefinitely.

[196] Volvo T-260/23 Working Document, par.17. Examples gİven in the working document: Mag Instrument v OHIM of 7 October 2004, C-136/02 P, EU: C:2004:592, paragraph 30, and Freixenet v OHIM of 20 October 2011, C-344/10 P and C-345/10 P, EU:C:2011:680, paragraphs 45 and 46) https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62023TJ0260.

According to Tullio Ascarelli, who has studied the registration of 3D trademarks, the registration of a "shape trademark" should be refused from the second half of the last century, on the grounds that "the protection may be equivalent to a model patent without a set time limit".[197] These pressures were first recognized in the early 1970s, i.e. in 1971, when the Benelux law texts entered into force. The EU trademark registration system creates uncertainties in the registration of shapes that combine functional and aesthetic elements, in particular as to how such registration applications should be assessed in a world where trademarks seek to compete in the marketplace by exploiting both aesthetic and technical advantages.[198] This situation suggests the need for a broader assessment and perhaps an update of the legislation in future EU trademark law applications. The EU trademark and design law framework is generally based on the fundamental principle of "distinctive character/individuality" and the same substantive subject matter is regulated through two different regimes.[199] However, since one of these regimes offers a more monopolizing approach and the other a more competitive approach, if this systemic contradiction is ignored, it will be possible to say that after the "short" term of a design expires, the trademark registration comes into play and ensures monopoly forever.[200]

A registered trademark protection may not have the same consequences for every type of trademark. For instance, Nestle, which registered the trademark protection of the

[197] **Ghidini, Gustavo**, "The Protection of (Three-Dimensional) Shape Trademarks and Its Implications for the Protection of Competition", in Irene Calboli, and Martin Senftleben (eds), *The Protection of Non-Traditional Trademarks: Critical Perspectives* (Oxford, 2018; online edn, Oxford Academic, 21 Feb. 2019), https://doi.org/10.1093/oso/9780198826576.003.0011, accessed February 19, 2025.

[198] **Gustavo**, "The Protection of (Three-Dimensional) Shape Trademarks and Its Implications for the Protection of Competition", p.7 of the relevant section.

[199] Ibid., p.7 of the relevant section.

[200] Ibid., p.6 of the relevant section.

shape of Nespresso capsules in Switzerland in 2000, has demonstrated that although patent protection expires, trademark protection is renewed for certain periods of time and its use as part of monopolization strategies of undertakings has a long history.[201] Thus, even though its patents have expired, Nespresso has been able to maintain its trademark protection in a sustainable way despite increased competition between companies thanks to its brand protection.[202] In addition, the court stated that the situation should not turn into a "permanent monopolization" through trademark law. As a matter of fact, as stated by the court[203], the fact that trademarks composed of 3D shapes are formed from the shape of the good itself and the registration of this shape as a trademark may bring some problems. The primary concern in this context lies in the potential monopolization of the product itself, rather than merely its shape or form. Therefore, from a competition policy perspective, it is crucial that the registration of 3D trademarks be conducted in a manner that avoids granting exclusive control over the product as such. This issue is inherently linked to the understanding of the primary function of a trademark, namely to signify the source or origin of the goods. For individuals perceiving the sign as a whole, simply visualizing, recalling, or identifying the products as commonly used product forms - without engaging in intellectual effort- may fail to fulfill the trademark's essential role of distinguishing the product's origin and may cause monopolization of the product. If the shape of a sign carries a shape that is in general use in the sector, leaving the use of this shape solely to the monopoly of the trademark right holder will seriously disadvantage competitors and users in the sector and will limit competition in this respect. This is

[201] **Yalçın**, "Üç Boyutlu Şekil Markalarının Pazarda Yarattığı Etkiler Üzerine Bir Değerlendirme", p.135.

[202] Judgment of the Swiss Federal Court dates 07.09.2021 and judgment no: 4A_61/2021.

[203] Ankara 2nd Civil Court of Intellectual and Industrial Property Rights dated 11.05.2016, 2015/378, 2016/141.

because the registration may limit the production and trade opportunities of these rival undertakings. This issue was similarly discussed in the case of *Volvo Personvagnar AB v EUIPO* (R 1129/2022-5)[204].

The protection of spare parts that meet these criteria with a 3D shape trademark may lead to the avoidable use of the repair exception created for the design right, and it may come to the fore that independent spare parts manufacturers cannot produce spare parts protected by the trademark for an unlimited period of time. Thus, the original part manufacturer will be able to prevent the production of the spare part protected by the trademark by the sub-industry, even for repair. This may ultimately prevent the exercise of the right to repair. The findings indicate that some previously established assumptions underpinning definitive decisions in trademark law warrant reevaluation in light of ongoing dynamic changes. However, it is essential that the transition towards a circular economy model does not undermine the fundamental principles of trademark protection.[205]

It should be discussed whether the repair exception to design rights requires an amendment to the legislation on the protection of spare parts as 3D trade marks. This is because, if spare part shape trademarks fall under the provisions of the repair clause, an oligopolistic structure based on monopolistic competition may be created within the conditions of perfect competition by producing the same product for the same product under only a few trademarks with a strong effect.[206] To give an example here, there are

[204] General Court (Seventh Chamber), 26 June 2024, *Volvo Personvagnar AB v European Union Intellectual Property Office*, Case T-260/23, ECLI:EU:T:2024:421.

[205] **Tischner, A., & Stasiuk, K.**. "Spare Parts, Repairs, Trade Marks and Consumer Understanding", p.4.

[206] **Seçkin ÇELİKTEL**, "Markalaşma Süreci Ve Stratejilerinin İncelenmesi", (Türk Patent ve Marka Kurumu Uzmanlık Tezi, 2008).

cars protected as 3D shape[207], but we have seen with a recent example that spare parts are also protected as 3D shape. Volvo's 'Y' headlight registration is one of the most recent and important examples of this. The car grilles referred to in paragraph 23 of the General Court's judgement are also among the spare parts in question. [208]

In the automotive sector, non-traditional movement marks such as 3D shape trademarks can also be encountered. However, Volvo's application[209] was rejected by EUIPO. In this case, Volvo Personvagnar AB, based on Art. 263 of the TFEU, sought the annulment and modification of the decision of the Fifth Board of Appeal of the EUIPO dated 9 March 2023. On 16 September 2021, Volvo applied for an EU trademark registration for a 3D LED headlight design, but its application was rejected. Volvo then initiated an appeal procedure. The Board of Appeal ruled that the design applied for was not significantly different from LED headlight designs commonly used in the automotive industry and therefore lacked the distinctiveness required under Art. 7(1)(b) of Regulation (EU) 2017/1001.

In order for spare parts to be protected as 3D trademarks, they must contain elements of distinctiveness and must not be dictated solely by technical requirements. According to the Board of Appeal, the assessment of distinctiveness for three-dimensional shape marks does not differ from the criteria applied to other types of trademarks. However, the perception of the relevant public may differ in the case of 3D marks based on the shape of the product compared to word or figurative marks. It was noted that the average

[207] Mercedes's application no.: 008574428, Jaguar Land Rover's application no.: 012682217, Volkswagen's application no.: 016675721, Bentley's application no: 003609881**,** obtained from EUIPO trademark database.

[208] Relevant decision: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62023TJ0260.

[209] Volvo's EX90 Motion Mark.

consumer is not accustomed to inferring commercial origin from the shape of a product in the absence of any graphical or textual element.

Despite the basic form of LED headlights being common, Volvo argued that none of the existing headlight designs in the market featured the characteristic "Y" shape of the applied-for mark, even if the assessment were limited to LED headlights.[210] The design was said to be derived from a version of Thor's hammer in the shape of a "T", and Volvo based its claim on the earlier registration of EU 3D trademark no. 791 956, which was granted by the EUIPO for automotive headlights on the grounds that it possessed the necessary distinctiveness. The company emphasized that the figurative “Y” shape element in the mark clearly differed from other headlight designs.

According to Volvo, the distinctive “Y” shape of the mark is perceived by the relevant public as an indicator of origin. Volvo also referred to similar 3D trademark registrations by the EUIPO and national trademark offices in countries such as Norway, Switzerland, Turkey, Australia, and Russia, to support its claim.

The EUIPO, on the other hand, maintained that the Board of Appeal was justified in relying on the presence of commonly used LED headlight designs. Given the variety of existing LED headlight designs on the market, it was stated that the applied-for mark represented merely another variation and lacked sufficient distinctiveness. Furthermore, the EUIPO rejected Volvo's reliance on an expert report suggesting that consumers were accustomed to identifying the commercial origin of vehicles based on their headlights.

[210] Decisions referred to in the judgment: Mag Instrument v OHIM, C-136/02 P, EU:C:2004:592, paragraph 30, of 7 October 2004, and Freixenet v OHIM, C-344/10 P and C-345/10 P, EU: C:2011:680, paragraphs 45 and 46.

The Board of Appeal emphasized that the shape in question represented a functional and design element of the vehicle and that there was insufficient evidence to suggest that a significant portion of the public or industry participants would perceive the mark as an indicator of commercial origin. Consequently, the Board concluded that the mark lacked the necessary inherent distinctiveness. However, in light of established case law, it is accepted that three-dimensional marks based on product shapes are not devoid of distinctiveness if they significantly depart from the norms or customs of the sector and are capable of fulfilling the essential function of indicating origin. It was also emphasized that novelty or originality are not the appropriate criteria for assessing distinctiveness. Rather, the key factor is whether the mark is sufficiently distinctive to enable the relevant public to distinguish the goods under the sign from those of other undertakings.

Volvo argued that the headlight design in question had a special and unique appearance due to the “Y” shape, which differed significantly from other LED headlights in the market. This uniqueness, according to Volvo, allowed the relevant public to distinguish the product from others and perceive it as an indicator of origin. Therefore, it was concluded that the mark possessed the minimum level of distinctiveness required under Art. 7(1)(b) of Regulation (EU) 2017/1001 and should be registrable.

In conclusion, the decision of the Board of Appeal to reject the application due to a lack of distinctiveness was based on a misapplication of Art. 7(1)(b) of the Regulation. Volvo's appeal was therefore found to be well-founded, and the contested decision was to be annulled and re-evaluated. Therefore, if the shape trademark is not sufficient to

object to unauthorised retailers or to applications for the registration of similar designs, national registrations can fill this gap.[211]

For 3D shapes, it is clear that any independent party that produces a non-original component part (in this case: headlights) that is identical or confusingly similar to the 3D shape will be liable for trademark infringement. This means that any repair or maintenance provider must apply to the OEM or an organisation authorised by the OEM in order to purchase components that are registered as trademarks.

In the automotive sector, competition law restricts OEMs from contractually limiting a supplier's ability to supply components, repair tools, or diagnostic or other equipment to independent repairers and end users, while the exclusive rights provided by 3D trademarks ensure that such products cannot be produced without the trademark owner's permission. The registration of spare parts as 3D trademarks leads to legal uncertainty in secondary markets (including the repair and maintenance market) and thus acts as a deterrent to independent repair services and the trade in repaired goods.

As the traditional linear economic model gives way to an increasingly circular economy, the role and limits of trademark protection are being re-examined, and this transformation necessitates the alignment of trademark law with the principles of environmental sustainability and circular economy.[212] The Repair Directive advances the European Union's objective of establishing a circular economy that promotes the repair

[211] **Alex Sutcliffe**, "Volvo's Experiments with Non-Traditional Trademarks to Protect Thor's Hammer", 2024, accessed April 27, 2025, https://www.reddie.co.uk/2024/10/10/volvos-experiments-with-non-traditional-trade-marks-to-protect-thors-hammer/.

[212] **Tischner, A., & Stasiuk, K.**. "Spare Parts, Repairs, Trade Marks and Consumer Understanding", p.5.

of faulty products, aligning with the overarching Green Deal strategy.[213] The environmental crisis and the shift away from a linear consumption paradigm necessitate the incorporation of diverse values and societal interests in trademark infringement disputes; consequently, trademark law ought to be harmonized with the principles of sustainability and circular economy.[214]

### C. Design Protection and its Overview in Automotive

#### 1. Scope of Design Protection

The purpose of design protection is expressed as encouraging creativity and innovation[215], increasing competition and developing the industry. Encouraging innovation and creativity also ignites competition in the market and the factors affecting the purchasing preferences of the products offered by the companies to their consumers such as aesthetics, quality, reliability, accessibility are also increased in a competitive environment.[216]

##### a) Design Protection in EU

Design is the external appearance, aesthetic, eye-appealing part of a product, the decorative aspect of a useful product.[217] Sometimes functionality can also be preserved

[213] Please look for more information: https://commission.europa.eu/law/law-topic/consumer-protection-law/directive-repair-goods_en?utm

[214] **Tischner, A., & Stasiuk, K.**. "Spare Parts, Repairs, Trade Marks and Consumer Understanding", p.6.

[215] Preamble of the Law No: 6769, p.31.

[216] **Salih BEKTAŞ**, "Yedek Parça Tasarımlarının Korunması Konusundaki İhtilaflar ve Ülkemiz Sınai Mülkiyet Sisteminin Konuya Yaklaşımına Dair Öneriler", (TPMK Uzmanlık Tezleri Serisi, 2023), p.5 accessed May 3, 2025, https://etkinlik.turkpatent.gov.tr/akademi.

[217] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.12.

with design, for example, the design of a product can also make that product functional, the design of a glass can also help the product to be easy to carry. [218] However, what is usually protected by design is not the technical function of the product, but rather the aesthetic features of the product, such as its shape, pattern, colour, etc. [219]In the USA, design patents are subject to stricter examination during the application stage and provide broad protection of external appearance, while EU Community designs are easier to register but offer more limited aesthetic protection. In the USA, design patents are often discussed in relation to functionality[220], but they protect appearance in the same way as patents.

[218] Ibid., p.12.

[219] Ibid., p.12.

[220] The Federal Circuit's precedential ruling in ABPA v. Ford addresses critical boundaries of design patent protection in the context of the automotive spare parts market. The case arose from Ford's enforcement of U.S. design patents covering the hood and headlamp of its F-150 truck. The Automotive Body Parts Association (ABPA), representing aftermarket manufacturers, contested the validity and enforceability of these patents on three grounds: utilitarian functionality, aesthetic functionality, and the right to repair doctrine. ABPA argued that "*the patented designs were functionally dictated by the technical and structural constraints of Ford's vehicle, such as fitting requirements, mounting mechanisms, and integration with the vehicle's overall look*". Therefore, they claimed the patents lacked ornamental character and should be invalidated. However, the court found Ford's counterargument compelling specifically, its presentation of alternative designs that served the same function but had different visual characteristics. This evidence undermined the claim of utilitarian necessity and led the court to conclude that the designs were not functional, thus valid and enforceable. In a novel legal argument, ABPA sought to import the aesthetic functionality doctrine from trademark law into design patent law. ABPA argued that the visual appeal of the Ford parts had a significant commercial impact and that exclusive rights over such designs would inhibit fair competition. The court, however, declined to extend this doctrine. It emphasized that "*design patent law -unlike trademark law- is fundamentally exclusionary and intended to reward aesthetically valuable designs by granting temporary monopolies*". The fact that a design's appearance contributes to consumer demand supports rather than negates its protectability under design patent law. Finally, ABPA invoked the non-statutory "right to repair" doctrine, asserting that consumers should be permitted to use replacement parts embodying patented designs to maintain or restore their vehicles. The court, held that "*while repair of individual patented parts is permitted, manufacturing or commissioning the manufacture of replacement parts still constitutes infringement if the part is covered by a valid design patent"*. Thus, the court rejected

Design rights protection fosters innovation and creativity, thereby enhancing market competition and influencing key factors that shape consumer purchasing preferences - such as aesthetics, quality, reliability, and accessibility- within a competitive environment.[221] Although design protection is regional, under the Hague System administered by WIPO, "the Hague Agreement Concerning the International Registration of Industrial Deisgns" allows applicants "*to file a single international application covering up to 100 designs in any number of signatory states*."[222]

In the EU, there ara two regulation about design protection. Firstly 98/71 Directive About Design Protection is a regulation enacted to harmonise the design laws of the member states. Another regulation is the EU Regulation, which ensures that the registration made in EUIPO is protected in all member states.

In the EU, both the Community Design Regulation 2002/6 with Amending Regulation No.2024/2822 (Regulation No.2024/2822) and the Community Design Directive 98/71/EC with Recast Directive No.2024/2823[223] have been updated. Regulation No.2024/2822 and Regulation No.2024/2823 were published in the EU

ABPA's argument, reinforcing the legal distinction between permissible repair and impermissible reconstruction. In conclusion, this decision reaffirms the strong protection afforded to design patent holders in the United States, particularly within the automotive sector. ABPA v. FORD, 908 F.3d 1316 (Fed. Cir. 2018).

[221] **WIPO**, Industrial Design Protection, accessed April 17, 2025, https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property/industrial-design-protection_en?utm.

[222] **WIPO,** What Is Intellectual Property?, (WIPO Publication No. 450E/20) 2020, accessed November 28, 2024, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf.

[223] EU Directive 2024/2823 of the European Parliament and of the Council of 23 October 2024 On the Legal Protection of Designs (recast) (Text with EEA relevance) https://eur-lex.europa.eu/eli/dir/2024/2823/oj/eng

Official Journal on 18.11.2024 and entered into force as the new Design Directive and regulation on December 8, 2024. Regulation No. 2024/2822 is directly applicable and binding throughout the EU and regulates the design protection system at EU level. Regulation No. 2024/2823 imposes an obligation on EU Member States to harmonize their design protection systems. Since the amendments made are included in both regulations, common amendments will be discussed under this heading.

First of all, the wording in 2002/6 as community design has been changed to EU design. Design rights may encompass 3D elements, such as the shape or surface texture of an object, as well as two-dimensional features, including patterns, lines, or colors, all of which contribute to preserving the product's visual appearance namely its shape, decoration, or coloration.[224] With the new regulation, the definition of design is as follows:"*"design" means the appearance of the whole or a part of a product resulting from the features, in particular the lines, contours, colours, shape, texture and/or materials, of the product itself and/or of its decoration, including the movement, transition or any other sort of animation of those features;"*[225]. Thus, elements such as movement, transition and animation have been explicitly added to the definition of design. In this context, in the explanations made regarding the amendments to the Article, since the introduction of the design system, developments in information technologies have led to the emergence of new types of design that are no longer found only in physical products.[226] This has necessitated a reconsideration of the definition of a product eligible

[224] **WIPO,** What Is Intellectual Property?, p.11.

[225] EU Regulation 2024/2822 of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002 (Text with EEA relevance) https://eur-lex.europa.eu/eli/reg/2024/2822/oj/eng.

[226] EU Regulation 2024/2822 of the European Parliament, par.11.

for design protection to include the spatial arrangement of elements contained in physical objects, presented in graphical form, or constituting interior and exterior space arrangements; in this context, it should be recognized that elements contributing to the appearance of a design may include movement, transitions or similar animation features, particularly where they are not associated with a physical object.[227]

According to Art. 3, additions have also been made to the definition of product. In this context, the definition of the product: ""*product" means any industrial or handicraft item, other than a computer program, regardless of whether it is embodied in a physical object or materialises in a non-physical form, including: (a) packaging, sets of articles, spatial arrangements of items intended to form an interior or exterior environment, and parts intended to be assembled into a complex product, (b) graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces"* has been amended.

Accordingly, the term "product" has been broadened to incorporate intangible entities, referring to all industrial or handcrafted items except computer programs '*regardless of whether it is embodied in a physical object or realised in a non-physical form*'. This means that digital and other designs are potentially protectable.

Design features of a product are generally not required to be visible at a specific moment or under certain conditions of use to be eligible for design protection. Nevertheless, an exception is made for component parts of complex products that are designed to remain visible during regular use; consequently, these components must be visible in order to be eligible for protection.[228]

[227] Ibid., par.11.

[228] Ibid., par.20.

In Art. 3, the meaning of the combined product is included in "*composed of multiple components which can be replaced, permitting disassembly and reassembly of the product*". According to the case law, while bicycle saddles are accepted to comply with this definition, ink cartridges and vacuum cleaner bags are not within this scope, and a part may be considered a component part if it is observable during the typical functioning of the complex product.[229]

In the explanations prior to the amendments, it is seen that the amendments keep pace with the changing technology. Accordingly, given the extensive application of 3D printing technologies across various industrial sectors facilitated by AI, and the challenges faced by design right holders in effectively preventing unauthorized reproduction of their protected designs, it has been argued that activities such as "creating, downloading, copying, and distributing any media or software embodying a design", when intended to reproduce a product infringing the protected design, constitute utilization of the design and therefore require the authorization of the rights holder.[230]

Under the new regulation, EU Member States are obligated to incorporate a repair clause—consistent with the Regulation—into their national design laws. However, the deadline for implementation extends until December 9, 2027, or, in certain cases, until December 9, 2032. Consequently, divergent approaches across the EU may persist until that later date. This legislative revision aims to modernize the industrial design protection framework within the Union and enhance its appeal to individual designers and

[229] **Louisse Popple**, "The New Repair Clause In EU Design Law", March 2025, accessed May 26, 2025, https://www.taylorwessing.com/de/insights-and-events/insights/2025/03/bu-the-new-repair-clause-in-eu-design-law-what-does-it-mean-for-oems-and-spare-part-providers.

