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**Copier Mentality vs. Innovator Mentality:  
Intellectual Property and Expert Subjectivities in Modern Day Turkey**

“[Man] does not act so as to safeguard his individual interest in the possession of material goods;  
he acts so as to safeguard his social standing, his social claims, his social assets.”  
Karl Polanyi, *The Great Transformation*

“If you are to be hung, better be hung with a Western rope.”  
*Turkish proverb*

This paper looks into how technocrats upheld intellectual property (IP) institutionalization in Turkey. IP has been institutionalized in Turkey through legal documents incorporated from various international and national legal regimes and through process models presented and prescribed by global experts of the World Intellectual Property Organization (WIPO) for national experts in various workshops in which national and global experts meet. I focus on expert subjectivities<sup>1</sup> and their relations with legal documents and prescribed models because how these technocrats institutionalize IP is not a momentary emulation of WIPO models. It is rather a socio-legal and historical articulation of local experts in which categorization of 'foreign innovator applicant' vs. 'domestic patent applicant' becomes significant for capitalist modernization in producing innovation in Turkey. This articulation comes from wider socio-historical frameworks in which IP and innovation have been institutionalized from Ottoman period onwards as something 'foreign' and something 'modern'. Being connected to WIPO in workshops on innovation and IP and particular emulation of IP institutionalization prescribed

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<sup>1</sup> I use 'subjectivities' and 'subjectification' in this article with a Foucauldian perspective. Foucault discusses the relationship between power and subjectification in the following way: “While the decision to exercise power is always intentional, the mechanisms of power that individuals use to exercise power are inherently non-subjective, because they do not depend on the existence of those individuals for their own existence. Power mechanisms, because they are structured and reproduced by a multiplicity of power-relations that are not reducible to the individuals who exercise them, are necessarily incapable of being controlled by any particular individual ('Power, Subjectification, and Resistance in Foucault,' 85).” - See more at: <http://percaritatem.com/2010/03/01/part-ii-power-subjectification-and-resistance-in-foucault/#sthash.qNLNjkmy.dpuf>

by WIPO experts do not only socialize these local experts in professional training and networks (DiMaggio and Powell 1983:152; Djelic 2004; Maman 2006, Beckert 2010), but also make them perceive themselves as 'modernizing agents of society' by transforming 'society' from 'copier mentality' toward 'innovative mentality'. This focus on local expert subjectivities enables me to discuss the authority of national experts as knowledge intermediaries between global and local agents forming and maintaining expert networks, while commodifying scientific and medical knowledge as not-so-new enclosures in the form of IP (May 2013).

IP is institutionalized globally with the establishment of World Trade Organization and its founding multilateral agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) in 1995. Many countries in the Global North have already had established legal IP regimes but TRIPs made these established regimes rule of the game in the world<sup>2</sup>. There have been many positive and negative responses from various 'developing' countries to implement binding IP policies. For example, Indian Supreme Court and Patent office resist implementing rigid IP laws in TRIPS in the case of Novartis' Gleevec case in 2013 (Abbott 2013). In this case, Indian Patent office rejected Novartis' leukemia treatment drug Gleevec because of lack of therapeutic efficacy. Novartis went to the High Court of Madras and the case was rejected. Then, Indian Supreme Court confirmed that Gleevec is failed to prove therapeutic efficacy. This court case and the huge generic medicine industry in India presented India as a country with a weak IP protection; this affects foreign pharmaceutical companies since most of local pharmaceutical companies are generic companies which do not have research and development cost, just copy the ingredients and produce medicine with much cheaper prices. Another reactive diffusion case to strict IP policies came from Brazil (Chorev 2012) Brazil interpreted article 8,

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2 TRIPs has been agreed with all the ministers from the member countries so it is not just an imposition but regarding lobbying and infrastructural power in world politics, it is not so difficult to point out that it is a matter of power politics. This does not mean there have been resistance in various places before the agreement, during the agreement and even after the governments signed the agreement from people, international non-governmental organizations and sometimes even from within the governments.

clause 1 of TRIPs for AIDS which states can adopt various measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development consistent with the provisions of TRIPs. Just like South Africa and Thailand, Brazil used public health flexibility such that it allows Brazilian government to give compulsory licensing to generic companies for HIV/AIDS medicine to reduce the prices and although it was not an epidemic, public health regarding HIV/AIDS was prioritized over intellectual property and this diffusion change the implementation of global norms elsewhere as well. Turkey does not have reactive diffusion in IP policies, the Ministry of Health regulates drug pricing in negotiations with foreign and local pharmaceutical companies (add reference). The foreign companies are originator companies doing research and development on medicine while local companies have been generic companies until very recently. Foreign companies started to buy some local generic medicine companies as a way to compete with cheaper medicine sales. Turkey embraces more cooperative model such that Turkish patent office has been strictly following TRIPs and WIPO models to improve its rankings in innovation indices and to promote innovation within the country. While increasing patent applications is the general strategy to improve rankings, Turkish Patent Institute focuses on promoting 'domestic patent applicants' with a nationalist tone by opening of Technological Transfer Offices (TTOs) in universities like China, India, Italy, South Korea and many others. This is not a case of diffusion; this paper frames IP institutionalization from a wider-historical framework such that contextual factors affect local elites' subjectivities to follow or to resist certain policies while even emulating some of them. How these local technocrats see themselves with legal and economic history of Turkey enables us to understand while Turkey has reasons to react against certain IP policies; they follow the WIPO models with a specific focus: promoting IP through increasing 'domestic patent applicants' and establishing TTOs for producing more 'domestic patent applicants'. Moreover, it is not

only professional networks and socialization of local experts with global experts that keep these local experts motivated to follow these commercialization of knowledge models as argued in new institutionalism (Beckert 2010) ; it is their claims to take part in 'modern, global world' as 'experts' by promoting 'innovator mentality' to move forward as a country and to distinguish themselves from the rest of 'society' with their knowledge authority. In other words, being tied to 'modern' and 'global' as local experts is beyond thinking of which IP policies work for promoting innovation within Turkey. The local experts do not know the impacts of these policies because they do not have an evaluation mechanism established within the country to measure which policies work for domestic production of innovation as I found out in the interviews<sup>3</sup>. They naturalize some of these policies as 'technical' and they are doing the political work to establish and sustain global IP regime and commercialization of knowledge through changing universities.