[230] EU Regulation 2024/2822 of the European Parliament, par.14.

businesses, especially small and medium-sized enterprises (SMEs), are significantly impacted. Regarding the extent of the repair clause, design protection excludes spare parts used specifically to reinstate the original appearance of a complex product. Although these design rights remain in force, they cannot be enforced to prohibit third-party use of the relevant design. Importantly, this provision specifically pertains to "component parts" of complex products, rather than spare parts in a general sense.

Newly added Art. 20a: "*1. Protection shall not be conferred on an EU design which constitutes a component part of a complex product upon whose appearance the design of the component part is dependent, and which is used within the meaning of Article 19(1) for the sole purpose of the repair of that complex product so as to restore its original appearance. 2. Paragraph 1 shall not be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, about the commercial origin, and the identity of the manufacturer, of the product to be used for the purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair. 3. The manufacturer or seller of a component part of a complex product shall not be required to guarantee that the component parts they make or sell are ultimately used by end users for the sole purpose of repair so as to restore the original appearance of the complex product*."

As evidenced by the explanations preceding the amendments, the primary objective of the repair clause is to nullify the enforceability of both registered and unregistered EU design rights when designs of component parts of complex products are utilized exclusively to restore the original appearance of the product concerned. Consequently, the repair clause ought to serve as a defense against design infringement claims. Moreover, to ensure alignment with the repair clause outlined in Directive 2024/2823 and

to restrict the design protection framework so as to prevent design holders from attaining de facto market dominance, the repair clause should be explicitly confined to constituent elements of a complex product upon which the protected design's appearance depends.[231]

To be encompassed by the scope of the 'repair item' exemption/exception, certain requirements must also be met. Within this context, the use of spare parts is strictly confined to the repair of complex products in a manner that restores their original appearance. This restriction limits the application of the repair clause to instances where it is essential for a component part to conform to the original design of the product. For example, the clause would apply to car doors and body panels, which must be reproduced in the same shape and form as the parts they replace. In the absence of such provisions, automobile manufacturers might effectively monopolize the production and distribution of spare parts. Another provision of the repair clause mandates that the design of the component part depends on the complex product. This condition, newly incorporated into the updated repair clause, functions to limit its scope compared to the previous version of the Regulation. The introduction of this "shape dependency" requirement has changed the position taken by the European CJEU in Acacia v Audi and Porsche.[232] Conversely, a further condition of the repair clause is that the part in question must be visible. The clause applies exclusively to parts that remain visible when the complex product is fully assembled. Consequently, this provision is regarded as a mechanism to foster competition

[231] Ibid., par.19.

[232] Popple, The New Repair Clause In EU Design Law, 'What conditions must be met to rely on the revised repair clause?' section.

and enhance affordability, especially within the automotive repair sector, reflecting a shift toward balancing the interests of design right holders and independent manufacturers. [233]

Furthermore, it is emphasized that the repair clause should be explicitly regulated to prevent its invocation by manufacturers or sellers of component parts who fail to adequately inform consumers about the commercial origin of the product intended for repairing the complex product, as well as the identity of the manufacturer, thereby avoiding consumer deception. In this context, the form of the information obligation is explained. Such information must be prominently displayed on the product; if this is not possible, it must be provided on the packaging or in the accompanying documents and must include at least the trademark of the item and the designation of the manufacturer.[234] This provision implies an additional requirement to inform consumers that the part is specifically designed for repair and is not an original part. This requirement aims to ensure that consumers are not misled while promoting fair competition. [235]

To preserve the intended effectiveness of aftermarket liberalization for spare parts under this Regulation and to qualify for the repair clause exemption from design protection as established by CJEU case law, manufacturers or sellers of component parts for complex products are obligated to ensure—primarily through contractual measures—that downstream users do not utilize these parts for purposes other than repair aimed at restoring the complex product's original appearance.[236] Manufacturers and sellers of components for complex products are not universally obligated to offer an objective

[233] Ibid., 'What Is the Issue?' section.

[234] EU Regulation 2024/2822 of the European Parliament, par.19.

[235] Popple, The New Repair Clause In EU Design Law, 'What does the revised repair clause say?' section.

[236] EU Regulation 2024/2822 of the European Parliament, par.20.

assurance that the parts they manufacture or distribute will be exclusively employed by end-users for the purpose of restoring the original aesthetic of the complex product. To enhance the commercialization of design-protected products—especially by SMEs—and to assist individual designers while raising awareness of design registration systems at both the Union and national levels, a widely accepted symbol, such as the (D) mark, ought to be made accessible to design right holders and, subject to their consent, to authorized third parties.

### b) Design Protection in Turkey

With the enactment of the TIPC, some amendments have been made to the law on design. First of all, the term "industrial design" used in the Decree Law No. 554 has been replaced by the term "design". In accordance with EU legislation, the objective is to prevent rights loss by excluding non-visible parts of combined products from design protection. Additionally, an exception to the three-year protection period is intended for the use of combined products in repair activities, supported by a list to be published by the Ministry of Science, Industry, and Technology. Furthermore, the introduction of a three-year protection term for unregistered designs aims to reduce market confusion. [237]

By introducing an exception to the three-year protection period for equivalent parts, it will contribute to the development of the equivalent parts industry where these parts are produced, and consumers will have cheaper access to these products. By introducing a three-year protection period for unregistered designs, the confusion caused by unregistered designs in the market will be prevented, and design owners who need long-term protection will be enabled to register their unregistered designs within one year.

[237] Preamble of the Law No: 6769, p.73.

The design regulated in the third book of the TIPC is included between Articles 55 and 82 of the law. Art. 55 of the TIPC defines design, product and composite product.[238] Design emerges as a result of the process aimed at improving both the aesthetic and functionality of products. The definition of design is important to define the boundaries of this field and to explain the elements that can be protected by design. Design focuses on aesthetic elements and features that can be reflected in the appearance by excluding the functional aspect of the product. Aesthetic elements include elements such as lines, shapes, textures, colors and materials. These features are not limited in number in order to ensure that the innovations that will emerge with technological developments in the future are also covered.[239] The features listed in the relevant definition may not be sufficient to differentiate the product alone, and thus to ensure design protection. Therefore, the use of such elements together with other visual elements is important in terms of design integrity.

According to Art 55/2, the products to which the design may be applied are described. This definition includes all kinds of articles that can be reproduced by hand or by

[238] "*Art.55 (1) Design shall be the appearance of the whole or a part of a product resulting from the features of, the line, contour, colour, shape, material or texture of the product itself or its ornamentation. (2) Product means any industrial or handicraft item, including parts intended to be assembled into a complex product, products like packaging, presentations of more than one object perceived together, graphic symbols and typographic typefaces, but excluding computer programs.*

*(3) Complex product shall be a product which is composed of components which can be replaced or renewed by disassembly and reassembly of the product.*

*(4) A design shall be protected as a registered design in case it is registered in accordance with the provisions of this Act and a design shall be protected as non-registered design in case it is presented to the public for the first time in Turkey..*" https://www.wipo.int/wipolex/en/legislation/details/16609

[239] Preamble of the Law No: 6769, p.66.

industrial means. The condition of being suitable for production is one of the basic criteria for protection. According to Art 55/3, it is envisaged that the parts constituting the unified product shall also be protected. The composite part referred to herein must consist of more than one part and each part must be assembled to form a whole.[240] According to Art 55/4, protection is provided in two forms: protection obtained by registration and unregistered protection obtained by being made available to the public. Although unregistered IPRs are protected under the provisions concerning unfair competition within the Turkish Commercial Code, the TIPC provides a short-term protection for unregistered designs, which is especially important for high-volume design areas such as textiles, fashion or packaging.[241]

#### aa) Novelty

Art. 56 of the TIPC sets forth the conditions for design protection.[242] For an element to qualify from design protection, it must be new and distinctive. The second and third subparagraphs of the relevant Article address the circumstances under which the components of a unitary structure may benefit from legal protection; in addition, the concept of "normal use" is clarified. Normal use refers to the parts that the end user can see during use without opening the interior of the vehicle, such as maintenance and repair. For example, since the end user cannot see the engine and pads of the vehicle, the engine cannot be protected as a design, even if it is an innovation. On the other hand, parts such as body panels, windscreens, lights, mirrors can be protected by the right of design since they are visible. It is possible to independently protect each element within this unified

[240] Ibid., p.67.

[241] Ibid., p.67.

[242] Art.56/1: Design shall be protected by this Code provided that it is new and has an individual character.

structure. However, as stated in the definition, only those parts of these components that are visible in the routine utilization process of the user may be subject to registration if they meet the conditions for protection. Here, in the preamble of the article[243], "normal use" does not include maintenance, service or repair activities; it is the direct interaction of the end user with the product.

The novelty requirement, a fundamental criterion for design protectability, is assessed through two distinct approaches: absolute and relative novelty. Absolute novelty implies that the design in question has not been publicly disclosed anywhere worldwide prior to the relevant date, whereas relative novelty allows a design that exists elsewhere to be regarded as novel within a specific jurisdiction if it has not been made known in that territory.[244] The relevant regulation is based on absolute novelty, thus both encouraging intellectual labor, which is the objective of the TIPC, and preventing the right ownership that may be caused by relative protection.[245] However, Art.56/4 clearly states that designs that have the same visual characteristics as an existing design or that differ only by minor changes will not be considered new. Accordingly, the required level of originality for protecting designs influenced by previously known examples has been heightened.

The same article defines "distinctive quality", which is another condition for protectability for both registered and unregistered designs, and specifies the aspects to be evaluated in the evaluation of this quality. Distinctiveness is a criterion indicating the extent to which the design differs from its counterparts. Due to the subjectivity of the

[243] Preamble of the Law No: 6769, p.69.

[244] Ibid., p.69.

[245] **Tekinalp**, "Fikri Mülkiyet Hukuku", p.676.

criterion, the person who will make this assessment is defined as the "informed user" in the law.

### bb) Public Disclosure

According to TIPC Art. 57, the design may be made available to the public, exhibited, sold, put into use, described, published, promoted or similar activities. Presentations to third parties made through such acts make the design in question known. In the second paragraph of the relevant article, it is regulated under which conditions the public disclosure will not have any effect on the novelty and distinctive characteristic of the design. Under the framework of the aforementioned provision, it is recognized that any disclosure made by the designer, their legal successor, or by third parties with their explicit authorization within the twelve months preceding the application or priority date shall be taken into account if any, will not eliminate the novelty. This provision provides an improved protection mechanism especially for the design owner and allows for a kind of testing process in the market in economic terms.

### cc) Limits of Design Protection

According to TIPC Art.58/1 outlines the boundaries of the legal protection conferred by design rights, as well as the approach to be employed in defining those boundaries. This scope to be determined will be evaluated primarily by considering the criterion of "distinctiveness". [246]

According to Art.58/3, it is stated that designs protected under the existing legal framework may also benefit from right protection under the Law No. 5846 on Intellectual

[246] Preamble of the Law No: 6769, p.71.

and Artistic Works in accordance with the principle of multiple protection, if the relevant conditions are met.

The fourth paragraph defines the conditions to be excluded from design protection. Subparagraph (a) of the paragraph stipulates that designs that violate public order or offend the prevailing moral standards of society shall be excluded from the scope of protection. For example, the fact that national symbols such as the Turkish flag are protected by special regulations numbered 2893 makes it legally problematic to monopolize them with a design right.[247]

Pursuant to subparagraph (b) of the fourth paragraph, parts that are required to be designed in a certain way solely for the purpose of fulfilling their technical function and for which the designer does not have any creative choice are also considered outside the scope of legal protection. According to the example given in the preamble of the Law, the circular form of an automobile wheel or the functional shape of a screwdriver bit will not be considered within this scope, as these are areas where the designer cannot make a creative contribution. However, the decorative elements of these products, such as the surface patterns on the tire or the formal features of the handle of the screwdriver, may be protected as they may be the subject of the designer's original effort.

In subparagraph (c) of the same paragraph, it is stated that where it is mandatory to design fasteners enabling the interconnection of more than one product in certain forms and dimensions only due to technical requirements, these elements will be excluded from protection. Thus, such functional elements are kept publicly available and restriction of competition through registration is prevented. Another exception is given by stating that

[247] Ibid., p.71.

these must-fit parts, i.e. parts to be used for assembly and connection purposes, will not be protected.

According to Art. 58/4 (ç) of also excludes symbols of sovereignty defined in accordance with Art. 6 of the Paris Convention 2 bis, as well as designs containing coats of arms, designations or symbols that are considered to belong to the common heritage of the people due to their religious, cultural or historical aspects and whose registration is not permitted by the competent authorities.

### dd) Scope of Rights Arising from Design Protection

In terms of registered designs, the right holder is granted comprehensive and wide-ranging authorizations, and through these authorizations, legal protection is provided for the use of the design in various ways. According to TIPC Art.59, the registered design enables the owner to assert its rights against third parties in the event of the production, marketing or commercial exploitation of products that are subject to its use or applied to the design without authorization. This form of legal protection establishes an exclusive monopoly right that is enforceable against all parties. In cases of infringement, the right holder is entitled to initiate legal proceedings regardless of the good or bad faith of the infringer.[248] On the other hand, as expected, the protection possibilities recognized for unregistered designs remain more limited; this right is a limited protection that only prevents the act of copying. In unregistered designs, unlike registered designs, in order for the existence of infringement to be accepted, the bad faith of the infringer must be present in a concrete manner. [249]

[248] Preamble of the Law No: 6769, p.73.

[249] Ibid., p.73.

In the same article, it is stated that certain acts are excluded from design protection. Some situations in which the design right cannot be used are regulated. With this provision, it is aimed to provide a legal basis for research, development activities and educational applications to be carried out freely without violating the design right. However, as stated in subparagraph ç, in order to prevent interruption of international transportation, the import of spare parts and accessories needed for the repair of these vehicles, as well as the repair activities of the equipment in the sea or air vehicles temporarily located within the borders of the country, are also excluded from the design right.

The repair clause, which is one of the most important pillars of this thesis, is also regulated by this article. Accordingly, it is asserted that the use of components directly linked to the external appearance of a composite product—provided they correspond exactly—after three years from the initial launch date of the product, for the purpose of restoring it to its original condition and without creating a misleading impression of origin, does not constitute a violation of design rights. For example, in the preamble of the article, it is stated that parts of a car, such as doors or bumpers, cannot be assessed together with another product because they are compatible with the relevant model. Although these elements may be registered independently, the duration of protection that the right holder may invoke is restricted to three years from the date of initial production. However, if, for example, a wheel design designed by a car manufacturer is protected, then since the wheel is not a component that is directly linked to the appearance - i.e. it is not a must match, but can be used in other vehicles - the holder of the design right can use the exclusive rights for 25 years, so it will not be covered by the exception of 3 years since it is not a must match.

Again, in the fifth paragraph of this article, the equivalent parts exception is mentioned and it is stipulated that if the parts in the equivalent parts list to be published by the Ministry of Science, Industry and Technology are used for repair within three years, the design right will not be deemed to be violated. The definition of equivalent parts, which is not included in the text of the law, is included in the preamble of the article, accordingly, the products defined as equivalent parts are products that can be measured by certain tests whether they meet the performance provided by the original part and the results can be documented.

The duration of design protection is governed by Art. 59 of TIPC. Accordingly, registered designs receive protection for an initial period of five years from the application date, which may be extended in five-year increments up to a maximum of twenty-five years through renewal. Conversely, unregistered designs are granted protection for a period of three years starting from the date they are first made publicly available.

## 2. An Automotive Perspective On Design Protection

After the purchase of the automobile, the question arises as to who should supply and produce the spare parts needed for after-sales services or after an accident. The question is whether the spare part should be supplied by original equipment manufacturers, who own the IPRs, or by third-party manufacturers that consumers can access at more affordable prices. Automotive body parts that are visible are generally eligible for IP protection under design laws in most jurisdictions. This protection primarily covers the aesthetic features of two- or 3D objects and is contingent upon region-specific criteria, which typically prioritize novelty, lack of functional aspects, distinctiveness, inventiveness, and uniqueness. A key issue in the debate over spare parts is that design protection extends not only to standalone products but also to individual component parts

of complex products. This extendibility of protection to component parts grants OEMs, who hold design rights over these parts, broader control over multiple product elements and the ability to restrict market access for competing manufacturers of non-original parts. This requirement arises from the necessity for competing parts to replicate the original exactly in order to ensure compatibility in both features and overall appearance. Because the original part cannot be replaced by a component from an alternative source, competition is effectively eliminated, resulting in an aftermarket dependency. Consequently, when legal supply to the aftermarket is restricted, recourse to competition law becomes necessary to counteract the effects of design protection.

In the automotive sector, many products can be protected by design rights. The body structure, bonnet, roof curves, headlights and taillights of vehicles can be protected by design right. [250] As a result of the design registration made by TPTO as a result of the application made by Ford, the exterior appearance of the vehicle, rear panel, raffiator grille, side spoilers, lamp decoration, side mirrors, fenders, door panel, door handles, steering wheel, hand brake lever, interior console, center console, radio decoration, instrument panel, storage consoles were protected with design rights. Steering wheel[251], digital instrument panel, center console, seat shapes, wheel models, LED light designs, Audi's horizontal striped louver, mirrors, roof bars, windshields, the shape and texture of

[250] **Gülçin Cankız Elibol, Fatma Korkut and Gülay Hasdoğan,** ed. Oğuz Bayrakçı, "Tasarım Hukukunda Yenilik ve Ayırt Edici Nitelik Değerlendirmesinde Kavramsallaştırma Sorunları", in *40 Yıl Sempozyumu Bildiri Kitabı*, . (2011) p. 309-316, accessed March 12, 2025, https://www.researchgate.net/publication/325528719_Tasarim_Hukukunda_Yenilik_ve_Ayirt_Edici_Nitelik_Degerlendirmesinde_Kullanilan_Terimler_Acisindan_Kavramsallastirma_Sorunlari.

[251] Information obtained from the registration number 2007-02371 according to the query made on the Design Inquiry Engine of the TPTO.

smart keys and charging station covers in electric cars can be protected by design. With the Design Regulation and Design Directive in the EU, the scope of products subject to design has been expanded on the grounds of technological developments. With the aforementioned amendment, it can be said that there may be an increase in the number of products that can be protected by design, as the protection of software interfaces, graphical user interfaces (GUI) and digital product designs, which were previously unprotected, may come to the agenda.

One of the most important protections in the automotive sector is the protection of spare parts. What is protected by design protection in spare parts is the design of the part, not the working principle of the part. The design can protect both the spare part itself and the external appearance of products such as motor vehicles and telephones, which are composed of parts that are assembled by disassembly and assembly.

The scope of design rights for spare parts can be particularly complex due to the interaction between functional and aesthetic elements. Where replacement parts need to be compatible with existing products, the design elements may often overlap with the design rights of the original product. The ownership of design rights for spare parts requires a delicate balance between protecting original designs and ensuring that the market remains competitive. Understanding the scope and limitations of these rights is critical for both OEMs and third-party manufacturers. These rights provide protection of original designs against unauthorized reproduction and use. However, the scope of design rights in relation to spare parts represents a complex and detailed area of TIPC. Spare parts that remain invisible within the context of the design are not eligible for protection. As a result, spare parts that remain hidden during the normal use of a product do not fall within the scope of design right protection. For example, it is not possible to protect the

engine, spark plug and battery[252] with design rights since they are not visible during normal use.

In contrast, designs consisting of elements like screws, bolts, or gears—whose form and size are determined by functional necessities essential for the mechanical fitting or linkage of the designed item or the item incorporating the design—are not eligible for design right protection. If functionality is present, design patents may also come into play. In Chrysler Corp v Vanzant[253], Chrysler sued Vanzant for unauthorised use of Chrysler's registered JEEP grille design. The court revoked Chrysler's registration on the grounds that the grille design was functional. Under the principle of functionality, functional designs cannot be protected under trademark or design rights because such designs could create a monopolistic barrier to competition in the market. Thus, the court rejected Chrysler's attempt to restrict competition by using its IPRs over this design. Another decision evaluating design patents in terms of functionality is the case of Chrysler Motors v Auto Body Panels of Ohio[254], in which Chrysler filed a lawsuit alleging infringement of a design patent relating to a fender design. The court ruled that the design in question was essentially functional and did not have ornamental characteristics, and therefore found the patent to be invalid.

[252] **Cahit SULUK,** "Yedek Parça Tasarımların Korunması ya da Otomotiv Yan Sanayiinin Var Olma Mücadelesi", p.6.

[253] The case is reported in *Volume 44 of the Federal Supplement*, beginning on page 1062, and was decided by the U.S. District Court for the Central District of California in 1999.