The new sociological institutionalism discusses these issues as divergence and convergence from models (DiMaggio and Powell 1983; Meyer and Rowen 1977) Emphasizing “multiple modernities” with multiple trajectories rather than homogenizing and heterogenizing in a globalizing world, Eisenstadt challenges this uniting or differing perspective as if there is one single trajectory in institutional developments. Various scholarly approaches challenge new institutionalism arguing that institutional developments can go beyond institutional isomorphism which emphasizes convergence or homogenization in institutional practices with increasing globalization (Beckert 2010, Hall and Soskice 2001, Dobbin 1994; Streeck and Thelen 2005; Thelen 1999, Lamont and Th’evenot 2000). Institutional isomorphism explain how Turkish technocrats emulate the processes of IP institutionalization, but they do not explain why they chose certain policies over others while converging with strict IP laws unlike Brazil, South Africa, Thailand. By converging, I mean, Turkey did not have transitional period after 3

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3 In the interviews, three local experts requested me to do the evaluation for them as a PhD student in sociology as my dissertation, yet I replied that I am not equipped enough to do evaluation to understand the relationships between IP policies and innovation promotion within Turkey.

years for establishing IP institutions, Turkey does not allow parallel importation without having consent from the originator company due to 'exhaustion of rights' (in other words, after 20 years of monopoly). Turkish high-rank officers do negotiations with the foreign pharmaceutical companies about drug prices in which the state officers do not have so much bargaining power. The technocrats mostly focus on increasing 'domestic patent applicants' through establishing TTOs in universities to catch up with the innovative production to compete with other countries by commercializing university with industry partnerships.

While focusing on knowledge networks of intellectual property, I analyze the workshop materials presented by World Intellectual Property Organization (WIPO), legal documents and historical frameworks of these legal documents institutionalizing IP. I also did in-depth interviews with 16 national, and 3 global patent experts and use these interviews in the analysis. This paper attempts to identify how IP institutionalization takes place in a way that certain models and texts become hegemonic in implementation for national experts.

First, I identify IP process models<sup>4</sup> *prescribed* by a “technical body” of the United Nations, WIPO. These prescriptions are suggested in the course of encounters between national and global experts. I look into these models presented at national workshops on Innovation Promotion and Technological Transfer in 2012 in Istanbul and in 2013 in Ankara, Turkey. I, then point out how these models are implemented with the statements of these experts from in-depth interviews I conducted in December 2013 and December 2014. This part will enable me to understand how national experts *articulate* these process models of IP *prescribed* to them, in other words emulate them with a specific focus. In the second part of the paper, I will provide historical accounts of coercive and hegemonic measures of legal and political institutions subjectifying local experts to institutionalize IP. Third, I will

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4 Many discussions on models are done in performativity scholarship in economic sociology by Michel Callon and

discuss the local experts' subjectivities and their relations to socio-historical institutions of economic development as some of the reasons that partially make WIPO process models hegemonic and shape their articulations.

### 1. *Process models in a 'developing' context:*

The World Intellectual Property Organization is an international organization whose mission is “...to respond to the main challenges [developing] member states are facing with development of strategies, infrastructure and skilled professionals” (2012). One of the objectives of the WIPO, from its emergence onwards, is outlined below:

“...to effectively support Member states, *in particular developing countries and countries in transition*, to enhance and strengthen their capacity for local creation, development, ownership, management, strategic use and commercialization of IP as an economic asset for the benefit of their nationals and economic growth.” (National workshop on Innovation promotion and technological transfer organized by the Turkish Patent Institute and WIPO, June 2012, Istanbul)

Its mission is mostly to transfer technology from ‘developed’ to ‘developing’ and ‘transitional’ countries, to share know-how and to distribute financial resources for institutionalizing IP for economic development in ‘developing’ contexts. As a global institution, an important task is to circulate these ideas and skills, to transfer skills to local experts. For this strategy to materialize, there has to be a connecting site for the WIPO to localize its global objectives (Latour 2005). In other words, there must be workshops and seminars in which global experts of WIPO meet national experts to disseminate information on IP and related issues. The function of these connecting sites serve to blur the lines between the local and the global, the micro and the macro processes (Brooks 2010; Knorr Cetina 2014; Latour 2005; Tsing 2005). Sassen identifies the global organizations setting the agenda for the national sphere (2006). But connecting sites are not only about the imposition of global agendas; they are also

hybrid spaces of exchange and circulation<sup>5</sup> through expanding, convoluted networks of specific entities such as legal texts or skills (Latour 2005). In this case, WIPO experts (TPI) are ‘global experts’ who translate *models* on how to develop legal and “technical” infrastructure for IP, how to institutionalize IP within a territorial authority and further and more detailed information on various processes related to IP.

Turkey became part of WIPO, a special agency of the United Nations, in 1976. Since then, there has been constant exchange in skills and financial resources between domestic institutions and WIPO to promote scientific, medical and technological innovation. For the WIPO and many other relevant international organizations, intellectual property is one of the most important variables of innovation. The assumption about these institutions is that legal and individual persons engage in innovation because they know they will have exclusive rights of ownership for some time legally, and these exclusive rights have monetary value through pricing the innovation and giving license for others to use it, if commodified and commercialized in the market. For example, the Organization for Economic Co-operation and Development (OECD) formulates innovation with an emphasis on intellectual property rights as one of the most important variables:

“*Innovation = f(IPR [intellectual property rights], Technology Transfer, Control Variables) + error term*” Organization for Economic Co-operation and Development (OECD) Trade Policy Working Paper No. 62, TAD/TC/WP(2007)19/FINAL, 2008.

WIPO is distinct such that it is perceived as “a technical organization” by national experts in Turkey with no political character unlike the World Trade Organization (WTO). This “technical” character makes WIPO more credible and more accurate for national experts as stated below:

“WIPO is a technical body, WIPO experts share their expertise in technical matters to institutionalize IP in Turkey for the benefit of the country. WTO is a political organization in which ministries and lobbying for certain issues are involved. You know

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5 For detailed and inspiring discussion of circulation of knowledge, see the interdisciplinary conversation between Edwards, Gitelman, Hecht, Johns, Larkin and Saifer “AHR Conversation: Historical Perspectives on the Circulation of Information” *American Historical Review*, December 2011.

which countries are powerful in it [WTO]” (2014, Ankara)

Although the emergence and actions of the WIPO are highly political, social and economic<sup>6</sup>, this discourse of the WIPO as being more “technical” is widespread among national experts, especially when compared to the World Trade Organization (WTO). Meanwhile, this same discourse opens up spaces for more conversation on the WIPO, especially because there are legal constraints on the public officers in Turkey talking about politics<sup>7</sup>. This research focuses on the connecting sites of WIPO experts and national experts at TPI and related ministries because one of the credible knowledge-making centers<sup>8</sup> for national experts in Turkey regarding IP has been the WIPO, due to its “technical” character, especially after the emergence of Turkish Patent Institute in 1994. The TPI and WIPO organize workshops together for new and existing national experts. These WIPO workshops bring global connectivity in the form of information exchange. They are also spaces in which economic knowledge on IP detached from its social relations, formulated and prescribed by ‘global experts’ as ‘technical knowledge’ circulating from the WIPO headquarters in Geneva to other places, asymmetrically. Although WIPO is not a binding, but advisory organization of United Nations unlike WTO, its expertise on economic development through innovation promotion is widely accepted by national authorities in Turkey and in most of 'developing' world. The 'developing' nations and their officers cannot risk avoiding any 'technical' resources coming from these international organizations to catch up with the 'advanced' nations. Also, WIPO's mission is based on 'helping out' developing and least developed countries to establish infrastructure for innovation promotion with material and knowledge resources. Systemic rapid capitalist development and its ideals seek for rapid policy

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6 To name one example of its political-economic character, in 2012, WIPO shares a number of hi-tech goods with North Korea and Iran and is taken under investigation by the United Nations. For details, see: <http://www.ip-watch.org/2012/09/11/review-of-wipo-shipments-to-iran-north-korea-issued-us-calls-for-new-safeguards/>

7 Public officers in Turkey are meant to be unbiased with regard to republican models of governance mostly influenced by the French system.