[254] The decision in *Chrysler Motors Corp. v Auto Body Panels of Ohio, Inc.* can be found in volume 908 of the Federal Reporter, Second Series at p. 951.

When we classify spare parts as appearance-dependent parts, parts that are not appearance-dependent and therefore not visible during normal use, and fittings, we have stated above that fittings and invisible parts cannot benefit from design protection. In the event that appearance-dependent parts are protected by the design right, the production and sale of this product in the market will be carried out from a single source. At this point, the lack of consumer choice and the absence of effective competition within the visible spare parts market constitute fundamental concerns from a competition law perspective. Due to these limitations, consumers are compelled to purchase such parts exclusively from automobile manufacturers, often at prices determined unilaterally by the manufacturers themselves. The implementation of a repair clause permitting the distribution of visible component parts by a broader spectrum of market operators enhances competition in the aftermarket, thereby enabling both independent repairers and consumers to reap the economic and qualitative benefits associated with increased market accessibility and choice. This, in turn, would contribute to making the aftermarket more competitive. An assessment within the context of competition law will be provided in Chapter 2.

### D. Copyright Protection and Its Overview in Automotive

EU copyright law is structured around thirteen directives and two regulations, which serve to harmonize the core rights of authors, performers, producers, and broadcasting organizations across Member States..[255] In this section, a few issues that we think should be addressed within the scope of this thesis in this scattered legislative network of the EU

[255] **WIPO**, The EU Copyright Legislation, accessed March 15, 2025, https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation.

will be included in this section, but will not be detailed such as patents, trademarks and designs since there is no example that can be addressed within the scope of the thesis.

## 1. Scope of Copyright Protection

The Berne Convention represents a global agreement intended to safeguard creators' rights concerning their artistic and literary creations. The TRIPS contains the minimum substantive standards of the Berne Convention. According to Art. 1, the World Copyright Treaty (WCT) constitutes a special agreement as defined by Art. 20 of the Berne Convention.

The primary objective of the Berne Convention is to establish a framework that safeguards the rights of authors and creators concerning their literary and artistic works. These works include writings, music, art and other creative expressions. The Convention sets minimum standards of protection that member states must afford to the works of nationals of other member states. These standards include rights of reproduction, distribution and public performance. Once a work is created, it is protected without the need for formalities such as registration or the attachment of a copyright notice.

Under Art. 12 of the TRIPS, copyright protection must be valid for at least 50 years in addition to the author's lifetime.[256] However, many countries go beyond this period and provide protection up to 70 years after the author's death. In the European Union, in Art.1 of Directive 2006/116/EC, this period is defined as “life + 70” as a general rule.[257]

[256] TRIPS Agreement.

[257] EU Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the Term of Protection of Copyright cnd Certain Related Rights, accessed January 18, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0116.

The EU copyright regime aims to protect content creators more effectively in the digital environment and to provide effective remedies against copyright infringement. To this end, Digital Single Market Directive 2019/790 of April 17, 2019 updates Directives 96/9/EC and 2001/29/EC and introduces new regulations on content sharing on digital platforms, data mining and publishers' rights. According to Directive (EU) 2019/790, Recital 3 "*The objective of copyright protection is to stimulate and reward creative expression by granting authors exclusive rights over their works*." It further encourages creativity by giving the owner a special right.

Copyright protection is a fundamental area of IP aimed at promoting creativity and protecting the rights of creators over their works.[258] According to TRIPS Art. 9 (2) is stated that: "*Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such."*. Copyright protects not only ideas but also the concrete and original expression of those ideas. In this context, while a concept or idea itself remains in the public domain, the way in which it is expressed is protected by copyright.

According to TRIPS Art. 10 (2): "*Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection shall not extend to the data or material itself..."* data compilations and databases are among the types of works assessed by the requirement of originality for copyright protection. Under TRIPS, collections of data or materials, such as databases, can "qualify for

[258] **Aplin, T.**. Creativity and the Law. In: Martin, L., Wilson, N. (eds) The Palgrave Handbook of Creativity at Work. Palgrave Macmillan, Cham. (2018), accessed March 20, 2025, https://link.springer.com/chapter/10.1007/978-3-319-77350-6_19?utm.

copyright protection" provided that the "selection or arrangement of their content demonstrates the owner's intellectual effort and originality". This provision protects the creative exhibition of creative effort in the curation and systematic arrangement of data not the data content itself. Thus, while the data itself may be in the public domain, the presentation or systematic organization of that data may be subject to copyright.

In the EU Database Directive (96/9/EC), Art. 1(2). is defined database as follows: *"A database shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means."*. This definition covers not only digital data but also physically organized collections of data. The Database Directive regulates databases through two different legal protection mechanisms: One is "copyright protection" and the other is "sui generis protection". According to Database Directive Art.3, if the database meets the originality criterion, i.e. the selection or organization of data involves a creative intellectual effort, it benefits from classical copyright protection. Sui generis protection is regulated in Art.7. Accordingly, even if it does not meet the copyright criterion, if financial and human resources have been invested in the creation of the database, it may benefit from "sui generis" special protection for up to 15 years.

One of the basic conditions for copyright protection is the principle of originality. According to CJEU, for a work to be subject to copyright protection, it must reflect the intellectual creativity of the author.[259] Also, according to TRIPS Art. 9/(2), the work must also satisfy the fixation condition. TRIPS Art. 14, fixation means the materialization of

[259] CJEU. (2009). *Infopaq International A/S v Danske Dagblades Forening*, Case C-5/08.

the work in a perceptible, reproducible or communicable form. Fixation can take both digital and physical forms, for example, a data set in a software file or a book.

The three-step test, established under Art. 13 of the TRIPS, serves as a universal standard in international copyright law to evaluate the legitimacy of restrictions imposed on the exclusive rights of rights holders. The main purpose of this test is to strike a reasonable balance between "copyright protection and the public interest".[260] This evaluative framework identifies the exceptions deemed permissible, especially when certain limitations are warranted to protect the public interest in domains such as information access, education, research, and cultural expression.[261] Thus, both the interests of authors are protected and the legitimate needs of users are taken into account.[262]

Both the WCT, TRIPS and the BERN convention provide for a three step test. According to Art 9(2), it is within the authority of the Union's member states to enact legal provisions authorizing the copying of these works,

*"1- in certain special cases, provided that such*

*2- reproduction does not conflict with a normal exploitation of the work and*

[260] **Geiger, C**, *From Berne to National Law, via the EU: the Dangerous Mutations of the Three-Step Test*. Intellectual Property and Competition Law, 29, 12 (2007), 486 - 491.

[261] Ricketson, S., and Ginsburg, J. C. (2006). *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (Vol. 1). Oxford University Press.

[262] Geiger, From Berne to National Law, via the EU: the Dangerous Mutations of the Three-Step Test, p.487.

*3- does not unreasonably prejudice the legitimate interests of the author"*. The derogation does not apply unless all of these conditions are met simultaneously.[263]

In contrast, computer programs, whether expressed in source code or object code, receive protection as literary works under the Berne Convention, in accordance with Art. 10(1) of the TRIPS. In addition to computer programs, databases also benefit from copyright protection. Databases according to Berne Convention Art 2(5) "*collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections."*

**2. Automotive Perspective On Copyright Protection**

Although copyright is not a type of protection that appears very often in the automotive sector, it is known that some intellectual rights can be protected by copyright. Software is considered a "literary work" under copyright law, so in the digitalized automotive world, in-vehicle software may be protected by copyright. As a result, coding that is essentially developed for the perception of commands from in-vehicle equipment to the brains of vehicles can also be protected under copyright. Technical drawings, software, algorithms, digital in-vehicle user interfaces, digital map data, software codes for decision-making systems of autonomous vehicles can be protected by copyright.

[263] **WIPO,** Summary of the Berne Convention for the Protection of Literary and Artistic Works, https://www.wipo.int/treaties/en/ip/berne/summary_berne.html.

Technical drawings were the subject of an old United Kingdom case.[264] British Leyland was a car manufacturer that held the copyright to technical drawings used in the production of exhaust systems for their vehicles. Armstrong Patents Co. was an independent manufacturer that produced replacement exhaust systems compatible with British Leyland cars. The dispute arose when British Leyland, a vehicle manufacturer, brought an action against Armstrong Patents Co. for alleged copyright infringement. The claim was based on Armstrong's production and sale of compatible exhaust systems for British Leyland vehicles, which were alleged to have infringed the technical drawings held under copyright by British Leyland. In response, Armstrong argued that it had not copied any drawings, but had lawfully reverse-engineered the parts based on the physical products.

The House of Lords ruled in favour of Armstrong, rejecting British Leyland's claims. The Court emphasized the public interest in allowing vehicle owners access to spare parts and recognized that restricting such access through IP enforcement could have anticompetitive consequences. In particular, the Court referred to the doctrine of exhaustion, holding that once a product is placed on the market, the IP holder can no longer control its downstream repair or maintenance, including the sourcing of spare parts from third-party suppliers.

Furthermore, the Court found that Armstrong's conduct constituted lawful reverse engineering, rather than copyright infringement. The ruling also addressed the risk of abuse of copyright, especially in cases where IP rights are exercised not to protect genuine creative work, but to stifle aftermarket competition. Lord Templeman notably warned

[264] British Leyland v Armstrong Patents Co., (1986) 67 N.R. 178, accessed March 19, 2025, https://vlex.co.uk/vid/british-leyland-motor-corporation-793248349.

against the use of IP as a tool to eliminate legitimate competitors under the guise of legal protection.

Voice response systems, animated interface transitions may be subject to copyright if they contain original sound files. For example, the “play music” command has technical functionality and is considered to be at the level of an idea and therefore not protected by copyright.

In the sector, copyright protections such as the source and object codes of Apple CarPlay's software and Siri audio files may be on the agenda. In-car digital systems such as Apple CarPlay and Tesla UI are subject to copyright protection, provided that they are designed in an original way. This protection applies both at the code level and at the visual user interface level. However, patent protection may be more appropriate for the functioning of algorithms or technical features. On the other hand, like Google Apple CarPlay, Google Android's interface software is installed on vehicles. Due to the definition of these two different software on vehicles, the problem of obliging consumers to use only one software system may arise. As a matter of fact, the Google Android Auto decision in Chapter 3 is a related dispute and will be detailed in the relevant section.

# CHAPTER TWO

# THE INTERSECTION BETWEEN DESIGN RIGHTS AND COMPETITION LAW IN THE AUTOMOTIVE FIELD

## I. Relationship Between Intellectual Property Rights And Competition Law In Terms Of Objectives

This intersection, which is also encountered within the framework of parallel imports and the principle of exhaustion of rights, compulsory licensing, FRAND principles, the existence and exercise doctrine, essential facilities doctrine, will be focused on the parts of this intersection that may be encountered in the automotive sector within the scope of this thesis. In the context of competition law, delineating the scope of rights associated with a particular subject matter necessitates a careful balance between safeguarding the pertinent IPRs and ensuring the preservation of fair and undistorted market competition.[265] In general, the relationship between these two branches of law can be explained as competition law supervising monopoly rights and private property rights arising from TIPC, limiting IPRs in certain and exceptional cases, and trying to ensure and protect the balance between the interests that should be protected by law, especially the public interest.[266] The enforceability of an IPR is not considered by the Commission to be acceptable if it infringes Community competition rules.[267]

[265] **Agneta Krützén**, "Abuse of Intellectual Property Rights Under EC Law -With Special Emphasis On Abuse of a Dominant Position", (Master Thesis, University of Lund, 2001), accessed December, 13, 2025,https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1559266&fileOId=1564929.

[266] **Gülgün Anık,** "AT Rekabet Hukukunda Fikri Mülkiyet Hakları", *Ankara Barosu Fikri Mülkiyet ve Rekabet Hukuku Dergisi*, No:3, 2001: p. 103-115.

[267] ECR, Consten & Grundig v. Commission (1966), 299.

According to the Law No. 4054, Art. 1: "*The purpose of this Act is to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by performing the necessary regulations and supervisions to this end."* The Article makes it a legal obligation to protect competition, which is the cornerstone of a free market economy. This aims to prevent monopolization and anti-competitive practices in markets. The Article emphasizes not only the protection of competition but also the instrument of competition. The aim is to provide consumers with advantages such as more choice, lower prices, better quality products, etc. through this instrument. The law not only penalizes infringements but also functions as a public policy to promote competition. In other words, it has both a "protective" and "regulatory" mission.

Protection of competition is one of the fundamental principles of a free market economy. In a free market economy, each enterprise decides which goods or services to use its scarce factors of production in order to maximize its profits, how much to produce and how to differentiate its goods or services from other products, and at what price to sell them. Competition increases the quantity of goods placed on the market, lowers prices, improves the quality of goods and thus enables the wider society to obtain more, cheaper and higher quality goods.[268]

Art. 1 of the Law seeks to prevent not only anti-competitive agreements and practices but also the abuse of dominance by enterprises holding a dominant market position.

[268] **Gamze Aşçıoğlu Öz,** "Türkiye'de Rekabet Hukuku Ve Uygulamaları." In . Ankara, Türkiye: Milletlerarası Tahkim Semineri (4 - 6 Ekim 2005), accessed April 16, 2025, https://hdl.handle.net/11511/84378.

Abuse of dominance refers to actions that prevent, distort, or restrict competition, resulting in consumer harm. Consequently, such abuse is encompassed within the scope of the legislation. Furthermore, Law No. 4054 is aligned with the competition law framework of the EU. This harmonization enables Turkey to create a competitive environment in international trade relations and provide a reliable market for foreign investors. Law No. 4054 is concerned with protecting and ensuring social welfare as well as consumer welfare. The main reason why competition law is based on "social welfare" rather than "consumer welfare" is that social welfare is considered as the ultimate goal.[269]

There are different approaches as to whether the objective of competition law is consumer welfare or social welfare. Bork defines consumer welfare as "the wealth of the nation" and prioritizes the welfare of the stakeholders of the economy and the welfare of both producers and consumers, and thus the welfare of society. [270] According to the consumer welfare view, the principle of consumer welfare in antitrust policy should aim at maximizing output rather than lowering prices while maintaining sustainable competition, as a strong economy depends on healthy individual markets, and antitrust is

[269] **Gamze Aşçıoğlu Öz**, "Avrupa Birliği ve Türk Rekabet Hukuku Çerçevesinde Hakim Durumun Kötüye Kullanılması", (Doctoral Thesis, Istanbul University, 1997). Competition among the participants in commercial activity will lead to more efficient production and operation, while encouraging the use of fewer resources, production at lower costs, technological innovations and developments, which will result in the opportunity to purchase better quality goods and services at lower prices, thus increasing the welfare level of consumers and society as a whole. General Preamble of Law No. 4054. https://www.rekabet.gov.tr/tr/Sayfa/Mevzuat/4054-sayili-kanun/kanunun-genel-gerekcesi.

[270] **Herbert Hovenkamp, "**On The Meaning of Antitrust's Consumer Welfare Principle", Concurrentialiste Jan, 2020, accessed April 27, 2025, https://www.networklawreview.org/herbert-hovenkamp-meaning-consumer-welfare/.

better able to contribute to this goal than to undermine it. [271] The social welfare approach, which underlies this preference, argues that concerns about the distribution of welfare should be addressed through appropriate instruments such as tax and fiscal policies after total economic welfare has been increased, while competition law should remain within its own boundaries, focusing mainly on economic efficiency to enhance overall welfare.[272]

The key determinant of the consumer welfare standard is the elimination of monopolistic elements in the market structure that impede competition. The removal of monopoly allows output to increase and prices to fall as output constraints are overcome. This standard does not accept any "trade-offs" that tolerate the actual output reduction that comes with increased market power, unless offsetting gains in productive efficiency are achieved.[273] Maintaining the competitive process ensures that national resources are distributed in accordance with public demand, while enhanced economic efficiency positively impacts overall welfare. [274]

The scope of the act, according to Art. 2: "*This Act covers all agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the borders of the*

[271] Hovenkamp, On The Meaning of Antitrust's Consumer Welfare Principle, p.1.

[272] Ibid., p.2.

[273] **Iona Marinescu, Herbert J. Hovenkamp**, "Anticompetitive Mergers In Labor Markets", *Indiana Law Journal*, 94 (2019): p.32, accessed April 28, 2025, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?params=/context/faculty_scholarship/article/2967/&path_info=Anticompetitive_Mergers_in_Labor_Markets.pdf.

[274] General Preamble of Law No. 4054 https://www.rekabet.gov.tr/tr/Sayfa/Mevzuat/4054-sayili-kanun/kanunun-genel-gerekcesi.

*Republic of Turkey; abuse of dominance by dominant undertakings in the market; any kind of legal transactions and behavior having the nature of mergers and acquisitions which may significantly decrease competition; and transactions concerning the measures, observations, regulations and supervisions aimed at the protection of competition.".*

Art. 2 of Law No. 4054 delineates the scope of the legislation into three categories: first, "agreements, practices, and decisions by various undertakings that hinder, distort, or restrict competition"; second, "the abuse of dominant market positions by undertakings"; and third, all forms of legal transactions and conduct related to "mergers and acquisitions" that substantially diminish competition. While agreements, practices, and decisions that hinder, distort, or limit competition may qualify for exemptions under specific conditions, such exemptions do not apply to violations concerning a dominant position. An entity holding a dominant market position must exercise caution when acquiring exclusive IP licenses, ensuring that such acquisitions do not violate the provisions of Articles 4 or 6. An IP holder has the authority to restrict third-party usage of their rights through licensing agreements; nevertheless, subsequent judicial decisions have established that a refusal to grant licenses can amount to an abuse of a dominant market position, particularly when combined with other forms of abusive behavior. A refusal to grant a license may be deemed abusive if it impacts downstream or related markets, as illustrated by the Magill case. In this case, the IP owner would be seen as having some form of essential business facility.[275] Conflicts between IPRs and competition law are generally seen in cases of abuse of market dominance. It has been

[275] **Agneta Krützén**, "Abuse of Intellectual Property Rights Under EC Law -With Special Emphasis On Abuse of a Dominant Position", p.56.

observed that both European Community competition law and Turkish competition law recognize that the use of industrial rights may initiate an abuse of a dominant position if the person or entity holding the industrial right is in a dominant position in the relevant market.[276]

Competition law can be defined as the set of rules and principles that regulate competition between businesses in order to protect market dynamics and benefit consumers.[277] IPRs provide the holder with a monopoly-like position [278] can be defined as rights that confer exclusive powers. Simultaneously, IPRs are acknowledged as powerful incentives for innovation that drive economic growth, yet it is equally recognized that they may impose limitations on competition.[279] The IP regime aims to balance the rights and interests of different actors. In this context, it is essential to examine the relationship of interests between creative individuals and users of services or products; between firms engaged in commercial activity and organizations competing in the same market; and between high-income countries and states with limited economic resources.[280] An effective and equitably designed IP system benefits not only producers but also ordinary consumers in several ways. [281]

[276] **Sülün Güçer**, "Rekabet Hukukunda Hakim Durumun Kötüye Kullanılması Çerçevesinde Sınai Mülkiyet Hakları", (Rekabet Kurumu Lisansüstü Tez Serisi XIII, 2005), accessed December 19, 2024, p. 130.

[277] **Richard Whish and David Bailey**, *Competition Law*, (Oxford University Press, Oxford, 2018, Seventh Edition), p. 19.

[278] **Agneta Krützén**, "Abuse of Intellectual Property Rights Under EC Law -With Special Emphasis On Abuse of a Dominant Position", p.57.

[280] **WIPO,** What Is Intellectual Property?, p.5.

[281] Ibid., p.4.

If IPRs are allowed to be exercised without any restriction within the social legal system, the holders of these rights may have the opportunity to arbitrarily abuse their dominant position by harming the competitive environment and consumers. IPRs cannot be said to constitute a dominant market power if the right holder exercises its exclusive right within ordinary limits. Therefore, the existence of an IPR does not, as a rule, constitute a presumption that the undertaking holding the IPR has abused its dominant position. This principle was confirmed by the CJEU in the Deutsche Grammophon case.[282]

The exercise of a right can only be protected if the specific subject matter or essence of the right is protected. Although innovation of competitors is encouraged by the protection of IPRs, the preparation of the technical and capital infrastructure for the production of new, competitive and substitute products in the market is not possible in the short term when competition is restricted, and the competitive structure of the market should be established in a determinable term. When IPRs are used in a way that constitutes an abuse that harms competition in the markets, the use of the right may constitute an abuse of dominant position.[283] In principle, these rights restrict competition in the market, but do not eliminate it completely. However, the elimination of competition is not necessary for competition law to come into play; restriction of competition is sufficient. In terms of patents, preventing competitors from competing freely in the market as a result of the registration of anonymous or public inventions cannot be adopted

[282] ECR, Case 78/70, Deutsche Grammophon Gesellschaft mbH v. Metro-SB-Grossmärkte GmbH, (1971) 487.