8 Latour calls them “centers of calculation” (1987).



changes to develop quicker. Technocrats in Turkey buy these ideals and try to establish IP institutions very quickly after 1995 and took WIPO as one of the leading knowledge centers for IP institutionalization.

In this section of the paper, I will dig into the process models of IP prescribed by the WIPO. Global experts actually define each stage of the IP institutionalization process as *a universal model* to promote scientific and technological innovation, especially for developing countries. ‘IP valuation’ is not an abstract conceptualization of the author’s own devise; rather, it is a living, relational, socio-technical term used among national experts; it becomes part of their expertise and vocabulary through their connections with the WIPO.

While delving deeper into the details of the workshop materials on Innovation promotion and technological transfer organized by the Turkish Patent Institute and the World Intellectual Property Organization (WIPO) in 2012, this part of the paper focuses on process modelling and the enactment of this model by national experts whose purpose is to institutionalize IP. In this workshop, IP institutionalization is defined with certain formulas depending on the predicted life of a patent and commercialization of the patent. This predicted life is based on legal ownership of the patent for 20 years and the economic life of the patented product, meaning the time period until another innovative product substitutes the patented product<sup>9</sup> (2012). The process leading to the commercialization for making IP institutionalized is modeled as the following (Figure 1):

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9 The details of WIPO IP valuation methods can be found online, accessed online at [http://www.wipo.int/edocs/mdocs/innovation/en/wipo\\_inv\\_mty\\_02/wipo\\_inv\\_mty\\_02\\_4.pdf](http://www.wipo.int/edocs/mdocs/innovation/en/wipo_inv_mty_02/wipo_inv_mty_02_4.pdf) (March 10, 2015)

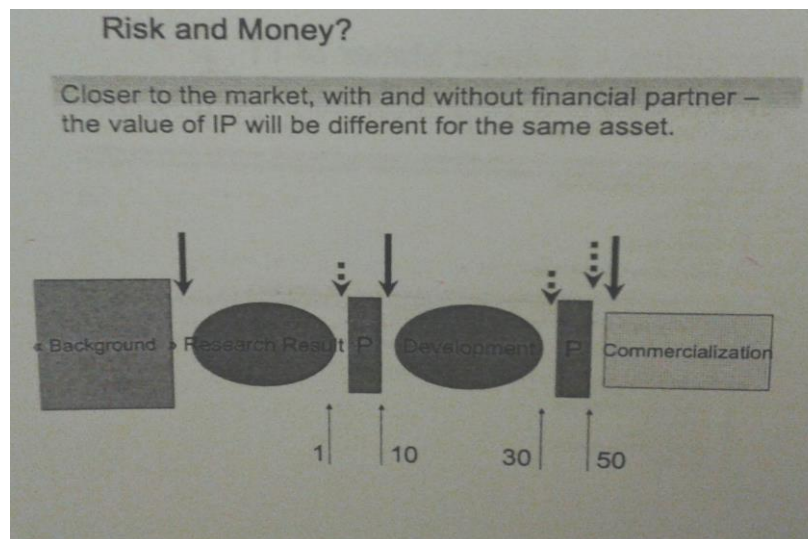


Figure 1- Booklet on “Innovation Promotion and Technological Transfer”, The presentation entitled “The stages of IP valuation”, presented by a WIPO expert in 2012 workshop. Let's go through the stages modeled for the national experts in the workshop in its ideal type. These stages of this process are respectively background research, research result, partnerships, development, patenting and commercialization (Figure 1). The concrete processes described by the experts is similar in their accounts and resembles the following: The first stage is background search; this is a process of checking each and every granted patent in a database to determine whether there is anything similar to the innovation of “the innovator”. This is the process to look into the collection of innovations which is registered, classified<sup>10</sup> and gathered by state officers through software programs. If the result is negative and there is no innovation similar to what one has in mind under the same classification, it means that the “innovator” can look for an industrial partner to work on this innovation to develop as a product or as a process. An “innovator” can then apply for a patent through the legal entity, usually a company. After that, an “innovator” has to do more development to make her creation in mind applied as a product or as a process. The patent is then granted to the idea of a product or a process. The last

<sup>10</sup> There are standardized international classifications for innovations to be patented. Classification is also an important collective calculative device for economization of IP. For detailed information, see <http://www.wipo.int/classifications/en/>.

stage is to decide how to commercialize the innovator's own product or process in the markets. This pattern must be followed in order to make a “good” patent<sup>11</sup>; a useful patent responsive to the global problems of innovation; in the words of a national expert, a “good patent” is defined as follows:

“Good patent is the patent which is useful for that nation. What is useful for that nation and state? To be responsive to the global problems of innovation. You [Turkey] cannot continue just copying, you should have a mechanism promoting innovation or innovative solutions to global problems... This utility actually happens when the innovation meets the industry” (January 2014, Ankara)

The commercialization step is basically the step where use value in its Marxist sense is transformed into exchange value through transforming an innovation into an asset with monetary value. The utility referred to in the quote is very different than use value; the interviewee redefines a useful patent by attaching it to commercialization in which “innovation meets the industry”. So exchange value determines its use for an innovator; commercialization also becomes the only way “...to be responsive to the global problems of innovation”. This entire process in this WIPO model is for patent applicants rather than national experts to follow. However, national experts are responsible for establishing, securing and maintaining these processes with certain institutions and by subjectifying citizens as domestic patent applicants within Turkey.

WIPO experts warn national experts to maintain this model with establishing new institutions because IP is a fragile asset in the markets. Being an intangible 'asset'; IP does not suffer from scarcity like tangible objects (Verdery 2004; Povelli 2004; Alver & Katyal 2010). So, its mobility and shareable character, make its enclosure and ownership a bit more difficult (Aoki 1998); it necessitates litigation, maintenance of market-driven incentives by institutions and experts. In other words, IP law, IP courts and the police enforcing the law are necessary parts of institutionalizing IP, but not sufficient. There have to be institutions to establish, and maintain new institutions to keep IP intact in the market through

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commercialization. In these new institutions, experts must convince people to start and go through the entire process as prescribed. The national experts enact, circulate, promote and maintain these processes constantly within the country; they also establish new institutions to subjectify citizens as an imagined entrepreneurial innovator (Rajadhyaksha 2014) which is classified as “domestic patent applicants”, as one of the measures of global competitiveness and global innovation indices.

**R&D Networks and IP Hubs (TTOs):**  
Implemented in Colombia and Western African Countries

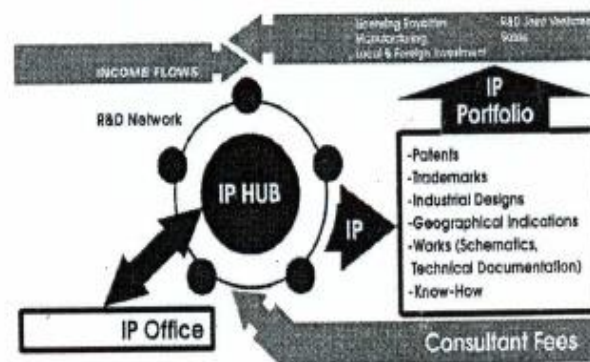


Figure 2- A slide from the Booklet on “Innovation Promotion and Technological Transfer”, National workshop on Technological Transfer and Innovation Promotion in Istanbul (December 2012), presented by a WIPO officer to national experts in Turkey.

Regarding the last stage of the process model, commercialization, this visual schema becomes important for national experts. According to this simplification, Research & Development networks are part of the IP Hub in relation to the IP office. IP is created from this hub in the form of patents, trademarks, industrial designs, geographical indicators, works (schematics, technical documentation) and know-how. All these entities incorporate IP portfolio affected by consultant fees, income flows and macro-economic measures. In the title of the slide, it says R&D networks and IP Hubs and “TTOs” is found in parentheses. TTO is an abbreviation for Technological Transfer Offices. Almost all national experts refer to TTOs in one way or another as an important part of the plan for the commercialization

stage of the process. These new institutions have been established following the process models. Technological Transfer Offices (TTOs) are mostly located in public and private universities in Turkey. The mandate of TTOs is to commercialize knowledge produced in the universities (Lave, Mirowski & Randalls 2010), therefore creating more subjects who are potential domestic patent applicants and who value IP. In one of the interviews, the interviewee explains what TTO means, its relation with institutionalization of IP in the commercialization stage and what national experts aim at through TTOs:

“TTOs are units that mediate between the useful knowledge produced in the universities and society to respond to the demand for such useful knowledge. We want these offices to work for various objectives, there are four of them that are significant: *Project contracts between universities and industry actors, registration of patent documents, commercialization of knowledge, activities on increasing entrepreneurial mentality*, helping university actors to apply for national and international funding through support in project writing, preparation of the documents and other relevant issues in patent applications.”<sup>12</sup> (December 2013, author’s translation)

TTOs are central to institutionalizing IP, they are one of IP hubs (Figure 2) because they are the institutions connecting universities in the local doing research and development and the industry making profit from the application of these researches. There are currently TTOs in 44 universities, and in 2012 there were only 22. In 2014, the Scientific and Technological Research Council of Turkey signed contracts with 10 more universities to open TTOs by connecting them with the industry. TTOs are institutions that subjectify university members to act with an entrepreneurial mentality as stated above (Boltanski & Chiapello 2006). Here, the important questions are: How do these process models become hegemonic? Why are they articulated as such in Turkey? These questions cannot be answered without delving into historical-institutional frameworks of IP law and its relation with political elite

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12 The original transcript of the interview: “TTO universitelerde geliştirilen bilginin, teknolojinin toplum tarafından kullanılmasına aracılık eden birim. Onun biz birkaç boyutta işlem yapmasını istiyoruz. Üniversite-sanayi arasında kontratlı projeler, bir tanesi patentlerin patent belgelerinin alınması, ticarileşmesi üzerine faaliyetler, girişimcilikle ilgili faaliyetler, bir de üniversitenin ulusal ve uluslararası fonlardan daha çok yararlanabilmesi için, fonlara yönelik çalışmalar, proje yazımlarını destekleyen birimler şeklinde olmasını, bu dört tane görevi yapan bir çerçevesi var teknoloji transfer ofislerinin.” (2013)

subjectivities.

Both of these models prescribed by WIPO have been appropriated by national experts although they are not enforced. The models enforced and the relations of domination between countries of what is referred to as the global South and those of the North are studied by various scholars (Caliskan, 2005; Elyachar, 2005; Mitchell, 2002, 2007; Goldman 2006). It has also been studied as coercive isomorphism in institutional theory (Powell & DiMaggio 1983). Turkish case on IP institutionalization by emulating WIPO models can not be discussed only through coercive isomorphism because Mitchell argues that the object of development becomes self-referential and World Bank's images of space and numbers regarding population and agriculture in Egypt become 'naturalized' as "technical knowledge" (2005). He continues by pointing out that "what appears as nature is already shaped by forms of power, technology, expertise, and privilege" (2005). IP valuation process models are also shaped by coercive and hegemonic forms of power. WIPO process models are 'naturalized' in the sense that they become "technical" entities; they become part of the public officers' expertise and these national experts apply these models to the 'science' of economic development. These models are to value IP, hence to promote innovation within the country. These models become part of national experts' cognitive skills. Why do the national experts find these models worth following to value IP? Their subjectivities and relational institutional processes become vital to answer this question (Mische 2011; Zelizer 2011).

In this case, these process models of WIPO are products of global networks of exchange among experts and they serve both for states and markets, but these models would not be hegemonic unless historical-institutional frameworks of IP law and the related elite subjectivities valuating them come together with these devices in these knowledge networks. The legal construction of intellectual property has been instituted with the bifurcation of 'foreign innovator applicants' and 'domestic patent

applicants'. I will now delve into these historical-institutional frameworks of IP law that led to the subjectification of citizens as “domestic patent applicants” as opposed to “foreign innovators”. The category of “domestic patent applicants” has become very significant through the history of IP in Turkey. Then, I will inquire into the subjectivities that make these models and legal texts hegemonic and pave the way to the new institutions, TTOs to subjectify new agents with entrepreneurial mentality who commercialize knowledge in the universities as steps of economic development.

## ***2. Historical Accounts of IP institutionalization in Turkey:***

Reifying technological and managerial devices within economics such as models has the danger of making socio-historical power relations invisible (Breslau 2013). In analyzing property rights in India, Mukhopadhyay points out to the danger inherent in not giving more power to the wider historical-institutional parameters in the analysis (2014). He argues that this intervention signifying the wider historical-institutional parameters highlights the asymmetric power relations with a more systemic perspective<sup>13</sup>.

In this part, I will only trace the historical accounts of the political elite in Turkey<sup>14</sup> institutionalizing IP legally, politically and socially, which positions itself between 'uneducated masses' and the 'modern world' (Ahiska 2010; Chatterjee 2010); subjectified by legal texts, international and regional institutions, process models and evaluation measures in global indices. The experts' role is to increase patent applications through subjectifying the citizens as “domestic patent applicants” as opposed to foreign patent applicants. This paper does not look into the subjectification of citizens as 'domestic patent applicants'. I do not have data to understand if subjectification of citizens are

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13 By 'systemic', I do not mean a totalizing/reifying argument determining IP valuation. As Fernando Coronil points out, there is “no reason why social analysis should be cast in terms that polarize determinism and contingency, the systemic and the fragmentary” (Joseph et al. 1998). There has been a tendency to identify political economy with an abstract master narrative and cultural studies with fragmented local histories. But the interplay, even creative tension, between the systemic and the fragmentary may give us a better grasp on relations of domination in valuation.