[283] **Agneta Krützén**, "Abuse of Intellectual Property Rights Under EC Law -With Special Emphasis On Abuse of a Dominant Position", p.17.

as an objective that the legal order should protect.[284] The essential facilities doctrine may come to the fore for the refusal to grant a license, for example, which is evaluated in refusal to contract situations that are more commonly encountered in the case of patent rights. This doctrine holds that the refusal by the owner to grant access to an essential facility produces anticompetitive effects, lacks objective justification, and is therefore prohibited under Art. 82. In Magill, the Court appears to have implicitly acknowledged that IPRs can qualify as essential facilities, thereby obligating right holders to grant access to these facilities fairly and without discrimination. Although the Court did not reference any precedent related to essential facilities, it described the publishers' refusal to grant licenses as a denial of access to an indispensable input, effectively constituting an essential facility.

## II. Competitive Concerns of Intellectual Property Rights in the Automotive Sector

Art. 167 of the 1982 Constitution, which constitutes the constitutional basis of the Law No. 4054: "*The State shall take measures to ensure and promote the sound and orderly functioning of the markets for money, credit, capital, goods and services; and shall prevent the formation of monopolies and cartels in the markets, emerged in practice or by agreement."*. In this context, competition law is "*All regulatory and prohibitive legal regulations related to preventing agreements between undertakings or decisions with the aim of affecting markets and restricting competition in respect of goods and services as well as concentrations leading to abuse of dominant position, monopolization or distortion of competition"*[285], Therefore, in any goods and services market within the

[284] **İlhami Güneş,** *Sınai Mülkiyet Kanunu Işığında Uygulamalı Patent ve Faydalı Model Hukuku, (Ankara,* Seçkin Yayınevi, 2019 2.baskı).

[285] General Preamble of Law No. 4054

borders of the Republic of Turkey, agreements or decisions between undertakings to influence the markets and restrict competition, abuse of dominant position in the market, and concentrations that lead to monopolization or distort effective competition are prohibited by Law No. 4054.

In the automotive sector, this situation may appear as a restriction of competition in all areas protected by IP, including spare parts. In particular, IPRs may serve to create a dominant position of undertakings in the market, and sometimes IPRs may be used as a tool for monopolization.

Due to the importance of spare parts in the automotive sector, our evaluations will focus on this area. However, the competitive concerns that may arise from IPR protection of tangible or digital tools in the automotive sector, which are not considered as spare parts, will be addressed as appropriate.

As stated in the general justification of the Law no: 4054, competition law promotes free competition in spare parts markets and access to a variety of choices for consumers. This allows consumers to benefit more by keeping prices lower and quality higher. In the absence of sufficient competition in spare parts markets, prices may remain artificially high and consumers' freedom of choice may be restricted.

Competition law encourages spare parts manufacturers to innovate and keep up with technological developments. In an environment of free competition, firms constantly strive to improve their products in order to offer better and more affordable spare parts.[286] This encourages innovation in the industry, as firms compete to produce better performing and more durable spare parts.

[286] **WIPO**, "Introduction to Intellectual Property Theory and Practice", p.233.

Monopolistic or oligopolistic structures in spare parts markets can lead to abuse of market power. In particular, a main producer may dominate the spare parts market, preventing rival firms from entering the market or charging high prices. Competition law provides for various regulations and sanctions to prevent such situations and to ensure a fair distribution of market power. However, when spare parts are protected by an IPR, the holders of the IPRs appear to be shielded almost inviolably. In fact, this is not the case, as there are limits to the protection of IPRs and it will be important to strike a balance with competition law. Specifically, an undertaking holding a dominant position in the primary product market -or one deemed dominant based on market definition within the spare parts sector- may restrict competition by leveraging its market power and reinforcing its dominance through IPRs protection. In the context of design law, aesthetic designs of new vehicle parts, engine covers, digital display panels, steering systems, and other exterior components may receive protection under design rights. The objective of design protection is to safeguard original designs and to grant the designer exclusive rights as a reward for creating a well-conceived product. However, the protection of the designed product itself from competition is excluded from the protections of design law. Therefore, legal orders have excluded functional designs that leave no alternative possibility from protection. However, the same is not the case for aesthetically pleasing designs, which cannot be produced by the subsidiary industry for three years under the repair clause.

Technically functional trademarks are also not covered by trademark protection. The reason for not excluding them from the scope of protection here, as stated in the general justification of the TIPC, is not to monopolize the right holder. In cases where the equivalent part is protected by the design right, problems may arise in terms of competition law in the spare parts market regarding the production and supply of spare

parts that can be substituted for the equivalent part and the protection of the IPRs of the design right holder. While in terms of TIPC, the right holder whose design is protected is prevented from freely using a design that is not of the same quality but may be equivalent and called 'spare part' and sometimes does not replace the equivalent, in terms of competition law, this situation may create a monopoly effect. In competition law, if the process is the production of spare parts, a market definition can be made even for spare parts, and if a definition is made for spare parts, the only design right holder operating in that market may abuse this situation due to IPRs / dominate the market due to monopoly ownership, which are possible problems that may be encountered in terms of competition law. Features such as automobile doors, hoods, fenders, mirrors, etc., which are visually compulsory, may differ even within a brand, and therefore, as a rule, they will become an aesthetically compulsory product since they turn into an element that must be produced according to each vehicle model. When these products are protected by design protection, an alternative manufacturer will not be able to produce these parts, and the IPR holder will have a de facto monopoly over these spare parts; whereas design legislation does not protect the products themselves, but only the design (appearance) of the products, and therefore the IPR holder will have a monopoly over these aesthetically functional parts.[287] This would exceed the authorization granted by an IPR, as stated in the TIPC's reasoning. For example, the shape of the connection point of a car's exhaust pipe to the main body will not function functionally if it is a must fit product and not identical to the original; the outer shape of the car's door is a must match product and if it is not identical to the original, the door will work but will not be preferred by consumers as it will not fulfill its

[287] **Cahit SULUK,** "Yedek Parça Tasarımların Korunması ya da Otomotiv Yan Sanayiinin Var Olma Mücadelesi", p.21.

aesthetic function.[288] As a solution to this, Suluk argues that the regulation on visually functionally necessary part designs should be parallel to the regulation on functionally necessary part designs, that both types of designs do not allow for substitute designs, and that visual functionally necessary part designs will lead to the destruction of competition in the spare parts sector since they do not offer the option of substitute designs.[289]

In terms of trademark protection, it is a comprehensive IP area that opens the door to monopolization due to the duration of protection. Although there are many traditional and non-traditional types that are eligible for trademark protection, applications for trademark protection of 3D shapes raise some competitive concerns, as mentioned above. Considering that trademark protection may cause competitive concerns such as barriers to market entry and exclusion of competitors, it is considered that trademark rights for 3D shapes should be granted in a way that does not conflict with competition law rules and this issue should be taken into consideration before registration. At the same time, if the applicant of the trademark registration holds a dominant position within the market where the 3D trademark right will be used, these competitive concerns will increase; it is possible for the trademark right holder to use this right in a way to abuse its dominant position, and in this context, entities holding a dominant position within the market where the 3D trademark right will be used may lead to actual or potential anti-competitive market closure through exclusionary behavior. On the other hand, the acceptance that the conditions for trademark registration of 3D shapes may be evaluated differently than other types of trademarks due to potential anti-competitive concerns may lead to some problems in terms of case law integrity in this field. [290] For this reason, it is considered

[288] Ibid., p. 24.

[289] Ibid., p. 27.

[290] **Yalçın**, "Üç Boyutlu Şekil Markalarının Pazarda Yarattığı Etkiler Üzerine Bir Değerlendirme", p.134.

that it may be beneficial to set some registration thresholds for 3D trademark registration in the TIPC in order to ensure distinctiveness, and to determine these thresholds in a way to enable a more detailed examination of 3D shape trademarks. For example, the distinctiveness assessment for 3D shapes may be more detailed than the distinctiveness assessment for a verbal trademark; in registrations of 3D shape trademarks with little distinctiveness, for example, in the registration of a spare part with the trademark X, which has no distinctiveness, it should be taken into account that undertakings operating in the market will not be able to produce this part again.

Trademark rights and design rights in spare parts markets should be handled carefully in terms of their effects on competition. The competition concerns mentioned above regarding 3D shape trademarks are essentially the same for 3D design protection. This is because, although design protection is for a longer period of time than trademark protection, the product protected by the design remains on the market for the duration of the protection period, after which its influence on the market diminishes. In order to prevent the distortion of effective competition, it may be useful to regulate the time limit for the development of the sub-industry in spare parts for the design and trademark of 3D shapes. The effects of branded spare parts on price and quality competition should be analyzed, especially when they are produced in line with the original products. Excessive protection of trademark rights may hinder free competition, therefore it is important to protect these rights in a balanced manner.

In conclusion, the importance of spare parts in competition law is crucial for the healthy functioning of market dynamics, increasing social welfare and promoting innovation. Competition law provides regulatory mechanisms to promote fair competition in spare parts markets and prevent market distortions.

### A. Competitive Concerns Arising from Anti-Competitive Agreements

Art. 4 of Law No. 4054, states that *"Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited."*. Not every agreement and concerted practice made under this Article will constitute a violation of Law No. 4054. This is because the article also has an exemption regime. The exemption regime is of two types, individual or block, and is regulated in Art. 5 of Law No. 4054.

Horizontal agreements, agreements to restrict the supply of a spare part by competitors of equal level, agreements on price determination can be evaluated within this scope.[291] Vertical agreements, on the other hand, may appear in the form of preventing the production of the input automotive product, since spare parts are mostly aftermarket, or in the maintenance and repair market, where the manufacturer has a vertical relationship due to the need.[292]

Information exchange between competitors is also undesirable in terms of competition law. In the context of Information Exchange, in May 2012, the SAIC approved the imposition of fines on five companies operating in the wholesale market of automobile spare parts for engaging in a collective boycott of their customers operating

[291] **TCA,** Guıdelines On Horizontal Cooperation Agreements, accessed December 13, 2025, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.rekabet.gov.tr/Dosya/guidelines/7-pdf.

[292] **TCA**, Guidelines On Vertical Agreements, accessed December 13, 2025, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.rekabet.gov.tr/Dosya/guidelines-on-vertical-agreements-20231123140524385.pdf.

in the retail market of automobile spare parts and for exchanging information regarding discount levels and other future actions towards a specific customer.[293]

The design protection of the visible and appearance-related parts of the vehicle has been mentioned above. Since the invisible parts of the vehicle are not protected under design law, when spare parts such as engine, spark plugs, etc. are specific to a certain vehicle model, infringement arising from dominant position abuse in competition law may arise. However, in the case of alternative parts for invisible parts that can be used in all kinds of vehicles, there may be no violation of competition.

According to Çelebi[294], the protection of must match part designs will mean the protection of the product and will result in the design owner obtaining a monopoly over the product. Çelebi stated that this situation would cause the consumer, who has no freedom of choice in terms of price, quality and materials used, to be dependent on the manufacturer of the combined product in order not to spoil the appearance of the product. As stated by Çelebi, this situation, which causes the restriction of consumer preferences, may constitute a violation of competition according to competition law. In this thesis, it is planned to examine this situation from the perspective of competition law.

### 1. Evaluation of Subcontracting Agreements

In the event that spare parts are produced on a subcontract basis while creating a combined product, there will be no problem within the scope of IP infringement since a contractual license is granted.[295] At this point, it is important to highlight that the

[293] Decision of the Supreme Administrative Court, Case No. 1429.

[294] **Fatma Betül ÇAKIR ÇELEBİ**, "Tasarım Hukukunda Eşdeğer Parça İstisnası", p. 28.

[295] **Cahit SULUK,** "Yedek Parça Tasarımların Korunması ya da Otomotiv Yan Sanayiinin Var Olma Mücadelesi", p. 5.

utilization of the registered the use of the registered trademark and logo of the motor vehicle manufacturer by OEMs on spare parts supplied to the manufacturer may raise considerations related to contract manufacturing. As a matter of fact, the use of the registered trademark and logo of the motor vehicle manufacturer will only be possible if this manufacturer provides a license right to the OEM. In this regard, in paragraph 5 of the Guidelines on Certain Subcontracting Agreements Between Non-competitors, it is stated that the technology and equipment to be provided to the business owner will not be contrary to Art. 4 of the Law No. 4054 in cases where it is necessary for the realization of the work, and in the following paragraph, it is stated that the IPRs of the business owner can be evaluated within this scope. Accordingly, the supply of spare parts outsourced by the motor vehicle manufacturer to the OEM to third parties may be restricted.

**2. Evaluation of Technology Transfer Agreements**

Under Art. 4, one of the types of agreements that may be considered as infringement is licensing agreements. Licensing agreements may be horizontal or vertical depending on the concrete situation. For example, a vertical agreement may be considered between an inventor (licensor) and a manufacturer (licensee), i.e. between undertakings operating in different production or distribution channels, and a horizontal agreement may be considered if the licensor and licensee work in a similar market and could potentially be rivals.

Licensing of IPRs is generally considered by the EU Commission as a tool to strengthen competition, as licensing increases the remuneration of right holders for their

creative work, while encouraging other parties to invest in R&D.[296] Thus, competition law promotes innovation by increasing market efficiency, and innovation strengthens competition. Recognizing the advantages of IP licensing, the block exemption applies to technology transfer agreements.[297] In general, the possibilities to obtain exemptions for technology transfer and IP licensing agreements have been further expanded, Patent, know how and hybrid patent know how licenses are fully covered by a single technology transfer block exemption.[298] Restrictions in license agreements can be used as a vehicle for prohibited cartel practices such as price fixing, market division or production restrictions. Such practices may aim to effectively exclude competitors from the technology or from products using the licensed technology, leading to higher prices and hence harm to consumers, which can sometimes result in licensing processes appearing as an abuse of IPRs.[299]

### B. Competitive Concerns Arising from Abuse of Dominant Position

According to the United Brands[300] ruling, a dominant position denotes an economic strength that permits a company to restrict effective competition within the relevant

[296] **OECD,** Licensing of IP Rights and Competition Law, 2019, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/04/licensing-of-ip-rights-and-competition-law_20595b8f/6a74221e-en.pdf.

[297] EU Technology Licensing Agreements, accessed March 19, 2025, https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/ttber_en.

[298] Technology Licensing Agreements.

[299] Such practices are defined as "hardcore restrictions" under the TTBER.

[300] Judgment of the Court of 14 February 1978. United Brands Company and United Brands Continentaal BV v Commission of the European Communities. Chiquita Bananas. Case 27/76. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61976CJ0027.

market, enabling it to act autonomously from its competitors, customers, and ultimately, consumers. Since Art. 6 is designed to prevent monopolistic or near-monopolistic companies from abusing such dominance, it holds significant importance in the context of IPRs.

An IPR does not directly indicate that the right holder's position in the market will be dominant. Therefore, in this case, an assessment should be made as to whether it is in a dominant position. In dominant position assessments, it is important to first identify the relevant product market. A tightly defined product market can make holding an IPR a significant factor in establishing dominance, since the limited availability of alternatives is often a result of the IPR.

In the automotive sector, this is important for markets defined mostly for spare parts. In this case, when defining the market, the existence of substitute goods to the IP-protected good in the market will be taken into account. However, considering the fact that the spare part may differ according to each vehicle specific to the brand, it would be usual not to find a product that can be substituted for the spare part protected by the design in the market. Even though spare parts generally have the same physical characteristics as the original parts they replace, the approach has been adopted that spare parts represent an independent product market. This is due to the fact that the competitive dynamics in the spare parts market differ from those prevailing in the original parts market. The difference in competitive conditions arises from the fact that the buyers of original parts are only the enterprises that will use this good in their production, while the buyers of spare parts are different enterprises that perform service and warranty services after the original product leaves the factory, and thus the demand structure of spare parts and

original parts is different.[301] As a result, the market will be defined in terms of the spare part protected by the IPR, and since the rights holder will occupy a dominant position within the relevant market. The subsidiary industry will not produce the product under IP protection due to the exclusive authorization granted by the IP right, the competitive environment in the market will be damaged and will cause an entry barrier in the relevant market.

Advocate General Mischo observed in both *Volvo v. Veng* and *CICRA and Maxicar v. Renault* that this scenario demonstrates how the right holder attains a de facto monopoly by effectively excluding competitors through the exercise of IPRs. He suggested that holding such rights may inherently imply a dominant position, as the enforcement of the right can prevent consumers from accessing substitute products to those protected by the IPR.[302] The Commission further highlights that the mere acquisition of an exclusive license by a company holding a dominant market position does not, in itself, constitute an abuse of that dominance. Instead, the application of this provision requires consideration of the surrounding circumstances, particularly the impact on the competitive structure within the relevant market. In the *Tetrapak I* case, the decisive factor for determining abuse was the undertaking's market position combined with the fact that the licensed patent was the sole means for any competitor to effectively challenge Tetra Pak in the aseptic milk packaging sector. As a result, Tetra Pak's purchase of

[301] **Sinan Ülgen,** "Avrupa Birliği'nde Hakim Durumun Kötüye Kullanılması", *TÜSİAD*-T/98-12/247, Aralık 1998, accessed January 17, 2025, https://tusiad.org/tr/tum/item/download/1747_66a218339e19903ca303e01678814dcd.

[302] **Agneta Krützén**, "Abuse of Intellectual Property Rights Under EC Law -With Special Emphasis On Abuse of a Dominant Position", p.41.

Liquipak, along with the exclusive license, effectively removed all competition in the relevant market.[303]

Generally, undertakings holding a dominant position are entitled to conduct their business in any manner that maximizes profit and reinforces their market standing, provided that they employ only those methods necessary to achieve legitimate objectives without disproportionately restricting competition. Furthermore, the lawful exercise of rights in one market may become unlawful if it produces adverse competitive effects in a related market, a phenomenon often attributed to the leveraging of dominance from the primary market to subsequent markets.

Specifically, exclusive rights over visible spare parts can result in a monopoly within the spare parts repair market, potentially leading to increased prices and diminished consumer welfare. According to Charles de Haas[304], solutions in positive law that aim to deny both design rights over these parts and competition law are insufficient. In competition law, the ownership of the right to spare parts may be encountered in cases such as tying in abuse of dominant position or refusal to contract/refusal to supply. For example, in the Deutz decision, the Competition Board conducted an investigation with the allegations that Deutz abused its dominance in the IC3 train spare parts market[305]. In

[303] Tetra Pak I OJ (1988) L 272/27, (1988) 4 CMLR881.

[304] **Elsa Haïm,** L'articulation des droits de propriété intellectuelle et du droit de la concurrence, Pascale TRÉFIGNY (ed), November 2020, Concurrences N° 4-2020, Art. N° 97383, p. 278.

[305] *See* Danish Maritime and Commercial High Court: Deutz and Diesel Motor Nordic infringed competition legislation by preventing the supply of spare parts for the IC3-trains (kfst.dk), https://www.en.kfst.dk/nyheder/kfst/english/judgements/20210111-danish-maritime-and-commercial-high-court-deutz-and-diesel-motor-nordic-infringed-competition-legislation-by-preventing-the-supply-of-spare-parts-for-the-ic3-trains

2021, the Maritime and Commercial High Court ruled that Deutz had infringed upon its dominant market position by withholding the supply of engine spare parts for IC3 trains. Furthermore, the court found that Deutz and Diesel Motor Nordic had collectively entered into an anti-competitive agreement aimed at obstructing the importation of spare parts. According to the decision, Deutz prevented Danish State Railways (DSB) from supplying spare parts for the replacement of 404 Deutz engines in IC3 trains owned by DSB, by blocking supplies to subcontractors outside Deutz's exclusive dealer network. The case started in 2010, when DSB tried to reach an agreement with Deutz and Diesel Motor Nordic for the refurbishment of engines. DSB was unable to accept the price and conditions offered and instead reached an agreement with a consortium of four smaller companies. Although the consortium intended to procure spare parts necessary for the restoration of the IC3 trains, Deutz and Diesel Motor Nordic sought to obstruct the supply of parts exclusively available through Deutz by refusing to provide them and by impeding parallel trade. Their objective was to hinder the consortium's ability to fulfill its contract with DSB, thereby compelling the consortium to purchase the parts at a higher price from Deutz's authorized distributor in Denmark, Diesel Motor Nordic.[306] As can be seen from this case, spare parts right holders dominate the market due to their exclusive rights and have the function of making the market dysfunctional.

[306] Caroline Heide-Jørgensen, "Denmark: An Overview of Competition Law Rules", May 2023, Concurrences N° 2-2023, Art. N° 112187, accessed September 12, 2025, https://www.concurrences.com/en/review/issues/no-2-2023/international/denmark-an-overview-of-competition-law-rules.

In the EU, CJEU, in its judgments 'CICRA/Régie Renault'[307] and 'Volvo/Veng'[308], citing the reasons given in the Keurkoop/Nancy Kean Gifts[309] judgement, stated that the protection provided by national law in relation to design rights in spare parts creates a significant problem, and that a breach of Art. 82 of the European Community Treaty can occur neither in the exercise of these rights nor in their importation, due to the safeguards provided by national law. For this, the exercise of this right must also constitute an abuse of dominant position. If that were the case, it would not be considered a breach of Art. 82 of the European Community Agreement. Consequently, it is concluded that the car manufacturer cannot be compelled to transfer the license rights for spare parts in this situation.[310] In other words, refraining from granting the licence right is not per se contrary to the agreement. [311] Chapter 3 will offer a deeper examination of this decision.

There are many industries where the consumer of a product, for example an automobile, needs to purchase complementary products such as spare parts at a later date. A similar situation may arise when a customer must buy consumables, like cartridges for a laser printer, or maintenance services. In such cases, it is necessary "*to determine how*

[307] Case 53/87 Judgment of 05.10.1988, CICRA and others / Renault (Rec.1988,p.6039).

[308] Case 238/87 Judgment of 05.10.1988, Volvo / Veng (Rec.1988,p.6211).

[309] The holder of an exclusive right cannot rely on it if the import or marketing prohibition from which it seeks to benefit is linked to an agreement or practice restricting competition within the Community (paragraphs 24 to 27 of the Keurkoop v Nancy Kean Gifts decision cited above).

[310] Case 238/87 Judgment of 05.10.1988, Volvo / Veng (Rec.1988,p.6211), therefore not forced to issue a license.

[311] **Serdar Nart**, "Rekabetin Korunması Kapsamında Fikrî ve Sınaî Hakların Sınırları", *Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü Dergisi,* 1, (2009), p.113-146.

*the relevant product market should be defined*". [312] The market may be defined by brand, or it may not be defined by brand, as other brands of products and services may be used in the case of substitutes. In some cases, if the consumer can replace the primary product when the price of the product in the secondary market increases, then the secondary market will not be separately defined and there will be a single market.

The undertaking that owns the brand of the main product is usually in a strong position due to its IPRs, brand image, guarantee, know-how. If the manufacturer of the primary product holds a dominant position in the primary market, it may also be deemed dominant in the secondary market. However, if the primary product's manufacturer lacks dominance, its status in the secondary market must be independently assessed. In cases where a distinct market exists for the complementary product, an undertaking without power in the primary market may still exercise dominance in the secondary market. According to Law No. 4054, establishing dominance requires the ability to act independently of competitors and customers. If producers are aware that raising prices will lead to a reduction in their customer base, thereby constraining their pricing decisions, it indicates that they cannot act independently from customers and, consequently, may not be considered dominant.

CJEU in Hugin v Commission [313], Hugin was found to "*have abused its dominant position by refusing to provide spare parts for the cash registers it manufactured and by prohibiting itself, its affiliates, and distributors within the community from selling spare*

[312] Rekabet Politikaları ve Ekonomi Gücü: Pazar Tanımı ve Gücü: Yedek parçalar ve İkincil Pazar: See *Bishop and Walker*, paras 4.045–4.046 and 6.020–6.046; this issue often arises in cases concerning alleged 'tie-in transactions', as to which see ch 17, 'Tying', in Whish. pp 688–696.

[313] Case 22/78 (1979) ECR 1869, (1979) 3 CMLR 345; the Commission's decision was quashed in this case as it had failed to establish the necessary effect on inter-state trade.

*parts to businesses outside the authorized distribution network".* Although the products were not protected by IPRs, Hugin's conduct resembled that of an IPR holder, effectively granting the company a monopolistic status. The Commission's determination that Hugin held a dominant position in the "market for spare parts for its cash" registers was upheld. Liptons, a service provider for Hugin's machines, was unable to utilize spare parts produced by third parties due to Hugin's ability to prevent such use through rights under the UK Design Copyright Act 1968. As a result, although a broad market for spare parts was present, the relevant market needed to be defined narrowly to capture Liptons' particular application. Liptons was effectively 'locked in' due to its dependence on Hugin, justifying this narrower market delineation. This case, along with the CJEU rulings in EU Volvo v Erik Veng[314] and CICRA v Régie Nationale des Usines Renault[315], illustrates that spare parts may form a distinct market separate from the primary products required.[316]

As outlined in the *Maxicar Renault* ruling, the "relevant market" for owners of a specific vehicle brand encompasses the market for body parts sold by the vehicle manufacturer or interchangeable parts that serve as copies. Within competition law, accurately defining the spare parts market as a relevant market and analyzing the competitive dynamics therein is essential. Such analyses facilitate a deeper understanding of market structure and competitive conditions, enabling appropriate regulatory

[314] Case 238/87 (1988) ECR 6211, (1989) 4 CMLR 122.

[315] Case 53/87 (1988) ECR 6039, (1990) 4 CMLR 265.

[316] Whish and Bailey, "Competition Law", p. 37. Moreover, unlike Hugin, in defining the market in the Hilti decision, "the users of the guns participate directly in the market as purchasers of the nails, and it does not matter whether the purchasers of the nails are a separate group from the purchasers of the guns." The assessment is included.

interventions when necessary. The relationship between spare parts and their corresponding main products significantly influences market definitions and competition assessments, which are therefore pivotal for the effective application of competition law.

Vehicles require the use of identical components -such as body panels, doors, bumpers, and fenders- which cannot be substituted without infringing on design rights protecting the particular shapes. Because no substitutes are available, the owner of the design right generally has dominance in the relevant market. Therefore, the market is limited exclusively to the part protected by that design right. Reflecting this specificity, the Commission tends to define the product market for automobile spare parts narrowly, acknowledging the distinct consumer demand for particular spare parts.[317]

**1. Potential for Registrations to Create Barriers to Market Entry**

Established incumbents in the automotive industry, along with their IPRs, present significant barriers to market entry. Notably, automakers holding substantial market shares -primarily within the internal combustion engine (ICE) vehicle segment- utilize their revenues to allocate resources toward research and development concerning electric mobility technologies. However, the cohort of leading innovators in this field does not fully coincide with the dominant ICE vehicle manufacturers, indicating that not all incumbents are actively pursuing the forthcoming technological transition or are investing concurrently. Geographically, patent activity is predominantly concentrated in Asia, accounting for approximately 70% of patent filings. This regional concentration reflects a long-standing specialization, driven by the availability of natural resources and low-cost labor, which collectively attract major industry players to this area.[318] This suggests

[317] Volvo Veng Case.

[318] **Lorenzo Biancolini**, "Patent Landscape Analysis of Batteries for Electric Cars", p.66.

that Chinese actors operating in the Turkish market may also contribute to the creation of additional entry barriers. Although ownership of patents, trademarks, and other IPRs does not inherently confer dominance, these rights can nonetheless constitute significant barriers to entry depending on their scope, strength, and duration.[319]

In Tetra Pak 1[320] (BTG License), Tetra Pak's acquisition of a company benefiting from an exclusive patent and know-how license was considered a factor indicating a dominant position, since it complicated market entry for firms without access to the "licensed technology". In Hugin v Commission[321], CJEU, appears to have acknowledged that Hugin held a dominant position in the "spare parts market for its cash registers", as competing firms were deterred from manufacturing spare parts due to the risk of litigation under the UK Design Copyright Act 1968. Additional evident legal entry barriers include government licensing obligations, zoning or planning restrictions, and state control over radio signals[322], legal monopoly power[323] and tariffs and non-tariff barriers.[324]

[319] See eg *Eurofix- Bauco v Hilti* OJ [1988] L 65/19, [1989] 4 CMLR 677, par. 66.

[320] OJ [1988] L 272/27, [1988] 4 CMLR 881, para 44, upheld on appeal Case T- 51/89 *Tetra Pak Rausing SA v Commission* [1990] ECR II- 309, [1991] 4 CMLR 334.

[321] Case 22/78 (1979) ECR 1869, [1979] 3 CMLR 345.

[322] *Decca Navigator System* OJ (1989) L 43/27, (1990) 4 CMLR 627

[323] Case 311/84 *Centre Belge d'Etudes de Marché Télémarketing v CLT* (1985) ECR 3261, (1986) 2 CMLR 558; see Marenco 'Legal Monopolies in the case law of the Court of Justice of the European Communities' (1991) Fordham Corp L Inst (ed Hawk), pp 197–222.

[324] Whish and Bailey, "Competition Law", p. 172.

Under Art. 102, the critical factor is not the size of the undertaking but rather its market power. Since the relevant market can be narrowly defined, even small firms may be subject to sanctions for abusing a dominant position.[325].

Abuse of a dominant position can manifest in various forms. In one case involving allegations of such abuse, SPGPrints Baskı Sistemleri Tic. Ltd. Şti. was found to have exploited its dominant position in the market for maintenance and repair of laser engraving machines by implementing a password restriction; however, the preliminary investigation was closed following the company's commitment to remedy the issue. In a separate case, it was alleged that V.O.S.S.[326], the exclusive authorized distributor of Varian Medical Systems Inc. in Turkey, breached Art. 6 of Law No. 4054 by exploiting its dominant position in the market for the maintenance and repair of Varian-brand linear accelerator systems and associated support equipment. In another case alleging infringement of two articles of Law No. 4054, it is alleged that BP Petrolleri AŞ did not supply Castrol brand lubricants to İstanbul Otomotiv Hizmetleri İthalat İhracat San. ve Tic. AŞ, which operates as an authorised service of Borusan Otomotiv, but supplied them to all other Borusan Otomotiv authorised services, thereby violating Articles 4 and 6 of Law No. 4054. In another file, which was also examined in terms of two articles of Law No. 4054, there is an allegation that MICHELIN Lastikleri Ticaret AŞ imposed sales restrictions on dealers, determined the resale price and conditions, and excluded dealers

[325] BBI/Boosey and Hawkes provides a vivid example of the vulnerability of small firms under Article 102, where Boosey and Hawkes was found by the Commission to have abused its dominant position when it refused to supply musical instruments to customers threatening to compete with it in the market defined as instruments for British-style brass bands. The market was defined as instruments for English-style brass bands.

[326] VARİNAK Onkoloji Sistemleri Satış ve Servis AŞ.

working with competitors from the market. It is alleged that BILSING Automation Tic. Ltd. Şti. allegedly abused its dominant position through predatory pricing. The allegation that İncekaralar Tıbbi Cihazlar Ticaret AŞ, the sole authorised distributor of lllumina Inc. based in the United States of America in Turkey, abused its dominant position by overpricing reagent kits used in Miseq devices, GE Jenbacher GmbH&Co OHG and Topkapı Endüstri Malları Tic. A.Ş. refused to provide after-sales "maintenance and repair services and to supply spare parts", Türk Philips Ticaret A.Ş. allegedly violated Art. 6 of Law No. 4054, only Castrol branded oils are used in Volkswagen authorised services and the relevant oils are not sold separately in the market, and Valvoline branded oil is not allowed to be used even though it is approved by Volkswagen and brought by the customer.

### 2. Evaluation within the Scope of Tying Practices

The Commission discusses the 'objective necessity' requirement of indispensability in par. 83 of its Guidelines on Art. 102 Implementation Priorities. Paragraph 83 cites the Magill, Bronner, and Microsoft rulings, highlighting that the primary factor in assessing whether an input is essential is the likelihood of rivals being able to replicate it in the near future. Duplication refers to the establishment of an alternative efficient supply source that would enable competitors to exert competitive pressure on the dominant firm in the downstream market. In the case where Hilti, a manufacturer of "nail guns, nails, and cartridge strips", was found to have abused its dominant position, the Commission concluded that Hilti engaged in abusive tying practices by leveraging its patent-protected nail guns and copyright-protected cartridge strips. Specifically, Hilti restricted market entry for new producers of compatible nails by imposing disproportionately high royalties on independent nail manufacturers seeking licenses for cartridge strips. Although Hilti justified this practice as a measure to ensure machine safety, the court held that such

safety concerns should be addressed through legal and regulatory frameworks rather than through unilateral actions by independent nail gun manufacturers.[327]

One justification for tying is to enable manufacturers to engage in price discrimination among customers. For instance, a photocopier manufacturer may seek to charge heavy users a higher amount than light users by tying the sale of copy paper to the use of the machine; this method effectively replaces the need for a usage meter, as customers who utilize the machine more extensively incur greater costs. Another example of a potentially efficiency-enhancing tying practice occurs when a company produces game consoles alongside software that functions exclusively on those consoles. As consumer adoption of a particular console increases, software developers are incentivized to create more compatible games, which can, over time, boost console sales and ultimately lower prices. In this context, network effects generate efficiencies that provide tangible benefits to consumers.[328]

### 3. Evaluation within the Scope of Refusal to Contract

Unilateral refuse to deal practices are evaluated under Art. 6 of Law No. 4054. According to the TCA's Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings, it is recognized that all enterprises, regardless of whether they hold a dominant position, possess the right to freely select their business partners and to manage their assets at their discretion. This right extends to intangible business assets and information, irrespective of whether such assets are protected by IPRs. However, in some exceptional cases, the refusal of dominant undertakings to conclude contracts may be considered as anticompetitive behavior and the dominant undertaking

[327] *Eurofix- Bauco v Hilti* OJ [1988] L 65/19, [1989] 4 CMLR 677.

[328] Whish and Bailey, "Competition Law", p. 690.

may be obliged to conclude contracts under competition law. Such an obligation carries the risk of leading to a decrease in the incentives for investment and innovation of both the dominant undertaking and other undertakings, and of unfavorable consequences for consumers in the long run, by causing undertakings not to be rewarded for their investments and innovations.[329] Accordingly, in evaluating the immediate and long-term impacts of this obligation, the Board looks for three conditions to establish a violation:

First, there must be a refusal of "a product or service that is indispensable" to compete in the downstream market. This is the case "where there is no existing or potential substitute in the downstream market" for the element that is the subject of the competitors' contractual claim to compensate for the negative consequences of the refusal, at least in the long term.

If it is determined that the element subject to the refusal satisfies the indispensability condition, it is assessed whether the refusal to contract by the dominant undertaking is likely to "lead to the elimination of effective competition in the downstream market", either immediately or over time.

Finally, it assesses "whether the refusal is likely to cause consumer" detriment. In this assessment stage, it is examined whether the adverse consequences for consumers of refusing to enter into a contract in the relevant market will be greater than the adverse consequences of the imposition of an obligation to enter into a contract over time.[330]

[329] **TCA,** Guidelines On The Assessment Of Exclusionary Abusive Conduct By Dominant Undertakings 35. and 36. par.

[330] **TCA,** Guidelines On The Assessment Of Exclusionary Abusive Conduct By Dominant Undertakings 44.,46. and 47.par.

As can be seen, the Competition Authority evaluates many effects together in order not to restrict the freedom to contract in order to determine that the Law has been violated due to the refuse to deal. In the event that a third party refuses the license request of the patent owner who wants to benefit from the protection of the patent right, making licensing compulsory is to impose an obligation on the patent owner to conclude the license agreement, in other words, to force the patent owner to conclude a contract with the third party. Based on the definition of the relevant market is defined, spare parts needed to repair a particular product may be considered indispensable[331].[332]

Otherwise, in cases where market entry requires great costs, undertakings may incur losses due to both the budget to be allocated to innovation and the cost of entry as an obstacle to market entry. It is important to ensure the welfare of consumers as well as undertakings and to keep this in balance. For a refusal to supply to qualify as an abuse, it must involve an indispensable facility or input and also lead to the suppression of effective competition in a neighboring market. Of course, whether a refusal eliminates "effective competition in an neighboring market" depends on how that adjacent market is defined. In the case of innovation platforms, so-called aftermarkets play a central role. Aftermarkets are markets for products to be used in connection with a durable good that has already been acquired ('primary market'). The aftermarket product 'is usually a consumable, it may be hardware and software, but it may also consist of a complementary product for use in connection with a primary product'.

[331] See Case 22/78 *Hugin Kassaregister v Commission* [1979] ECR 1869, [1979] 3 CMLR 345; the Commission's decision in this case finding an abusive refusal to supply was annulled by the Court of Justice as it had failed to demonstrate an effect on trade between Member States: see ch 3, 'The Effect on Trade between Member States', pp 144–149

[332] **Whish and Bailey**, "Competition Law", p. 706.

Aftermarkets generally emerge in competition law cases when they are "registered," meaning they consist of brand-specific secondary products that are compatible with one brand of primary product but not with competing brands, despite the substitutability of the primary products themselves. A common point of contention arises when the supplier of the primary product attempts to monopolize the secondary market for its own benefit. In defining secondary markets, as in primary markets, substitution is important. Secondary markets are characterized by the fact that substitution has to be tested in both secondary and primary markets. The spare parts market for primary products of a specific brand may not constitute a distinct relevant market under two conditions: first, if consumers can switch to spare parts manufactured by alternative producers; and second, if users are capable of switching to a different primary product to circumvent price increases in the spare parts market.

Digital ecosystems are usually composed of several layers, primarily hardware and software. First, the software can form a side market of that hardware. In the Google Android case, for example, the EC found that the two main mobile ecosystems - the Android operating system and iOS - operate in different markets. It then defined an ecosystem-specific ancillary market for 'app stores for Android devices'. The innovation platforms at the center of these ecosystems, namely Google and Apple, have almost complete control over competition in these ancillary markets.[333]

### 4. Exclusionary Pricing Practices: Overpricing and Secondary Markets

[333] **Friso Bostoen**, "Abuse Of Platform Power - Leveraging Conduct In Digital Markets Under Eu Competition Law And Beyond", accessed April 23, 2025, https://www.concurrences.com/en/livre/abuse-of-platform-power-leveraging-conduct-in-digital-markets-under-eu-1354#id=111334&search=[T]he%20spare%20parts%20market&phrase=true.

There are questions as to whether system competition between OEMs will be sufficient to address potential competitive problems. It would be possible for an OEM to engage in an exclusionary practice through discriminatory access or through tying practices, which have already been observed. It is also possible for an OEM to favour itself or another undertaking in terms of pre-loaded applications and complementary services defined to the ecosystem of the vehicle it produces.[334] The CJEU decided that while a car manufacturer can deny licenses to third parties for producing spare parts, charging excessively high prices for the parts it manufactures could constitute an abuse of its dominant position.[335] Although customers may seem to be 'locked in' to the manufacturer's spare parts, the original vehicle will inevitably require replacement. Excessively high spare parts prices may deter potential new car buyers from purchasing from the same manufacturer, which in turn may discourage manufacturers from setting disproportionately high prices for spare parts initially.

Generally, IPR holders have the authority to control the use of their rights, and compulsory licensing should be reserved for exceptional circumstances.

Regarding the Renault and Volvo cases, third parties sought licenses to use car manufacturers' IPRs for producing spare parts and argued that refusal to grant such licenses constituted an abuse of dominant position under Art. 102. In *Volvo Erik Veng*, Advocate General Mischo observed that spare parts pricing significantly influences consumer choices when purchasing vehicles. If spare parts are deemed excessively

[334] **Bertin Martens , Frank Mueller-Langer,** "Access to Digital Car Data and Competition in Aftermarket Maintenance Services", *Journal of Competition Law & Economics*, 16(1) (2020), p.116-141, accessed April 16, 2025, https://academic.oup.com/jcle/article/16/1/116/5811545.

[335] Case 53/87 *CICRA v Renault* [1988] ECR 6039, [1990] 4 CMLR 265; Case 238/87 *AB Volvo v Erik Veng* [1988] ECR 6211, [1989] 4 CMLR 122.

expensive, consumers might opt for alternative brands with more affordable parts. Consequently, he concluded that the relevant market could not be narrowly defined as the general automobile spare parts market or more broadly as the entire market for motor vehicle production and maintenance. The judgment also stated that a manufacturer may maintain a dominant position without possessing the IPR, for example, by making warranties dependent on the use of genuine parts regulated by the manufacturer.

Moreover, in paragraph 8 of the Volvo case, the Court confirmed that the core of the exclusive right lies in the proprietor's ability to prohibit unauthorized production, sale, or importation of products featuring the protected design. The Court determined that forcing the proprietor of a protected design to license it to third parties, even with a fair royalty, would essentially strip the owner of the fundamental aspect of their exclusive right. Therefore, simply refusing to grant such a license does not constitute an abuse of a dominant position. Nevertheless, the Court also observed that a car manufacturer could be deemed to have abused its dominant position if it acts by unjustifiably refusing to supply spare parts to independent repairers, setting unfair prices[336] for spare parts, or discontinuing the production of spare parts for vehicle models still in operation. [337]

The issue of excessive pricing, as identified in the *Hilti* decision, may once again raise competition concerns within the automotive sector. In that case, Hilti was found to have refused to voluntarily license the use of its cartridge strips and, when compelled to grant such licenses, imposed fees six times higher than a reasonable rate. Hilti's selective

[336] In Case T- 198/98 *Micro Leader Business v Commission* [1999] ECR II- 3989, [2000] 4 CMLR 886 the General Court held that the Commission, before rejecting a complaint against Microsoft concerning the exercise of its copyright protection, should have investigated whether its prices were discriminatory contrary to Article 102(2)(c): ibid, paras 49–59

[337] Whish and Bailey, "Competition Law", p. 797

and discriminatory practices toward "its competitors and their customers were deemed unjustifiable", given the special responsibility that accompanies a dominant market position.[338]

### 5. Evaluation within the Scope of Predatory Pricing

In Tetrapak II, the Commission determined that Tetra Pak priced non-aseptic cartons in Italy from 1976 to 1981 well below average variable costs.[339]. Additionally, it ruled that proving an intent to eliminate competitors was not required, as had been clarified earlier in the AKZO case. According to this precedent, pricing below average variable costs constitutes an abuse in itself, rendering proof of the undertaking's intent to exclude rivals unnecessary.