14 The choice of following history of political elite is not a matter of priority; it is a matter of access to resources.

successful such that they become 'domestic patent applicants' other than raise in domestic patent applicants by years (Figure 3) but the subjectifying citizens is a significant part of local experts' subjectivity while they describe their duties for Turkey to produce innovation. The history of IP law makes the distinction of 'domestic patent applicant' vs. 'foreign innovator applicant' significant politically, economically and socially.

IP has been institutionalized in a context with its continuous and discontinuous historical accounts; it does not occur in a vacuum. It is instituted, sustained and maintained in a specific historical context; it is neither a mere moment of exchange nor just embedded in a societal culture (Eisenstadt 2000). It is also not a momentary assemblage or arrangement. Since I would like to respond to the questions of how IP has become institutionalized in Turkey and how IP process models prescribed by WIPO become hegemonic, I ought to look into the wider historical-institutional accounts recalling a Polanyian framework (Polanyi 1944, Holmes 2014).

These historical accounts are also significant because they enable me to locate political elite subjectivities in a wider historical perspective. They are also intertwined with political economic organizations affecting the specific context in Turkey. These expert subjectivities are influenced both by coercive measures of regional and international institutions and hegemonic discourses of expertise as a socio-political status. These experts seek for recognition from the 'modern' world by distinguishing themselves from the inferiorized other: 'society' while trying to fix the ills of 'society'; in this case 'copier mentality' (Mitchell 2000; Chatterjee 2004). This hierarchy between modern world and not-so-modern society can be followed in the laws and policies of IP in the region from late nineteenth century to the present day. This brings us back to the relation between institutionalization and their historicity or in other words their situatedness (Hussein 2014; Said 1979).

### ***2.1. Political Economy Matters: IP law and its institutionalization***



Now I provide a brief history of IP as a legal construct and its institutionalization in Turkey following and diverting from patent law in the Ottoman Empire. In the website of TPI and in few scholarly articles written on patent law related to the region, the history of intellectual property is presented starting from thirteenth and fourteenth century with the Ahi Organization much before its European counterparts (Soyak 2005, Bulbul & Ozbay 2010). The Ahi organization is a socio-economic organization of male sellers who mandate is to set common prices, aims and goals and to have an internship system for younger males<sup>15</sup>. It was a common legal procedure to divide the production of a single product as a monopoly, before 1870. The TPI website explains this process as follows: “*European-like* organizations of industrial and intellectual property were established in the 1870s.”<sup>16</sup> This means that product-based patents, rather than the production-based monopoly, were established in the 1870s. In other words, whereas before 1870 producers were organized such that each factory produced products distinct from other factories, after 1870 the patent was based on the product rather than the organization of producers. In 1879, the patent system was organized through a new Ottoman patent law known as *ihтира berati*. The studies on *ihтира berati* state that it was a translation of a French patent law established in 1844 (Bulbul & Ozbay 2010). From the late Ottoman era in the nineteenth century until the emergence of Republic of Turkey (1923), patent law in this geopolitical area is highly affected by the “western/European” framing of patent law. Moreover, *ihтира berati* is mostly meant for importing technologies from abroad (Soyak 2005). Importing technology or bringing technicians or teachers from abroad have been part of the industrial strategy from the late Ottoman empire to the 1940s in the Republic (Burcak 2008). For example, Seyyid Mustafa, one of the first Ottoman engineers in the early nineteenth century, was educated in the newly established Ottoman engineering schools modeled from French education system as a strategy of survival to improve military equipment (Burcak

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15 More information, though very nationalistic and biased, can be accessed at [http://www.ahilik.net/index.php?option=com\\_content&view=article&id=74&Itemid=55](http://www.ahilik.net/index.php?option=com_content&view=article&id=74&Itemid=55)

16 Translated by the author, accessed at <http://www.tpe.gov.tr/portal/default2.jsp?sayfa=602>

2008). This strategy continued with the sending of citizens abroad to acquire technological knowledge and bring it back to the country. As an industrialization strategy, import substitution policies continued until the 1980s in Turkey, with a shift toward an export-oriented economy. Most of the national patent experts I interviewed have been sent to the universities in western Europe to learn more on IP models and processes in a similar fashion as a partnership between the Turkish government and the European Union since 2003. So the system has favored exchange between foreign innovators/companies mostly from Western Europe and the Turkish political elite at least from nineteenth century on. This asymmetric exchange favors foreign innovators, engineers and merchants through the patent law, *ihтира berati*. This law has secured the privilege of monopoly without investigation for foreign innovators/companies until 1995 (Bulbul & Ozbay 2010). This legal document is significant in understanding the emergence of the “domestic patent applicants” as an important category.

It should also be noted that patent law was not an exception in favoring western merchants, states and companies in the Ottoman Empire in the nineteenth century. Although the capitulations and economic privileges for foreign merchants protected by bilateral agreements between the Ottoman Empire and Western European countries started in the sixteenth century, the nineteenth century has been pivotal for economic dependency on Western Europe for the Empire (Shields 1991; Inalcik & Quataert 1994). During the Crimean War (October 1853–February 1856), the Ottoman Empire began to acquire its first foreign loan, contracted in 1854 from western European countries (Kiyotaki 2005, Eldem 2005). This process continued with sporadic attempts to impose some control over the Empire by western powers (Eldem 2005, Pamuk 2005). From 1863 onwards, “a snowballing effect of accumulated debts” led to the formal bankruptcy of the Empire in 1875. In 1881, a solution known as *Düyun-u Umumiye*, was found in the establishment of the Ottoman Public Debt Administration, controlling the bulk of state revenues. This public debt administration was a consortium of foreign

creditors with more than 5000 officials working to organize state revenues to pay the empire's loans to its European creditors<sup>17</sup> (Quataert 2005).

The Ottoman patent law protecting and monopolizing innovation for foreign innovators, was established in 1879 against this economic backdrop, just two years before the bankruptcy of the Empire in 1881. This law protects only the product, not the process; it favors foreign innovators and it did not allow patents for pharmaceuticals (Bulbul & Ozbay 2010). This patent law was valid until 1995 with only minor changes. The emergence of the World Trade Organization changed the patent law, creating a global regime with a legally binding multilateral appendix agreement, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)<sup>18</sup> (Soyak 2005). This change brings patenting for pharmaceuticals and processes into the legal infrastructure of the country. Moreover, the WTO has mechanisms to enforce its clauses. One of the distinctive characteristics of the WTO is its binding power over the member states through the emergence of its legal body, the WTO Dispute Settlement Body. Any country can sue another country if that country does not obey the international trade laws, and TRIPs is a significant legal text in international trade. Enforcement has taken the form of economic sanctions and loss of prestige in the international arena as well as a decrease in the global rankings of trade measures. The parties have to be states; the conflicts of intellectual property are considered first and foremost a matter of international trade law. So multinational companies apply to the states where they have their bases to open up a case for them. For example, if Pfizer has a problem related to the implementation of patent law regarding pharmaceuticals in Turkey, the United States representative will be expected to sue the Turkish state in the WTO dispute settlement body, since Pfizer's headquarters are in the US. Until now, out of 488 cases, 34 are based on the violation of TRIPs

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<sup>17</sup> This system is quite similar to the International Monetary Fund (IMF) structural adjustment policies or contemporary European Central Bank policies in bankrupt Greece. In fact, in one of its working papers (2003), IMF authors themselves refer to the Ottoman Public Debt Administration as part of their history regarding British investors.

<sup>18</sup> The agreement and its details are available here: [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf)

globally<sup>19</sup>. TRIPs is only one part of this regime, but an important agreement in regulating commodification and the im/mobility and monopolization of medical, scientific and technological knowledge with its clauses (Mirowski 2007). Although TRIPs flexibilities are discussed and used by many ‘developing’ countries in the global South such as Brazil, South Africa and India (Drahos 2002), its famous clauses on the monopoly over pricing medicine and ban over copying them are still valid and strictly enforced in many parts of the world, especially after 2005, due to the end of transitional period for ‘developing countries’. TRIPs gives exclusive rights to patent-holders, including a 20-year-long monopoly over knowledge and pricing of the innovative entity authorized by its 160 member countries<sup>20</sup>. It should be remembered that these clauses of TRIPs were also matters of political contention, struggle and negotiation in the Uruguay Rounds and before, especially in the history of Western Europe (Biagoli et al 2011)

Turkey accepted to join the World Trade Organization (WTO) and the Agreement on Trade Related-Aspects of Intellectual Property (TRIPs) with a transitional period, ratifying the agreement on 1 January 1995. A transitional period of 5 years with an additional extra 5 (10 years in total) is given to many ‘least-developed’ and ‘developing’ countries because the WTO Council composed of government representatives from member states agreed that ‘developing’ countries need some institutions establishing legal and administrative infrastructure to comply with the intellectual property regime of the WTO. However, Turkey did not wait until 2005; with an abrupt legislative decree, Turkey ended its

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19 For more details, visit: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm#disputes](https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm#disputes), accessed online on April 10, 2014.

20 The article 28 shows the Rights conferred to the patent-holder:

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.” (TRIPs 1995, Article 28)

A list of WTO member countries is available here: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)

transitional period in 1998. According to one of my interviewees, on the day after the publication of the decree in the *Official Gazette*, more than 1500 patent applications were submitted by mostly multinational pharmaceutical companies based in the United States, as though they knew of this abrupt decision beforehand, suggesting the influence of US intelligence in this decision (2013). There is not enough evidence to corroborate these claims. When I question the reason behind the early end to the transitional period, one of the national experts said that “we are not a banana republic, we could and we did end the transitional period”, considering the transitional period as a charity for “not-developed” countries by “developed” countries; the end of the transitional period almost felt like a matter of pride, a matter of being part of the “developed” world for the expert<sup>21</sup>. On the other hand, The Turkish Medical Association (TMA) and the Turkish Pharmacists' Union (TPU) were wholeheartedly against the abrupt end of the transitional period; they were concerned with a potential increase in drug prices and both institutions have ideological positions favoring protectionist economic policies in Turkey. The TMA blamed the International Monetary Fund for ending the transitional period abruptly; they believe that Turkey had ended the transitional period so suddenly because the International Monetary Fund forced the political elite of the country to do so by any means necessary<sup>22</sup> (2013). Although the conspiratorial imagination is highly fertile in the Turkish context due to past political interventions by “superpowers” and events including military coups with the support of United States intelligence agencies, it is not false to state that the political-economic impact of the IMF was immense due to IMF loans given to Turkish government in the 1990s. The amount of loans issued to Turkey in 1999 reached approximately 11,7 million dollars (Table 1). In 2013, IMF loans were paid back and no more loans have been drawn from the IMF since. This does not mean that Turkey does not have any loans to pay. It

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21 Interviews carried out as part of my Unpublished MA Thesis, (2009) “Is Turkey fulfilling its Access to Medicine Obligations under the Article 12 of the International Covenant on Economic, Social and Cultural Rights, The Right to Health?” Human Rights, The Department of Political Science, University College London.

22 From an interview I did in 2013 in Ankara, Turkey.

actually has more loans than before, only that they are no longer to the IMF<sup>23</sup>. Many standby agreements were signed by the Turkish Parliament without much political-economic leverage for the country and its citizens in the 1990s. Structural Adjustment Policies (SAPs) were implemented as

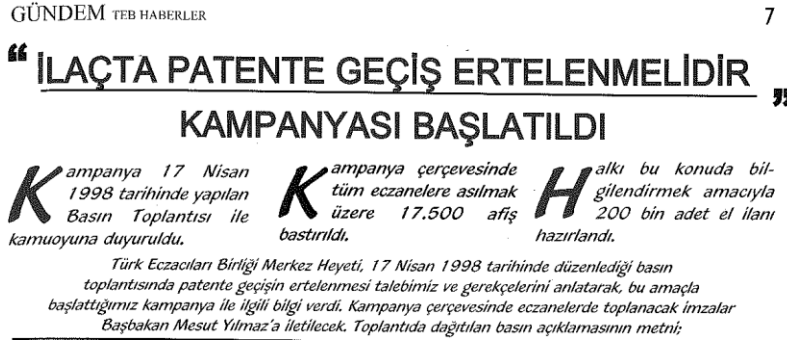
Facility	Date of Arrangement	Date of Expiration or Cancellation	Amount Agreed	Amount Drawn	Amount Outstanding
Standby Arrangement	May 11, 2005	May 10, 2008	6,662,040	4,413,602	4,066,620
Standby Arrangement	Feb 04, 2002	Feb 03, 2005	12,821,200	11,914,000	155,925
Standby Arrangement of which Supplemental Reserve Facility	Dec 22, 1999 Dec 21, 2000	Feb 04, 2002 Dec 20, 2001	15,038,400 5,784,000	11,738,960 5,784,000	0 0
Standby Arrangement	Jul 08, 1994	Mar 07, 1996	610,500	460,500	0
Standby Arrangement	Apr 04, 1984	Apr 03, 1985	225,000	168,750	0

coercive measures within the country.

Table 1- The chart of loans drawn by the Turkish government, with its timeline from the IMF website.

It was not only the Turkish Medical Association that was against the early termination of the transitional period in applying TRIPs in Turkey. The Turkish Pharmacists' Union also ran a campaign with protectionist claims. They warned that the entrance of multinational companies would end the national pharmaceutical companies and that drug prices would skyrocket and access to medicine would be jeopardized. They made petitions against the end of the transitional period and placed 17,500 posters on pharmacy windows, distributing more than 200,000 brochures and newsletters to inform people about the new patent law in effect by 1 January 1999 (Picture 1).