Applied to the spare parts sector, if a dominant manufacturer of vehicle spare parts -such as body panels, electronic components, or even embedded vehicle software- sells these products below average variable costs, this would amount to an abuse under competition law without the need to prove exclusionary intent. This is particularly relevant where access to such spare parts is essential for independent repairers to compete effectively, as below-cost pricing could undermine the viability of alternative supply channels and reduce consumer choice in the aftermarket.

## C. Evaluation Within The Scope Of Ancillary Restrictions In Mergers And Acquisitions

[338] *Eurofix- Bauco v Hilti* OJ [1988] L 65/19, [1989] 4 CMLR 677.

[339] Average variable cost is the variable cost per unit incurred by an enterprise in a given period. In a pricing policy below variable cost, the enterprise will make a loss for each product sold.

In the case reviewed by the Board concerning the acquisition of 51% stake in Vateks[340], it was determined that the "Non-Competition Agreement" relating to IPRs—including trademarks, patents, and know-how— stipulated by the parties complies with the established criteria for ancillary restraints under Community competition law. Accordingly, the agreement was deemed to constitute an ancillary restraint that is permissible within the scope of the transaction.[341] Accordingly, IPRs may serve as ancillary restraints in the context of non-competition agreements. In 1998, Procter & Gamble (P&G) Korea notified the Korea Fair Trade Commission (KFTC) of its acquisition of shares in Ssangyong Paper.

Given the substantial barriers to entry in this market—particularly regarding initial capital investment and technological requirements—the KFTC approved the merger on the condition that Ssangyong Paper transfer all relevant machinery and industrial property rights (including 24 trademarks, 7 patents, 9 utility models, and 2 design rights) to a third party within one year of the merger's completion.[342]

[340] Vateks Tekstil San. A.Ş. by PGI Nonwovens B.V.

[341] TCA's Decision dated 03.03.1999 and numbered 99-12/94-36.

[342] 2004 OECD Intellectual Property Rights Series Roundtables on Competition Policy.

# CHAPTER THREE

# EU AND TURKISH APPROACHES TO DESIGN RIGHTS AND COMPETITION LAW IN THE AUTOMOTIVE SECTOR

## I. The Relationship Between Design Rights And Competition In The Automotive Sector In EU

### A. The Relationship Between Design and Competition In EU

The protection of designs for component parts used in repairing complex products has historically created major obstacles to competition in the crucial spare parts market, while simultaneously hindering progress toward environmental sustainability and the development of a circular economy. Legal barriers—arising from copyright, design, trademark protection, and software-related restrictions—have created pressing concerns in Europe by limiting the independent production and sale of spare parts. Among the various IP regimes, design law stands out as the first to directly address access to and repair of spare parts through a specific exception known as the "repair clause."

The extent of design protection for spare parts has been a debated and unresolved matter in EU IPL for many years. Ongoing efforts to find compromise reflect the tension between the European Union's economic policy -focused on market liberalization and avoiding competitive distortion- and the national economic interests of individual Member States. Established in 2002 within the framework of the EU's harmonized design system, the repair clause limits the enforcement of Community design rights when component parts are utilized exclusively to reinstate the original appearance of complex products, thus protecting the competitive dynamics of the spare parts aftermarket. Pursuant to the decision of the French Competition Authority dated 30 June 2011, number 11-SOA-01, and within the framework of ex officio proceedings, the French Competition

Authority decided to examine the functioning of competition in the car repair and maintenance and spare parts production and distribution sectors and to issue an opinion. Despite these efforts, consensus on this clause has not yet been achieved at the national level. Currently, initiatives to reform European design law are increasingly acknowledging that the existing situation is untenable, and that the repair clause should be made compulsory in all Member States.[343] The updated Design Directive has established a compulsory restriction on design rights across all EU Member States by incorporating the repair clause. As emphasized by the CJEU in the *Acacia* decision, the objective of this clause is to prevent consumers who have invested in durable and often expensive products from becoming indefinitely dependent on the original manufacturer for repairs.

The issue at stake extends beyond mere access to spare parts supplied by the original producer; it also concerns the availability of alternative components from independent sources. This is particularly important for older models of complex products, where wear and tear heightens the importance of cost-effective spare parts. In line with circular economy principles, ensuring access to both original and non-original spare parts is essential. The environmental imperative further supports this competitive approach, linking the right to repair with sustainability goals. Acknowledging these priorities, the European Commission has included the reform of EU design law in its broader strategy for advancing the green economy.

Nonetheless, as illustrated in the Ford case, the repair clause established in design law cannot be similarly applied to trademark law. This is attributable to the presence of a unified framework of EU trademark law, which includes a comprehensive list of

[343] **Tischner, A., & Stasiuk, K.**. "Spare Parts, Repairs, Trade Marks and Consumer Understanding", p.33.

exceptions that national courts are not permitted to extend. Consequently, trademarks that are integrated into the design of a spare part cannot be reproduced without the permission of the trademark owner, even if their inclusion is essential for restoring the original appearance of the complex product.

In *Acacia*, the CJEU further clarified that the restoration of a "complex product's original appearance" can only be achieved using "parts that are visually identical to the originals". A lack of such identity excludes the part from "the scope of the repair clause". Any deviation—such as the inclusion of a different mark or the removal of the original—can diminish the part's effectiveness. While *Acacia* stops short of offering a comprehensive solution, it lays out specific conditions for invoking the repair clause.

Manufacturers or suppliers seeking to benefit from this limitation must ensure that all downstream users strictly adhere to these conditions. This includes providing explicit, visible notice that the part reproduces a protected design solely for the purpose of repair and restoration. Such information must appear clearly on packaging, in catalogs, and within commercial documentation. This framework sets a standard of good faith in the spare parts market and justifies the use of trademarks where necessary to fulfill the functional role of the replacement part.

If a spare part bearing a trademark is clearly identified as not originating from the trademark owner and no affiliation exists between the producer and the rights holder, trademark infringement does not arise. As noted by Annette Kur, the "function theory" of trademarks offers a conceptual framework encompassing all roles that trademarks play in competitive markets.[344] Importantly, additional trademark functions are protected only insofar as third-party uses remain compatible with fair competition. The convergence of

[344] **Annette Kur, Martin Senftleben**, *European Trademark Law*, (Oxford University Press, 2017).

trademark and competition law with sustainability objectives expands the interests at stake in such disputes. Practices that align with both competition policy and environmental goals may therefore be considered legitimate.

Finally, under Art. 3 of Regulation No. 461/2010, vertical agreements concerning the "sale", "purchase", or "resale of spare parts" and the provision of "repair and maintenance services" in the automotive sector may qualify for a block exemption—provided they meet the criteria outlined in Regulation No. 330/2010 and do not contain the core or excluded restrictions specified in Art. 5 of Regulation No. 461/2010. This regulation is of great importance in terms of protecting competition in the motor vehicle sector and increasing consumer welfare. In particular, suppliers should be able to sell spare parts freely, including authorized services, without limiting them to certain distribution channels. This will both improve the quality of service and encourage a competitive structure in the spare parts market.[345]

### B. Jurisprudence Decisions

Due to the importance of the protection of spare parts in this thesis, it is useful to examine some decisions.

#### 1. CICRA and Maxicar v.Renault[346]

CICRA is an Italian trade association of businesses producing automobile parts. Maxicar, a member of CICRA, brought an action against Renault. CICRA and Maxicar asserted that their activities related to the production and marketing of non-original spare parts did not amount to an infringement. In response, Renault, the holder of the design

[345] Whish and Bailey, "Competition Law", p.675.

[346] Case 53/87 Consorzio Italiano della Componeatistica di Ricambio per Autoveicoli (CICRA) and Maxicar v. Régle Nationale des Usines Renault (Renault) [1988] ECR 6039.

rights for these spare parts, filed a counterclaim, alleging that CICRA and Maxicar had violated Renault's rights. CJEU ruled that the mere acquisition of design rights over car body parts does not constitute an abuse of a dominant position. The Court affirmed that the legitimate exercise of exclusive rights -conferred by law to prevent unauthorized third parties from "manufacturing and selling" protected products- does not, in itself, amount to anti-competitive conduct intended to eliminate direct competition. The Court recognized that if the exercise of such rights by a company in a dominant position results in anti-competitive effects, it may be prohibited. Such instances would require evidence of specific abusive behavior, including, but not limited to: unjustly denying independent repairers access to spare parts, enforcing unreasonable pricing for these components, or halting the production of parts for a vehicle model that continues to be in widespread use.[347] The Court acknowledges that, under competition law, it is generally accepted that products protected by IPRs are typically priced higher than unprotected goods, and that IP right holders are entitled to receive compensation for their investments.

The judgment affirms the legitimacy of a right holder's interest in excluding unauthorized producers from the market for protected products. Moreover, it recognizes that the right holder is entitled not only to recoup production costs and a reasonable profit but also to recover expenditures associated with research and development. In the realm of vehicle body components marketed as spare parts, it is important to recognize that some of these costs may have been recouped through the sale of new vehicles. Consequently, this aspect should be considered when establishing suitable pricing for spare parts.

[347] CJEU, 5 October 1988, Maxicar v Renault.

## 2. VOLVO- VENG[348]

Another significant case in this context is the EU Volvo decision. In this case, Volvo had obtained a registered design in the United Kingdom about front wing panels of its 200 series vehicles. Eric Veng Ltd. imported and marketed identical body panels, produced in another Member State, without Volvo's authorization. Volvo initiated legal proceedings in the High Court of Justice, alleging infringement of its exclusive design rights. The Court held that the core of a design right is the ability to prevent "unauthorized third parties from manufacturing, selling, or importing products incorporating the protected design." Therefore, compelling the right holder to license its design to third parties—even for a fair royalty—would undermine the very essence of that exclusive right. Consequently, the mere refusal to license does not in itself amount to an abuse of a dominant position.

Although the Court affirmed that registering design rights over vehicle body parts and refusing to license them falls within the lawful exercise of such rights, it emphasized that certain practices may still infringe Art. 86 (now Art. 102 TFEU) if they constitute abusive conduct. This includes instances where a dominant firm:

- "Refuses to supply spare parts to independent repairers";
- Imposes unfair pricing for spare parts;
- "Ceases production of spare parts for models that are still in circulation".

The Volvo case was underpinned by three key principles:

- IPRs are not inherently incompatible with competition law; to assert otherwise would undermine the entire framework of IP protection.

[348] CJEU, AB Volvo v Erik Veng (UK) Ltd, C-238/87, 5 October 1988.

- While IPRs and competition rules are generally compatible, the exercise of such rights must be scrutinized under Art. 82 (now Art. 102 TFEU).
- Art. 82 may prohibit the use of IP rights by dominant undertakings when such use results in anti-competitive conduct under specific circumstances.

These principles have formed the basis for judicial reasoning in subsequent case law involving the intersection of IPL and competition law.[349] In these cases, the CJEU, the Court of First Instance (CFI), and the European Commission consistently opened their judgments by emphasizing that their aim was not to undermine IPRs, but rather to exercise a limited oversight of the conduct of dominant undertakings in exceptional situations.[350]

As a result of this decision, preventing third parties from producing the protected product and not granting licenses for the protected parts based on the IPR was not considered as abuse on its own, since it is the essence of the design right, and an "additional situation or element" is required in order to claim a violation of Art. 82, in the presence of such situations, it is stated that the prevention of competition based on the IPR cannot be characterized within the subject matter (essence) of the right, on the contrary, the right will be used "inappropriately", in a way that does not comply with the subject matter of the right, and therefore a violation may occur within the scope of Art. 82.[351]. However, abuse of a dominant position may include malicious conduct, such as a

[349] **Paul Nihoul**, The Limitation of Intellectual Property in the Name of Competition, Fordham International Law Journal Vol.32: p:489-524, 2009.

[350] Opinion of Advocate General Sharpston, The Wellcome Foundation v. Paranova Pharmazeutika Handels GmbH, Case C-276/05 2008, UFEX v. Commission, Case T-60/05, [2007] E.C.R. 3397; SCL. Carbon AG v. Commission, Case T-68/04

[351] **Yüksel Kaya**, "Hâkim Durumun Kötüye Kullanılması ve Fikri Mülkiyet Hakları", (Rekabet Uzmanlığı Tezi, 2003), accessed 08.09.2024, https://www.rekabet.gov.tr/Dosya/uzmanlik-tezleri/15-pdf.

dominant undertaking arbitrarily refusing to supply independent repairers with a spare part protected by a registered design and still in use in traffic, setting the price of such spare part at an inequitable level, or choosing to cease the production of spare parts for a specific model.

As can be seen from the above-mentioned decision, while "the intellectual property right itself and the use resulting from the right" is not an infringement of competition, "the abuse of the monopoly created by using the intellectual property right" may be considered as an infringement of competition.

In the decision, the Court recognizes the original equipment products produced through IPRs as a market (spare parts market), considers the producers of these products as a monopoly, and does not define the prevention of the production of these products by competitors as an infringement of competition, but states that certain practices regarding the sales conditions of the product (price fixing, refusal to supply goods, etc.) may be infringements.

Similar to Turkish competition law, EU competition law differentiates between "*dominant and non-dominant undertakings*" and imposes a special responsibility[352] on dominant undertakings not to distort the functioning of the market. Accordingly, while

[352] It is accepted that undertakings in a dominant position have a "special responsibility" not to cause restriction of competition by their actions. This responsibility is based on the Cine 5 decision of the 10th Chamber of the Council of State numbered 2001/355 E., 2003/4245 K. and the Board's Karbogaz decision numbered 05-80/1106 317. https://www.rekabet.gov.tr/File/?path=ROOT%2FDocuments%2FKilavuz%2FHAK%C4%B0M+DURUM+KILAVUZU111.pdf.

dominant undertakings may breach Art. 102 of the Agreement when they abuse their market position, this is not the case for non-dominant undertakings.

In the decision of Compagnie Maritime Belge (CMB)[353], The concept of "super-dominance", another distinction regarding the degree of dominance, has been developed. This new distinction means that the same conduct may breach Art. 102 when it is committed by "an undertaking in a super-dominant position and not by an undertaking in an ordinary dominant position". The obligations imposed on super-dominant undertakings, rather than ordinary dominant undertakings, arise from their "market position", in other words, their "market power", rather than their actual conduct.

ECJ in TeliaSonera case[354]; "*As a general rule, the degree of market power is more relevant to assessing the extent of the effects of an undertaking's conduct than to determining whether abuse has occurred*". This method seeks to elucidate the application of the super-dominance concept and to guarantee a uniform interpretation of Art.102. More recently, the concept resurfaced in the General Court's Google Shopping decision[355], where the Court referred to Google's super-dominance and emphasized its heightened obligation to avoid conduct that distorts competition.

The degree of market power is, as a general rule, relevant to the extent of the effects of the conduct of the undertaking concerned, rather than to the question of whether there has been abuse, seeking to clarify the use of the concept of super-dominance and to ensure a consistent application of Art. 102. More recently, the concept has reappeared in the

[353] Joined Cases C-395/96 P and C-396/96 P, Compagnie Maritime Belge NV and Dafra-Lines v Commission, ECLI:EU:C:2000:132.

[354] Case C-52/09, Konkurrensverket v TeliaSonera Sverige, ECLI:EU:C:2011:83, para. 81.

[355] Case T-612/17, Google and Alphabet v Commission, ECLI:EU:T:2021:763.

General Court's Google Shopping decision. In the Decision, the Court referred to Google's super-dominance and highlighted its heightened obligation to ensure that its conduct does not distort competition.[356]

### 3. AUDI AG[357]

In the Audi case, the ECJ recently ruled that the repair clause provided in Audi v GQ in relation to designs cannot be applied to trademarks. The conflict in the primary proceedings involved protection for the registration of the AUDI car manufacturer's four-ring logo[358]. The trademark owner took action before the referring court against a natural person who does not sell directly to consumers and sells spare parts to other distributors.[359] The plaintiff sought to prohibit the defendant—a professional retailer of automobile spare parts—from importing, marketing, offering, and advertising radiator covers ("grilles") that did not belong to AUDI AG but bore a mark identical or similar to AUDI's European Union figurative trademark No. 000018762. The defendant marketed these grilles for vintage Audi models from the 1980s and 1990s to various professional dealers and distributors, rather than selling them directly to consumers.

[356] **Alessia Sophia D'Amico and Baskaran Balasingham**, "Super-dominant and super-problematic? The degree of dominance in the Google Shopping judgement", *European Competition Journal*, (2022): p.614 – 630, accessed April 12, 2025, https://www.tandfonline.com/doi/full/10.1080/17441056.2022.2059962#d1e225.

[357] Judgment of the Court (Fourth Chamber) of 25 January 2024, accessed May 23, 2025, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0334.

[358] EUTM No. 000018762.

[359] **Lukasz Zelechowski**, "Non-original car spare parts and trade mark infringement: is there no room for referential use? The AG Opinion in C-334/22 Audi" *Journal of Intellectual Property Law & Practice*, 2023, Vol. 18, No. 12 accessed May 29, 2025, https://academic.oup.com/jiplp/article/18/12/843/7428689.

Advocate General Medina emphasized that the function of a spare part is to return a product to its original condition. Therefore, a radiator grille that includes a mounting location for the car manufacturer's emblem must allow the exact reproduction of the vehicle's original appearance. Replacement parts are, by nature, imitations or replicas, and offering them cannot be deemed unjustified.

He further noted that the grille's emblem mounting area serves a purely technical function, as perceived by the average, reasonable consumer. Buyers view this mounting area not as a trademark indicating the product's origin but as a necessary technical element of any spare part required to restore the vehicle's original look. The court expressed doubts about whether a trademark placed on the appearance of such a spare part fulfills its essential function of indicating product origin in this context.[360]

CJEU ruled that: The sale of the radiator grille incorporating the "Audi mark does constitute use of the trademark". Such use can be "*prohibited if national courts find the marks and goods/services are identical or similar, and there is a likelihood of confusion or unfair advantage/detriment*" to the trademark owner. The repair clause under Art. 14(1)(c) of the EUTMR, which limits design rights for spare parts, does not apply to the use of trademarks in this context. The ECJ highlighted that the radiator grilles were introduced to the market without Audi's approval, and the component intended for affixing the Audi emblem was included to aid in the marketing efforts of third parties. Since this emblem is visible to consumers, it creates a material link between the spare part and Audi, potentially infringing the trademark's functions—especially its role in guaranteeing the origin or quality of the goods. The producer or vendor of a non-genuine component is obligated to exercise due diligence to fulfill the necessary requirements,

[360] The Polish Court Referral in Case C-334/22, Audi Case No. XXII GWzt 19/20, decision of 25 February 2022.

ensuring that downstream users adhere to ethical practices and refrain from engaging in misleading or defamatory conduct, it stated. AG said, "*An appropriate method is to clearly and visibly indicate that the spare part is a non-genuine product and to take appropriate contractual measures*".

### 4. Google Android Auto

In February 2025, Google made a series of commitments to the Bundeskartellamt to terminate certain anticompetitive practices related to the Google Maps Platform and Google Automotive Services in the context of the Google Maps Platform, numerous companies- particularly those operating in the logistics, mobility, and delivery sectors- rely on B2B mapping services. In this domain, Google holds a dominant position in licensing access to maps, navigation, traffic information, address validation, location-based search, and data concerning points of interest. Especially in relation to local search and point-of-interest data, Google gains a competitive advantage from its extensive user base and the wealth of information derived from it. However, to date, Google's mapping services have had only limited interoperability with third-party solutions. With the new commitments, these restrictions are to be lifted, aiming to offer customers a broader range of options and increased flexibility. Accordingly, users will now be able to integrate more cost-effective and efficient mapping services into their applications and will have greater freedom to develop alternative solutions. Google has pledged to waive contractual provisions that prevent the display of its mapping content on third-party platforms—such as OpenStreetMap—thus enabling such integrations.

In the context of Google Automotive Services, the service package comprising Google Maps, Google Play, and Google Assistant has been provided in an integrated manner within in-car infotainment systems. Previously, these services could only be licensed as a bundle, limiting manufacturers' access to individual components. Through

its commitments to the Bundeskartellamt, Google has declared that these services will henceforth be available for licensing as standalone components.[361] Furthermore, contractual provisions that restrict competition -such as default settings and incentive mechanisms based on advertising revenues, which steer users toward Google services- will also be removed. Google has additionally committed to establishing the necessary technical and contractual conditions to ensure compatibility with third-party services.

## I. The Relationship Between Design and Competition in Turkey

Component parts are integral to nearly all contemporary products and devices. The automotive spare parts industry stands out as the foremost sector in this context.[362]

### A. Communiqué No. 2017/3 Block Exemption Communiqué On Vertical Agreements In The Motor Vehicles Sector and Guidelines Explaining The Block Exemption Communiqué On Vertical Agreements In The Motor Vehicles Sector, No 2017/3[363]

[361] Google will stop restricting competition in connection with Google Automotive Services and Google Maps Platform, accessed May 25, 2025, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2025/04_09_2025_GAS_GMP.html.

[362] **Beldiman, D, Blanke-Roeser**, *An International Perspective on Design Protection of Visible Spare Parts*, (Germamy, Springer, 2017).

[363] For more information. https://www.rekabet.gov.tr/Dosya/kilavuzlar/motorlu-tasitlar-sektorundeki-grup-muafiyeti-tebligini-aciklayici-kilavuz1.pdf

The group exemption in the motor vehicles sector was first regulated by the Communiqué No. 1998/3[364]. Subsequently, Communiqué No. 2005/4[365] entered into force on January 1, 2006 and Communiqué No. 1998/3 was repealed. Communiqué No. 2005/4, which was in force from 2005 until 2017, was repealed with the Communiqué No. 2017/3 on Group Exemption for Vertical Agreements and Concerted Practices in the Motor Vehicles Sector, which entered into force on February 24, 2017. Consequently, this section will discuss the provisions of Communiqué No. 2017/3. As is known, vertical agreements between undertakings operating in the automotive sector are subject to exemption assessment under Communiqué No. 2017/3. Within the framework of competition law, this regulation concerning spare parts is designed to avert the monopolization of businesses involved in the production and distribution of these components, thereby ensuring that consumers have access to a variety of options. This Communiqué provides a group exemption for certain vertical agreements from the prohibition in Art. 4 of Law No. 4054. It covers agreements related to:

- "*The purchase, sale, or resale of new motor vehicles*",
- "*The purchase, sale, or resale of motor vehicle spare parts*",
- "*The provision of maintenance and repair services for motor vehicles*."

These agreements are exempted as a group based on the third paragraph of Art. 5 of Law No. 4054, provided that:

[364] Communiqué No. 1998/3 on Group Exemption for Motor Vehicle Distribution and Service Agreements.

[365] Communiqué No. 2005/4 on Group Exemption for Vertical Agreements and Concerted Practices in the Motor Vehicles Sector.

- They contain certain vertical restrictions [366], (i.e., limitations imposed on companies functioning at various tiers of the supply chain),
- "*They comply with the conditions set out in the Communiqué*". [367]

The exemption encourages competitive and efficient relationships along the supply chain while controlling anti-competitive restrictions.

### 1. Conditions Regarding the Exemption Provided by Communiqué No. 2017/3

The exemption provided by this Communiqué introduces a 30%[368] market share threshold for some providers for contracts pertaining to quantitative selective distribution and exclusive distribution. The exemption provided by this Communiqué introduces a 30% market share threshold for certain providers in respect of agreements on quantitative selective distribution and exclusive distribution. Providers that do not exceed this threshold may be considered within the scope of the exemption. In this context, the conditions foreseen for the 30% threshold are as follows:

- "The market share of the vehicle provider in the relevant market where it provides motor vehicles does not exceed 30%,

[366] Communiqué No. 2017/3 4/1 (e): "*Refers to the competition restraints included in a vertical agreement and falling under the scope of article 4 of the Act no 4054*"

[367] In this context, according to Article 11 of Communiqué No. 2017/3, the exemption granted pursuant to this Communiqué shall not prevent the application of Article 6 of Law No. 4054.

[368] For more detailed information on the calculation of the 30% threshold, see Article 9/3 of Communiqué No. 2017/3. If the parallel networks formed by similar vertical restraints cover more than 50% of the relevant market, the Competition Board may exclude the exemption provided by this Communiqué.

- The market share of the vehicle or spare parts provider in the relevant market for which it provides spare parts does not exceed 30%,

- The market share of the vehicle provider in the relevant market where it provides maintenance and repair services does not exceed 30%,

- For maintenance and repair chains, the market share of the network founder undertaking in the maintenance and repair market does not exceed 30%."

group exemption may be applied in case of a qualitative selective distribution system (SDS). The qualitative SDS does not have a specified market share threshold. Art. 9 of the Communiqué No. 2017/3 mentions the method of calculating the market shares mentioned in the Communiqué according to different types of products and services. In the distribution of spare parts, the market share is calculated on the condition that similar products are provided, but this time on the basis of value rather than quantity. This is based on the fact that price differences in spare parts are more decisive than quantity.

If the quantity or value data required for these calculations is not available, value data is used as an alternative; however, if this is not possible, quantity data can be used. In the absence of both types of data, estimates derived from credible market information are utilized. In this way, flexibility is provided in the market share calculation and the most accurate assessment is made.

In vertical agreements that include an obligation to provide to a single buyer, the exemption applies provided that the buyer's share in the relevant market in which it purchases the goods and services subject to the agreement does not exceed 30%. This regulation aims to establish the market share threshold for the exemption condition by focusing on the market power of the individual buyer.

On the other hand, different conditions are stipulated for an "agreement between the supplier and the distributor to benefit from the exemption". The Communiqué

distinguishes these agreements according to their duration. If the agreement is for at least five years, both parties must agree to notify the non-renewal request “at least six months before the expiration of the agreement”. In this case, the exemption will apply to the agreement between the provider and the distributor.

For agreements established for an indefinite duration, the notice period for termination shall be a minimum of two years for both parties. However, the Communiqué states that the exemption may be applied for two situations where the agreements are terminated, provided that the two-year period is reduced to at least one year. One such case arises when the supplier is required to provide compensation upon termination of the agreement. In the event that the provider is obliged to pay compensation upon termination of the agreement, the termination notice period must be reduced to at least one year in order to receive exemption benefits. The other situation is when the provider terminates the agreement due to the necessity to reorganize the distribution system. In this case, if the agreement is terminated in the event that it becomes mandatory to make changes in the distribution system, the termination notice period will need to be reduced to at least one year for the agreement to receive exemption benefits if the agreement is terminated by the provider.

### 2. Limitations Preventing the Benefit from the Group Exemption

As a rule, agreements that aim to prevent competition directly or indirectly will constitute a violation of Law No. 4054. Within the scope of Communiqué No. 2017/3, some agreements may benefit from group exemption. Nonetheless, certain agreements do not qualify for the exemption provided by Communiqué No. 2017/3 and therefore fall outside the scope of the group exemption. Within the scope of the thesis, only the limitations regarding spare parts will be mentioned due to their relevance. Communiqué

No. 2017/3 lists five circumstances that will prevent an agreement or concerted practice from being granted a group exemption. Significant breaches that prevent a vertical agreement from qualifying for group exemption are governed by Art. 6 of Communiqué No. 2017/3. At the top of the blacklist are restrictions on the distributor's ability to set resale prices. Another limitation involves the geographic areas or customer segments to which the distributor is permitted to sell. Furthermore, members of the SDS are restricted from selling vehicles and spare parts directly to final consumers. Additionally, there are restrictions related to the "distribution of motor vehicles", the "distribution of spare parts", and the combined provision of maintenance and "repair services". Furthermore, restrictions that prevent specialized service providers from accessing spare parts, as well as restrictions on the distribution of spare parts themselves, are also included in the blacklist.[369]

### 3. Restrictions on Non-Competition Obligation

Provisions that do not bar the entire agreement from qualifying for the group exemption, yet cannot independently benefit from the exemption, are governed by Art. 7 of the Communiqué, entitled 'Non-Competition Obligation and Restriction on Opening Additional Facility Locations'. According to this regulation, it may be possible to separate these non-exempt provisions from the agreement, allowing the remaining provisions to fall within the scope of the group exemption.

The objective is to grant undertakings access to markets and specifically to allow distributors and authorized service centers to sell and repair vehicles from various

[369] TCA, Guideline Explaining the Group Exemption Communiqué in the Motor Vehicle Sector, accessed November 12, 2025, https://www.rekabet.gov.tr/Dosya/kilavuzlar/motorlu-tasitlar-sektorundeki-grup-muafiyeti-tebligini-aciklayici-kilavuz1.pdf

suppliers, thereby encouraging "multi-branding." Consequently, Art. 6 of the Communiqué forbids any direct or indirect non-competition clauses related to vehicle sales, maintenance, repairs, or spare parts distribution. Vertical agreements imposing restrictions that aim to limit competition, whether directly or indirectly, are excluded from the exemptions provided by this Communiqué. Within this framework, any benefits or incentives that lead distribution network members to exclusively sell a supplier's products or avoid offering competing goods are also regarded as non-competition obligations.

The Communiqué further prohibits "direct or indirect obligations" requiring distributors or authorized service centers to purchase "*more than 30% of their vehicles or spare parts for the same relevant market from a single supplier"*. However, this does not imply that distributors or authorized workshops must purchase "*the specified quantity (up to 30%) directly from the supplier*". These undertakings may also acquire the "*same goods from other sources designated by the supplier, such as entities within the supplier's distribution system*". General obligations that do not prevent members of the supplier's distribution and service network from purchasing at least "70% of their substitutable goods or services" from competing providers benefit from the group exemption. Provided the market stays accessible to rival suppliers, such requirements do not create concerns for competition.

The Guidelines clarify that non-competition obligations between an authorized workshop and a supplier, or between an authorized workshop and a spare parts supplier, cannot benefit from the group exemption. However, when an authorized workshop is free to purchase goods either from the supplier or from other sources designated by the supplier, an obligation to purchase up to 30% of a certain type of spare parts from a particular brand may be considered a non-competition obligation. Such a restriction, which directly or indirectly prevents the authorized after-sales service center from

servicing other vehicle brands, cannot benefit from the group exemption. Authorized after-sales service centers should have the freedom to serve multiple brands, provided they meet the provider's conditions. Furthermore, a requirement that some employees serve only a certain brand, even if justified by additional costs (e.g., sales), is not accepted for authorized after-sales service centers.[370]

## B. Competition Board's Assessments on the Spare Parts Sector

### 1. TİRSAN KARDAN

An investigation was initiated against TİRSAN KARDAN with the allegation that the economic integrity consisting of Tirsan[371] and Tiryakiler[372] (TİRSAN KARDAN) abused its dominant position by preventing rival undertakings from entering the market. With the Board Decision dated 10.07.2015 and numbered 15-30/445-132, it has been concluded that TİRSAN KARDAN is not in a dominant position in the product markets defined as 'cardan shaft production and sales activities for commercial vehicles' and 'cardan shaft production and sales activities for industrial use, non-road vehicles and aftermarket' and therefore, it has not violated Art. 6 of the Law. However, in the decision of Ankara 18th Administrative Court dated 27.10.2017, it was stated that the inclusion of Daimler, which is the closest company to TİRSAN KARDAN in terms of market share in the market of cardan shaft production and sales activities for commercial vehicles, in the market is not in accordance with the law, although it only produces for the Mercedes-Benz main industry company, of which it is a partner, and that a new transaction can be

[370] **Suna ÖZER**, "Rekabet Hukuku Açısından Rekabet Yasakları", (Master Thesis, Kadir Has Üniversitesi, 2009), accessed 15.03.2025, https://tez.yok.gov.tr/UlusalTezMerkezi/tezSorguSonucYeni.jsp.

[371] Tirsan Kardan Sanayi ve Ticaret AŞ.

[372] Tiryakiler Yedek Parça Sanayi ve Ticaret AŞ.

established by examining and evaluating the claim that TİRSAN KARDAN abuses its dominant position. TİRSAN KARDAN allegedly exploited its market power to stop rival companies from entering the market. Again, Volvo Otomotiv Tic. Ltd. Şti. (Volvo Turkey) for its authorised dealers to be able to sell equivalent spare parts in addition to original spare parts, which is alleged to be a de facto impossibility and to make the dealer's activities difficult.

As a result of the documents, when the nature and intention behind the behaviour of TİRSAN KARDAN, which is in the dominant position in the relevant market, are considered, it is understood that it aims to exclude competitors/close the market and pursues strategies against the suppliers working with it in this direction. Considering the number of undertakings active in the relevant markets, the input markets are quite competitive, imported products are a significant part of the market against domestic products, and it is not possible to mention that certain suppliers are prominent or important for shaft production. TİRSAN KARDAN is unlikely to close the supply channel to its competitors, TİRSAN KARDAN is not a 'mandatory commercial partner', As a result of the investigation carried out, since no matter that can be qualified as a violation within the scope of Article 6 of the Law No. 4054 on the Protection of Competition has been identified, Tirsan Kardan San. ve Tic. A.Ş. and Tiryakiler Yedek Parça San. ve Tic. A.Ş., against which an investigation was conducted, it was concluded and concluded that there is no room for imposing an administrative fine within the framework of Art. 16 of the Law.

**2. Ford-Timken**

Ford Otomotiv Sanayi AŞ is also investigated for allegedly engaging in activities prohibited under Art. 4 of Law No. 4054 by determining the sales prices and discount rates of its authorised dealers (dealers) operating throughout Turkey and imposing

restrictions on the use of competing and equivalent spare parts by authorised dealers. Finally, in the last file to be mentioned, TİMKEN Europa GmbH (TİMKEN Europa) alleged that TİMKEN Europa carried out some discriminatory practices in favour of OES, one of its distributors in Turkey, and against other distributors, and within this framework, it was requested to take necessary actions against TİMKEN Europa and its Istanbul Liaison Office (TİMKEN Turkey) with the allegation that the distributorship agreement of Semir Ticaret ve Yatırım Ltd. Şti. (Semir Ticaret), which applied discriminatory prices and incurred significant losses as a result of this, was terminated.

### 3. Boztekin-Renault[373]

In the case, a lawsuit was filed by MAİS, the manufacturer and Oyak Renault[374], the distributor of Renault brand vehicles, alleging that these practices constituted an infringement with the registered parts, upon the unauthorised production and sale of some body parts that could be used in the repair of Renault's Toros, Renault 9 and Renault 12 model vehicles by some body manufacturers. Renault filed a lawsuit against Boztekin based on trademark and unfair competition provisions due to the production of a spare part in Turkey by an undertaking named Boztekin, which Renault had protected in France through an industrial design (Renault cannot obtain design protection in Turkey because there is a design that was presented to the public before the Decree Law on Industrial Designs, therefore the spare part protected by design in France is protected according to general provisions in Turkey). The Istanbul 3rd Commercial Court of First Instance ruled

[373] TCA decision No. 06-02/49-10 of 05.01.2006, accessed June 1, 2025, https://www.rekabet.gov.tr/Karar?kararId=8d50db89-3985-421f-8862-72c590c0bd6a.

[374] Oyak Renault Otomobil Fabrikaları A.Ş.

that Boztekin had infringed Renault's design right, and the decision was upheld by the Court of Cassation.

The decision in question is open to criticism primarily because it is based on the grounds that a third party infringed the design right of a product that is not protected by design in our country. On the other hand, even if there was design right protection, it contains some problems since the production of the spare part is now open to third parties for repair purposes after three years have passed since the registration of the design.[375]

In light of this development, The Competition Authority investigated a complaint filed by 3 undertakings, including Boztekin and engaged in the production of spare body parts for various automobile brands[376]. In summary, the complaint states that MAİS and OYAK RENAULT have also filed lawsuits against independent spare parts dealers in Istanbul for allegedly producing body parts in a way that constitutes confusion with parts registered under their names, and that apart from these lawsuits, spare parts dealers have also been pressured and independent spare parts dealers who want to buy Renault original spare parts are given goods on the condition that they do not sell other brand spare parts, Otherwise, they were told that Renault original parts would not be sold to them, and apart from these, MAİS and OYAK RENAULT engaged in behaviors aimed at preventing competition in the market of spare parts used in Renault branded cars and in the unused car sales market; Prohibition of OYAK RENAULT-MAİS's actions against the enterprises producing spare body parts, which fall under Art. 6 of the Law, and Art. 6 of

[375] **Cahit SULUK,** "Yedek Parça Tasarımlarıın Korunması ya da Otomotiv Yan Sanayiinin Var Olma Mücadelesi", p.15.

[376] The 3 companies in question are: Boztekin Otomotiv ve Tekstil Sanayi ve Ticaret Anonim Şirketi, Acar Kaporta ve Plastik Sanayi ve Ticaret Anonim Şirketi, Kısmet Otomotiv Sanayi ve Ticaret Anonim Şirketi.

the Law and imposing a fine according to the second paragraph of Art. 16 of the Law. OYAK RENAULT, which was only engaged in the production and import of parts, was excluded from the scope of the investigation.

Just as parts of different brands of vehicles do not fit each other, parts of models of vehicles of the same brand cannot be used interchangeably. Therefore, for example, it is not possible to use a body part manufactured for a Renault 9 model car in Renault 12 model vehicles. In fact, it is not possible to use any part of a Renault 12 model vehicle as a substitute for another. Therefore, it can be said that each part of each model of automobile creates a different relevant product market. Since the complaint relates to the body parts of Renault 9 and Renault 12 model cars, only these types of parts are taken as the relevant product market. According to the interviews with the authorized dealers, it was stated that the dealers did not sell competing spare parts voluntarily and not under the coercion of MAİS, but there was no obstacle to sell other brands if the customer wanted, and MAİS was imposed an administrative fine for violating Law No. 4054 by determining the resale prices of spare parts used in repair.[377] As no evidence was obtained regarding the allegations of pressure on spare parts dealers not to sell equivalent parts, that aspect of the complaint was also rejected. Since the design right protected in France was not registered in Turkey, the repair exception could not be applied in the case examined within the framework of the general provisions on unfair competition, since the

[377] Although the aforementioned decision of the Competition Board was issued on 02.11.2000, the decision was annulled by the 13th Chamber of the Council of State with the decision dated 30.9.2005 and numbered 2005/929 E. 2005/4804 K. on the grounds that "*there is no compliance with the law in the Competition Board Decision subject to the lawsuit, in which the Board member who conducted the investigation participated in the final decision meeting and voted*". The Competition Board decision, which was taken after the annulment decision due to procedural problems, was issued on 05.01.2006.

repair exception was related to spare parts with design protection and the production made by Boztekin was not for repair purposes. In our opinion, if Boztekin had made a repair for the purpose of repair, then the repair exception would have been applicable. However, since the protection period of unregistered designs is 3 years, it is considered that the designs should be put into production, even if there is no repair exception, and therefore they should be produced by the sub-industry. Otherwise, it can be said that unregistered designs have a protection that exceeds registered designs.

### 4. Maysan Mando[378]

In the case heard before the Bursa 3rd Civil Court of First Instance between Maysan Mando and Atak Taşıt Yedekleri San. ve Tic. AŞ, it was asserted that Maysan Mando produces shock absorbers under the trademark "Maysan," registered with TPI under registration number 2002/03157. Furthermore, it was stated that Maysan Mando developed the front shock absorbers of Fiat 131 Şahin/Doğan vehicles manufactured by Tofaş into an adjustable model, and that Tofaş procures all shock absorbers for these vehicles from Maysan Mando. The defendant was alleged to manufacture shock absorbers in China under the brand "VEKA," selling and marketing them for Tofaş vehicles under the designation "Maysan Type." It was also claimed that the defendant used the "Maysan" designation on its website to promote these counterfeit shock absorbers, accompanied by the phrase "made in China," and that the term "Maysan Type" appeared both on the website related to orders and on the invoices issued by the defendant. The plaintiff contended that the defendant infringed upon its trademark rights and sought the cessation and remediation of this infringement.

[378] TCA decision dated 20.06.2019 and numbered 19-22/353-159.

Based on the claims, defenses, collected evidence, and the overall case file, the court held that the defendant's use of the plaintiff's registered trademark in the forms "MAYSAN TYPE" or "MAYSAN TIPI" on its website advertisements and product listings, as well as the abbreviation "MAYS" on its invoices, amounted to unauthorized use. The court reasoned that the inclusion of the plaintiff's trademark alongside the defendant's own mark could lead to an association between the two marks or manufacturers, thereby creating the impression of an administrative or economic connection. The court emphasized that "MAYSAN" constitutes a distinct trademark, and that the defendant's use of this term was not merely descriptive of a technical feature but conveyed the impression that the products shared the same qualities and standards as those bearing the "MAYSAN" trademark. The use of the trademark as a domain name and in advertisements was also deemed unfair. Consequently, the court ruled in favor of the plaintiff, ordering the cessation of the defendant's infringement of the trademarks registered under registration numbers 2002/03157 for "Maysan Mando" and "Maysan."[379]

Upon appeal by the defendant, the Supreme Court reviewed the case and found that although the plaintiff's claim was limited to the cessation of infringement regarding the "Maysan Mando" trademark registered under number 2002/03157 with the TPI, the lower court erred by extending the injunction to cover the "Maysan" trademark registered under number 82/073142, which also belongs to the plaintiff. The Supreme Court therefore reversed this part of the decision. Subsequent requests for revision of the ruling by the parties' legal representatives were rejected.