<sup>23</sup> The quarterly lists of external debt stocks of Turkey can be accessed online from the website of Treasury, [http://www.hazine.gov.tr/File/?path=ROOT%2fDocuments%2fKamu+Finansman%c4%b1+%c4%b0statisti%c4%9fi%2fT%c3%bcrkiye+Net+D%c4%b1%c5%9f+Bor%c3%a7+Stoku+\(Ar%c5%9fiv\).xls](http://www.hazine.gov.tr/File/?path=ROOT%2fDocuments%2fKamu+Finansman%c4%b1+%c4%b0statisti%c4%9fi%2fT%c3%bcrkiye+Net+D%c4%b1%c5%9f+Bor%c3%a7+Stoku+(Ar%c5%9fiv).xls) (January 2015)



Picture 1- The headline reads: “Transition to patenting pharmaceuticals should be delayed” (March 1998)

Tracing the path of the political-economic history of Turkey related to patent law and its changes, the relations of debt and the patent law mostly protecting foreign innovators seem to show historical continuities with slight changes. National experts are very concerned about changing this by promoting “domestic patent applications”, meaning the applications done by citizens through establishing new institutions valuating IP.

There is a recent attempt to change the IP law entirely, complementing these institutions. In the new draft law that is awaiting to be accepted in the Turkish Parliament, prepared by national experts; Article 6, paragraph 3<sup>24</sup>, states that universities will be allowed to be the patent-holders, yet sharing one third of the monetary value with the innovator just like the Bayh-Dole Act of United States (1980)<sup>25</sup>. One of the patent experts explained this to me with great enthusiasm (2013).

The Bayh-Dole act is well known for changing the public character of universities in the US by entitling them to be the patent-holders. The Act changes the directions of researches in universities with a twist of neoliberalization (Lave et al 2010; Lieberwitz 2005; Greenbaum 2008). The role of public universities has changed from public institutions toward profit-maximizing, patent-holding

24 For original draft law in Turkish, see <http://www2.tbmm.gov.tr/d24/1/1-0756.pdf>, accessed online, January 2015.

25 For detailed information on Bayh-Dole Act, see <https://www.law.cornell.edu/uscode/text/35/part-II/chapter-18>, accessed online, Feb 2015.

institutions<sup>26</sup>. TTOs and Technoparks within universities push them to earn their own revenues in the markets. Since they are seen as profit-making bodies, after this act the cuts in the state funds for education become legitimate.

The political elite has been either coerced or convinced to institutionalize IP law in a way that favors foreign innovators that benefit from the process. The legal infrastructure is also framed as ‘western’; both the Ottoman patent law, decree law no. 551 and the new draft law are respectively translations of their French, European Union and United States counterparts (Appendix 1).

These changes in the patent law are meant to increase “domestic patent applicants” as opposed to just foreign innovators/companies applying for patents in the Turkish Patent Office. This category also resonates with the nationalist economic development discourses of the recent government to be more competitive in the global rankings. Nevertheless, it would be unfair and too easy to picture these historical accounts as mere acts of coercion by the Western capitalist forces. This is a complex struggle combining coercive measures of international and regional organizations, dynamic legal infrastructure, subjectivities of the political elite and process models. All these complex fragments of institutionalizing IP can be framed as tools of oppression and struggle for recognition of in knowledge-production systems by subjectifying ‘their own’ citizens to be entrepreneurial innovators or “domestic patent applicants”, depending on the contexts in which they are used.

### ***3. Recognition Matters: Expert-elite subjectivities in Turkey***

While ratifying TRIPs in the parliament in 1995, one of the Members of the Parliament stated his view, accepting the global intellectual property regime and the protection of IP ‘rights’ as follows:

“...we should *trust our own people, our own entrepreneurs, our citizens* from now on; Turkey does not deserve to be among the nation-states which are not trustworthy especially for the protection and fulfillment of intellectual and industrial property rights.

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26 For more information, see Lave, Rebecca et al. (2010) “Introduction: STS and Neoliberal Science” Social Studies of Science Vol. 40, pp. 659-75.



These rights should be protected in Turkey, *this necessity is indicated by the world at this stage.*<sup>27</sup> (TBMM Proceedings, p. 378)

One of the reasons why focus on 'domestic patent applicants' as a measure here, has been widely shared among public officers, bureaucrats, national experts in Turkey: the matter of recognition; being a trustworthy nation-state in the eyes of the “world”. How does Turkey become a trustworthy nation-state? In this statement, the Member of the Parliament answers: by trusting “our own citizens” as entrepreneurs and protecting IP rights. This bifurcation of our own patent applicants vs. foreign innovators can be traced in the political economic frameworks I laid out in the previous chapter.

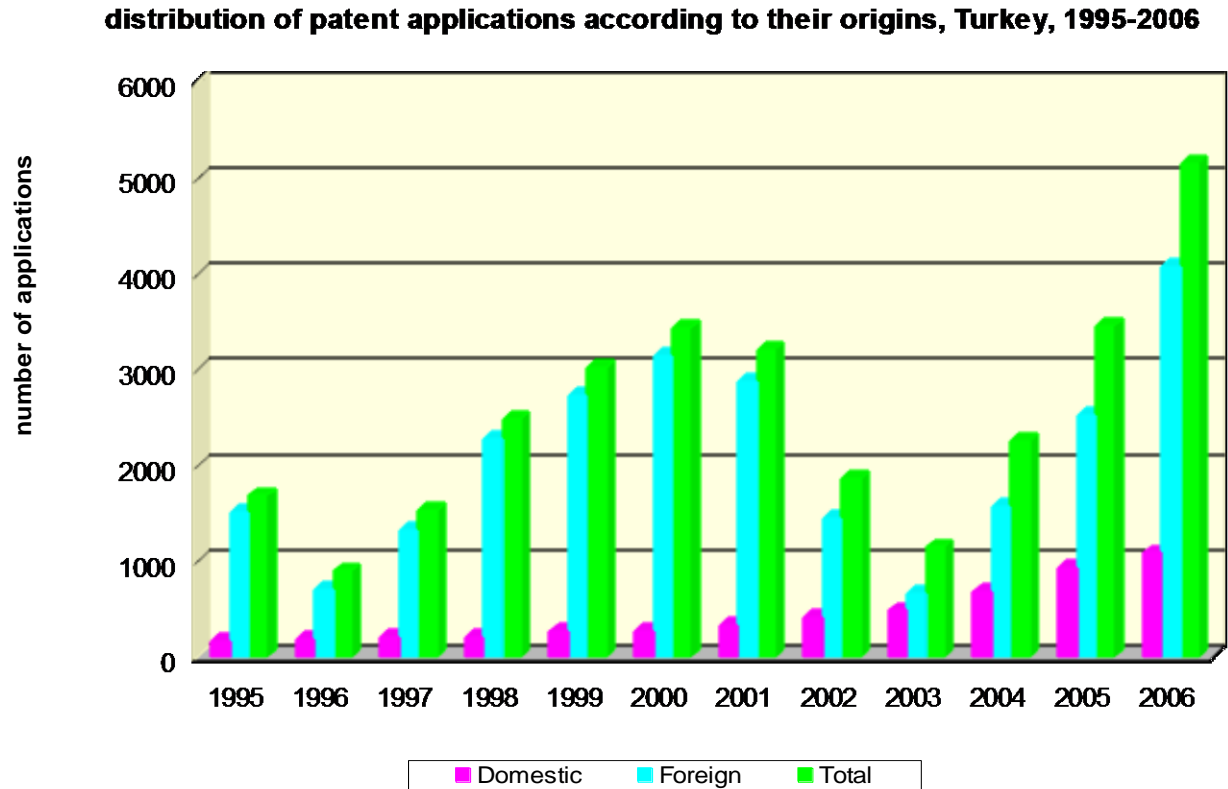


Figure 3- The distribution of patent applications according to their origins from 1995 until 2006, World Bank Data<sup>28</sup>