[379] The decision of Bursa 3rd Civil Court of First Instance dated 26 March 2012, case file number 2008/167 and decision number 2012/157.

As in the Renault-Boztekin decision mentioned above, after the conclusion of the proceedings in the private law courts, an application was also submitted to TCA in this case. Upon examination of the allegations that Maysan Mando[380] refused to supply goods to the complainant, and that the complainant was attempted to be excluded from the market by colluding with competitors thereby restricting competition, the Competition Board's decision dated 18 February 2016 and numbered 16-05/107-48, which dismissed the allegations without conducting sufficient investigation and research and consequently decided not to initiate an investigation, was annulled by the Ankara 15th Administrative Court's decision[381], on grounds of unlawfulness. Therefore, TCA reopened the file and conducted an investigation to determine whether the said undertaking violated Art. 4 of Law No. 4054.

It was assessed that Maysan Mando's dealership agreement, which appears to be of indefinite duration, did not meet the general conditions regarding termination notice periods set out in Communiqué No. 2017/3, nor was it eligible for exemption under this Communiqué due to non-compliance with non-compete provisions exceeding five years. The non-compete obligations stipulated in the agreement were found to potentially hinder multi-branding in the shock absorber production or distribution market, and thus the agreement failed to satisfy the criteria under subparagraphs (c) and (d) of the first paragraph of Art. 5 of Law No. 4054. Consequently, it was concluded that individual exemption under the same article could not be granted to the agreement.

Within this framework, it was determined that Maysan Mando's dealership agreement clauses titled "Duration and Renewal" (Art. 8), "Commercial Rules"

[380] Maysan Mando Otomotiv Parçaları San. ve Tic. AŞ.

[381] Ankara 15th Administrative Court dated 25.10.2017 and numbered E: 2016/3742, K: 2017/2794.

(Art.3.14), and the annexed "Commercial Terms" clause "Annual Quota" (Art. 5.8) should be brought into compliance with the provisions of Communiqué No. 2017/3.

Documents obtained during the on-site inspection revealed that Maysan Mando monitored and intervened in the pricing, profitability, and promotional activities of its dealers with the aim of preventing price competition among them, effectively determining the resale price. It is recognized that resale price maintenance constitutes a vertical restriction, generally limiting intra-brand competition. According to Art. 6 of Communiqué No. 2017/3, which outlines restrictions precluding group exemption, preventing distributors' freedom to determine their own resale prices is considered a restriction aimed at directly or indirectly limiting competition, and agreements containing such restrictions cannot benefit from the group exemption.

The determination of resale prices, as a key factor of competition, is generally regarded as a competitive restriction in terms of purpose and is not eligible for exemption under Art. 5 of Law No. 4054. This is because such practices, except in exceptional cases, are unlikely to meet the criteria set forth in subparagraphs (a) and (b) of the first paragraph of Art. 5, which concern "new developments and improvements in the production or distribution of goods or the provision of services" and "consumer benefits."

Following the evaluation of the documents obtained during the inspection, it was concluded that Maysan Mando's actions to determine the resale prices of its dealers between 2014 and 2018 fall within the scope of Art. 4 of Law No. 4054. Furthermore, it was determined that the dealership agreements were not eligible for group exemption under Communiqué No. 2017/3 or for individual exemption under Art. 5 of Law No. 4054. Accordingly, it was found that Maysan Mando violated Art. 4 of Law No. 4054 by fixing the resale prices of its dealers.

It was also concluded that Maysan Mando products constitute a small share of the complainant's total sales and that the complainant's inability to sell Maysan Mando products does not prevent it from operating in the automotive spare parts market. When considered under a narrower market definition focused on shock absorber distribution, it was observed that the quantity of Maysan Mando shock absorbers in the complainant's sales declined after 2015, while sales of other shock absorber brands increased, indicating substitution of Maysan Mando products with competing brands.

Given that alternatives to Maysan Mando products are available in the same market and included in the complainant's sales, the indispensability criterion—necessary to consider refusal to contract or supply as an infringement—was not met. Therefore, the practice subject to the file was not deemed an abuse of dominant position under Art. 6 of Law No. 4054.

## II. Suggestions

At first glance, the limited opening of the spare parts market to the aftermarket sector for repair and maintenance purposes after a three-year protection period may appear to undermine the innovative incentive of the IPR holder and to run counter to the essence of IP protection. However, when assessed comprehensively, such a limitation effectively results in the production and sale of a product being left to the initiative of a single party. This product constitutes a significant and indispensable element in reducing dependence on the aftermarket sector and, consequently, in mitigating the current account deficit. The exception applies solely to use for repair purposes; however, it is highly probable that it could be made applicable to all forms of production and use beyond repair.

Three years is a lengthy period for the aftermarket sector, yet if a vehicle remains under warranty until the third year, it is not uncommon for consumers to turn to the aftermarket

rather than to original spare parts and repair-maintenance services once the warranty expires. As the concepts of OEM (Original Equipment Manufacturer) and OES (Original Equipment Supplier) indicate, the replacement market does not solely consist of spare parts of equivalent quality; original spare parts also constitute an input for the replacement market. Nevertheless, there exists a widespread misconception across the sector that spare parts supplied in the replacement market are not original spare parts. For this reason, aftermarket production still fails to become preferable to originals, and aftermarket manufacturing requires support. Consumers are often unaware that productions other than those of the vehicle manufacturer can also qualify as original spare parts.

At this juncture, guidelines and/or directives to be issued by motor vehicle manufacturers should clearly set out the criteria for relevant spare parts to be considered as original. Due to the prevailing perception that aftermarket production is invariably second-hand and of inferior quality, the aftermarket is unable to effectively communicate its position. Therefore, the detailed preparation of products manufactured by independent producers in accordance with the Original Spare Part Quality Declaration is of critical importance for ensuring that independent manufacturers receive the recognition they deserve. In this regard, it may be useful to prepare a document outlining the main stages of spare part production and demonstrating that both the motor vehicle manufacturer and the independent spare part manufacturer complete the relevant stages in accordance with the same technical capacity and standards, in order to establish an accurate perception among end consumers.

Furthermore, there should be public information efforts indicating that original parts can also be produced by independent manufacturers. Such communication must be subject to oversight, as it is necessary to prevent entities that do not, in fact, meet the original spare part criteria from making such claims. This oversight could be carried out

under the supervision of the Ministry of Science, Industry and Technology, or through collective efforts to raise awareness by industry associations operating in the automotive sector, such as Automotive Manufacturers Association, Automotive Distributors Association, the Authorized Automotive Suppliers Association, and the Automotive Aftermarket Products and Services Association, using means such as conferences and public announcements to generate mass engagement.

It is reasonable for the supply industry to be able to produce spare parts for repair after the expiration of the warranty period. However, given the fact that the aftermarket only begins production after three years and requires time to understand the technology, it is considered that production for repair purposes should be permitted before the three-year mark, while after three years the restriction of "for repair purposes" should be lifted altogether.

Spare parts of equivalent quality are produced to replace original parts used in the assembly of a motor vehicle and, under the relevant legislation, whether such parts are equivalent to the original is determined by organisations accredited in accordance with the ISO/IEC 17065 standard, either by the Turkish Accreditation Agency or by accreditation bodies that have signed a mutual recognition agreement under the International Accreditation Forum. Art. 59/5 of the Industrial Property Code stipulates that the use of listed equivalent parts within three years for repair purposes shall not be deemed to infringe design rights. However, the failure of the Ministry of Science, Industry and Technology to publish the equivalent parts list to date renders this provision inapplicable. Consequently, since 2017 the provision has had no meaningful practical effect due to the absence of the said list. Our recommendations naturally include the publication of such an equivalent parts list by the Ministry to enable the provision's implementation.

Another matter for consideration is whether designs that are not appearance-dependent can be included within this exception. For instance, it is possible to protect wheels compatible with every make and model of vehicle under design rights. However, registration or use of such a right by an undertaking with significant market power, or by an undertaking operating both upstream and downstream with such market power, could create a leveraging effect, allowing the manufacturer to use its upstream market power in the downstream market and thus creating a barrier to entry. Therefore, defining the relevant market in which the registered design is used is of particular importance, as any assessment of how market power is exercised will begin with the definition of that market. For this reason, it is important for the Competition Authority to carefully define the market in its case files.

As of 1 May 2025, some changes in the field of design law that have come into force in the European Union have not yet been incorporated into the relevant legal regulations in Turkey. Accordingly, in the coming period, design and product definitions will be expanded to include not only physical objects but also digital environments, user interfaces, icons, animations and motion transitions within the scope of protection, 3D printing and digital file sharing will be explicitly included among design right infringements, The provision exempting spare parts used to maintain the original appearance of complex products from design protection under the ‘repair clause’ should be made permanent. Introducing exceptions for the use of designs for criticism, parody, or commentary, the use of the Ⓓ symbol for the promotion of registered designs, and explicitly adding provisions that design rights can be protected alongside copyright under appropriate conditions. We believe that the legislature will work on this issue. Thus, transformations will be pursued in a system that can respond to current needs such as digitalisation, 3D printing, sustainability, and changes in consumer habits. It is considered

and expected that design regulation that entered into force in the EU should be aligned with the new EU regulations, thereby ensuring that the legislation does not fall short in the face of technological developments and that it remains in harmony with the EU acquis.

Given that spare parts are always addressed through the lens of design protection, it is conceivable that such laws could be circumvented via 3D trademark protection. Despite the existence of a repair exception under design law, where a spare part is protected as a 3D trademark, there is no time limitation comparable to that under design protection, which could result in the market being closed indefinitely. The use of trademark protection to circumvent the repair exception afforded to designs is inconsistent with the objectives of both IPL and competition law. Since the repair exception in design protection has given rise to an area where both IP and competition law must be applied in tandem, judicial decisions — whether by the Civil Courts for Intellectual and Industrial Rights, other higher courts, or competition authorities — should be rendered with mutual consideration of both regimes. Consequently, it is argued that a repair exception for designs should also be introduced for trademarks.

Products protected by design remain on the market for the duration of the protection period, and their impact on the market diminishes at the end of this period. In order to prevent the distortion of effective competition, it may be useful to regulate the development period of the sub-industry for the design and trademarks of 3D shapes. It is considered that distinctiveness criteria should be separately defined for 3D trademark registration, and that these thresholds should be set at a higher level than those for verbal trademarks. This is because the production of spare parts has now evolved into a product market, necessitating a more detailed examination of 3D trademarks for such products.

Competition considerations will increasingly align with sustainability objectives. This convergence will fundamentally reshape trademark protection and other IP regimes. Indeed, the evolving economy and markets, driven by the transition to a circular economy, will require close monitoring of changes in consumer behaviour. Ultimately, the aim of this transformation is to actively influence consumer behaviour. Should trademark law fail to adapt to these evolving needs and changes, it risks becoming a significant obstacle to the full realisation of sustainability policies.

Another important matter in the spare parts context is patent protection. For independent spare part manufacturers seeking to compete with motor vehicle manufacturers, the only available avenues to produce a patented product are to request a licence from the original manufacturer or to attempt to demonstrate before judicial authorities that the act of producing or selling for repair purposes falls outside the scope of the IPR. In this regard, the jurisprudence of competition authorities and courts on the conditions and scope of compulsory licensing, as well as the legislative approach of lawmakers to incorporating a repair exception into patent law, are of critical importance to preserving and sustaining competition in the market concerned.

Given that spare parts subject to patent protection may remain inaccessible to the aftermarket for an extended period due to the exclusive control of the right holder, the monopolisation of the market through IPRs — and the resulting barrier to entry — is far from desirable. Therefore, in respect of patent-protected spare parts, it is submitted to the attention of lawmakers that, as in the case of design protection, a three-year repair exception should be introduced.

As a result, these recommendations are not only aimed at solving existing problems, but also serve as a roadmap for sustainable and innovative approaches.

## CONCLUSION

The transformation of the automotive industry with digitalisation has transformed the spare parts market into a competition area based not only on physical but also on IP. Spare parts with digital content are subject to multi-layered protection within the scope of IPRs such as design, patent and trademark due to the fact that they contain sensors, software and connected systems, and this situation brings along important discussions in terms of competition law. One of the main conclusions reached in this study is that this multidimensional protection of spare parts goes beyond the purpose of protecting innovative producers in the sector and provides exclusive rights that may affect the structure of the market and this situation may adversely affect competition.

The exclusive authorisations provided by IPRs may lead to an increase in the prices of spare parts, restricting access and narrowing the consumer's repair options. This situation both reduces consumer welfare and limits the market entry of independent sub-industry producers. However, in secondary markets such as the spare parts market, the main motivation is to meet consumer needs quickly and cost-effectively, rather than innovation. Therefore, in line with the basic principles of competition law, it is necessary to control IP protection with certain limitations and exceptions, rather than applying it in an absolute manner.

In this framework, especially the repair exemption application stands out as an important balancing mechanism in terms of both EU and Turkish law. Although there are objections that the three-year repair exemption proposal will increase market access in favour of the consumer and reduce the innovation motive of right holders, it should be taken into consideration that the main motive in the secondary market is functionality and access, not innovation. Therefore, it should be recognised that such exceptions are limitations that pursue the public interest without harming the essence of the IPR.

In addition, in trademark law, regulations allowing the use of the trademark for information purposes, especially in the marketing of spare parts, are important in terms of protecting competition. Provisions such as Art. 14(1)(c) of the EU Trademark Directive aim to ensure the correct flow of information to the consumer by limiting the exclusionary power of the IPR holder, these provisions have been considered as important structures that fulfil the balancing function of competition law vis-à-vis IPRs.

In conclusion, the protection of IPRs in the spare parts market is of course important; however, when this protection leads to restriction of competition, decrease in social welfare and decrease in economic efficiency, the intervention of competition law becomes inevitable. The evaluations made within the scope of this thesis have shown that this intervention is based not only on legal, but also on economic and social requirements. In this context, it has been concluded that legal systems should observe a dynamic balance for both the effective protection of IPRs and the establishment of a free and fair competition environment in the automotive sector.

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**ABSTRACT**

The globally accelerating digitalization process has profoundly affected many sectors, including the automotive industry. Today, automobiles are no longer merely mechanical devices but have transformed into integrated mobile technology products encompassing software, artificial intelligence, sensor technologies, and connected digital systems. This transformation has restructured production and after-sales processes within the automotive sector, leading to significant legal and economic changes, particularly in the spare parts market.

This study addresses the digitalization process and current state of the automotive industry, emphasizing spare parts due to their importance. It examines the nature of technologies encountered in the digitalized automotive sector concerning spare parts, as well as the protection of these parts under IPL and the effects of such protection from the perspective of competition law. IP tools such as design, trademark, and patent rights grant manufacturers extensive authority over the production and sale of spare parts; however, these exclusive rights hinder aftermarket producers' market entry and limit consumer access, thereby reducing price competition. In this context, a delicate balance between IP protection and competition law becomes imperative.

To explore this balance, patent, trademark, and design rights have been comparatively analyzed within the framework of Turkish and European Union legislation, with due attention to relevant statutory provisions within the scope of the thesis. The study highlights key competition-restricting issues in the automotive spare parts market, including barriers to repair, artificially inflated prices due to exclusivity rights, and consumer difficulties in accessing alternative suppliers. It further delves into critical legal debates such as the extent to which design protection applies to combined products and the conditions under which repair exemptions may be invoked. These discussions are contextualized within competition law, particularly Articles 4, 6, and 7 of the Turkish Competition Law No. 4054. Additionally, an

assessment is made of the EU regulation on design protection, which came into force in May 2025.

The primary aim of the thesis is to propose a framework that balances IPRs rights with competition law, thereby protecting manufacturers' rights while promoting social welfare and fair competition.

This study underscores the necessity of reconciling IP protection for spare parts with competition law in the increasingly complex structure of the digitalized automotive sector, emphasizing the need to evaluate legal, economic, and technological dynamics jointly when delineating the boundaries of IPRs. Ultimately, considering the limited innovation incentives in the spare parts market, absolute protection of IPRs may adversely affect consumer access and market dynamism. Therefore, certain legal flexibilities, particularly repair exemptions, should be considered. Recognizing that the law's purpose extends beyond solely protecting rights holders, it is crucial to establish a fair, accessible, and sustainable market structure that prioritizes the public interest. The recommendations presented in this thesis aim to contribute to strengthening a balanced perspective in both legislative implementation and judicial decisions.

**Keywords:** Intellectual Property, Design Protection, Spare Part, Competition Law, Market Power.

# ÖZET

Küresel ölçekte hız kazanan dijitalleşme süreci, birçok sektörde olduğu gibi otomotiv sektörünü de derinden etkilemiştir. Günümüzde otomobiller, yalnızca mekanik araçlar değil; aynı zamanda yazılım, yapay zekâ, sensör teknolojileri ve bağlantılı dijital sistemlerle entegre birer mobil teknoloji ürününe dönüşmüştür. Bu dönüşüm, otomotiv sektöründe üretim ve satış sonrası süreçleri yeniden yapılandırmış; özellikle yedek parça piyasasında ciddi hukuki ve ekonomik değişimleri beraberinde getirmiştir. Çalışmada, otomotiv sektörünün dijitalleşme süreci ve günümüzdeki durumuna değinilmiş, önemi nedeniyle yedek parça hakkında daha detaylı bilgilere yer verilmiştir. Dijitalleşen otomotiv sektöründe karşılaşılan teknolojilerin yedek parça niteliği ve yedek parçaların fikri mülkiyet hukuku kapsamındaki korunması ile bu korumanın rekabet hukuku açısından doğurduğu etkiler ele alınmıştır. Tasarım, marka ve patent hakları gibi fikri mülkiyet araçları, üretici firmalara yedek parçaların üretimi ve satışı üzerinde geniş yetkiler tanımakta; ancak bu münhasır haklar, yan sanayi üreticilerinin pazara girişini zorlaştırmakta ve tüketici erişimini sınırlayarak fiyat rekabetini azaltmaktadır. Bu bağlamda, fikri mülkiyet koruması ile rekabet hukuku arasında hassas bir denge kurulması gerekliliği ortaya çıkmaktadır.

Bu dengeyi tartışmak adına öncelikle patent, marka ve tasarım hakları Türkiye ve Avrupa Birliği mevzuatları çerçevesinde karşılaştırmalı olarak incelenmiş, mevzuat hükümlerine tez kapsamında gerektiği ölçüde değinilmiştir. Otomotiv sektöründeki yedek parça piyasasında onarımın önündeki engeller, münhasır hakların fiyatları yapay biçimde yükseltmesi, tüketicinin alternatif tedarikçilere ulaşamaması gibi rekabeti kısıtlayan temel sorunlara değinilmiştir. Bu kapsamda, tasarım korumasının özellikle birleşik ürünlerde ne ölçüde geçerli olacağı, onarım istisnasının hangi koşullarda uygulanabileceği gibi kritik hukuki tartışmalara yer verilmiştir. Bahse konu tartışmalara rekabet hukuku bakımından 4054 sayılı Rekabetin Korunması Hakkında Kanun'un 4., 6. ve 7. maddeleri çerçevesinde bakış açısı sunulmuştur. Öte yandan

Avrupa Birliği'nde 2025 yılı Mayıs ayında yürürlüğe giren tasarım korumasına ilişkin düzenlemeye yönelik değerlendirmelerde bulunulmuştur.

Tezin temel amacı, fikri mülkiyet hakları ile rekabet hukuku arasında denge kurarak, hem üretici haklarını koruyacak hem de toplumsal refahı ve adil rekabeti sağlayacak bir çerçeve önermektir. Bu çalışma, dijitalleşme ile birlikte karmaşıklaşan otomotiv sektörü yapısı içinde yedek parçaların fikri mülkiyetle korunması ile rekabet hukukunun dengelenmesi ihtiyacını ortaya koyarak fikri mülkiyet haklarının sınırlarının çizilmesinde hukuki, ekonomik ve teknolojik dinamiklerin birlikte değerlendirilmesi gerektiğini vurgulamaktadır.

Sonuç olarak, yedek parça piyasasında inovasyon güdüsünün sınırlı olduğu göz önünde bulundurulduğunda, fikri mülkiyetin mutlak şekilde korunmasının, tüketici erişimini ve piyasa dinamizmini olumsuz olarak etkileyebileceği, bu nedenle, başta onarım istisnası olmak üzere belirli hukuki esnekliklerin uygulanabileceği ifade edilmiştir. Hukukun tek amacının yalnızca hak sahiplerini korumak olmadığı göz önünde bulundurulduğunda genel kamu yararını gözeterek adil, erişilebilir ve sürdürülebilir bir piyasa yapısı oluşturmak gerekmektedir. Bu bağlamda tezde sunulan öneriler, hem mevzuatın uygulanmasında hem de yargı kararlarında dengeleyici bakış açılarının güçlenmesine katkı sunmayı hedeflemektedir.

**Anahtar kelimeler:** Fikri Mülkiyet, Tasarım Koruması, Yedek Parça, Rekabet Hukuku, Pazar Gücü.