27 Author's translation. The original statement in Turkish: “Artık, biz, kendi insanımıza, kendi müteşebbisimize güvenmek, ona inanmak durumundayız ve Türkiye, artık, dünyada, yeni dünya düzeninde, bu, meydana gelmiş, kazanılmış hakların, özellikle fikrî ve sınai mülkiyet haklarının korunmadığı bir ülke olmak durumuna layık konumda değildir veya layık değildir; yani, fikrî ve sınai mülkiyet hakları, muhakkak, Türkiye'de de korunmalıdır; bütün dünyanın geldiği nokta da bunu gerektiriyor.”

28 The entire databank can be accessed online April 1, 2015; <http://data.worldbank.org/indicator/IP.PAT.RESD>

This bifurcation still continues (Figure 3); one of the core missions of national patent experts is to increase domestic patent applications in the tenth Development Plan of Turkey (2014-2018), which is prepared by the experts in the Ministry of Development; these experts set the goals of innovative production, and stable high growth in the first place<sup>29</sup>. One of the significant subtitles is promotion of intellectual property and increase in the number of domestic patent applicants for increasing innovative production. This mission is both to object to the “backwardness” of the Ottoman patent law favoring only foreign innovators and to claim economic development ideals simultaneously. During these discussions, nationalist sentiments have been widely shared national experts with some frequently reiterated statements such as: “We cannot even protect our own seeds or trees.” (December 2013). These constitute a combination of discourses of protection of “Turkish economy”, and of economic development. The economic development discourse is meant to seek for recognition from the national experts because the number of patent applications and the ratio of domestic patent applicants are important measures of development in the Global Innovation<sup>30</sup> and Global competitiveness<sup>31</sup> indices referred to as points of references<sup>32</sup> by national experts. Evaluation measures are important socio-technical parts of IP valuation (Beckert& Aspers 2011; Lamont 2012; Vatin 2013). Nevertheless, the number of domestic patent applicants is not the only measures in these indices; it is articulated as “one of the most important variables to improve” for innovation by most of the national patent experts I interviewed. I would like to delve into hegemonic political subjectivities to comprehend this articulation of the political elite; rather than formulating their actions as simply “mimetic” or

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29 The brochure of Tenth Development Plan can be accessed online in English, [http://www.mod.gov.tr/Lists/RecentPublications/Attachments/29/Brochure%20of%20Tenth%20Development%20Plan%20\(2014-2018\).pdf](http://www.mod.gov.tr/Lists/RecentPublications/Attachments/29/Brochure%20of%20Tenth%20Development%20Plan%20(2014-2018).pdf). The whole document in Turkish can be accessed online [http://pbk.tbmm.gov.tr/dokumanlar/10-kalkinma\\_plani.pdf](http://pbk.tbmm.gov.tr/dokumanlar/10-kalkinma_plani.pdf).

30 The detailed report on this index is accessible online <https://www.globalinnovationindex.org/content.aspx?page=GII-Home> (January 2015)

31 The detailed report on this index is accessible online <http://www.weforum.org/reports/global-competitiveness-report-2014-2015> ( March 2015)

32

“copy/model” (Ahiska 2010). The national experts seek for membership in the ‘modern world’ through their articulations of modeling IP institutionalization processes to subjectify citizens as “domestic patent applicants” (Ferguson 2002).

The first and most obvious example that makes the case for seeking membership in ‘civilization’ is the introductory video of a Turkish patent institute (TPI) which was broadcast on the national TV channel TRT to promote patent applications. It was run from the early 2000s onward. In this video, patent was represented with everything “modern” with an image of a dancing woman in red and white clothes symbolizing the Turkish flag. A simple translation of the lyrics is found below:

“It is a light, holding onto *civilization*.  
It is science that makes our lives easier.  
It is the mind which opens up new worlds.  
(Patent is invention, innovation and power.)  
It is technology, feeding production with knowledge.  
Invention is your power, it makes your dreams come true,  
when it is registered, it becomes patent.  
Patent is the convergence of mind (reason) with technology.  
Turkish Patent Institute,  
Produce with the mind, earn with registration.”<sup>33</sup>

In this video, the emphasis on civilization and its relation to innovation and technology give another value to IP as the driving force for technological innovation. It is almost a call for taking part in this civilization by producing new knowledge; membership in civilization depends on establishing and protecting patents. Membership has always been a matter of recognition and for the political elite, be it an MP or a national patent expert, patent is worth valuating in the market because the more domestic patent applicants there are in the country, the more Turkey will be recognized as a member of civilization complying with “global standards”.

Post-colonial critics have sketched out the dynamics of recognition in colonial regimes

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<sup>33</sup> Turkish Patent Institute, Introductory videos. Translated by the author. This video and many others can be accessed through this website, <http://www.tpe.gov.tr/portal/default2.jsp?sayfa=655>, December 1, 2012.

(Povinelli 2004; Fanon 1967; Bhabha 1994; Spivak 1999). Turkey has never been colonized in the same manner as many parts of South Asia, Latin America and Africa. There are very few historians who argue for a semi-colonial period in the Ottoman Empire at the end of nineteenth century until the emergence of Republic of Turkey due to the economic control by the Western powers, as outlined above (Feroz 2002). Turkey is not post-colonial within its limited understanding of former colonies of Western European countries<sup>34</sup>. However, this does not mean that these dynamics of recognition are not relevant through the ideals of economic development and call for membership in western civilization in the Turkish context (Ahiska 2010; Bozdogan & Kasaba 1997; Escobar 2011; Ferguson 2002).

Mimicry has been debated as an important strategy for the colonized subjects to feel recognition in its Hegelian sense (Bhabha 1994). In order to secure the object of value, civilization and becoming part of civilization has been significant in the dynamics of recognition through mimicking certain structures, policies, organizations and actions in general:

“the condition of livability for colonized people depended on the colonized subject’s ability to mimic the civilizational structures of the colonizer, central to which was the assumption of the human I as necessary to the enunciation of the sovereign subject—or for that matter any subject, split or whole. The discourse of cultural imperialism not only said to the colonized “you (culture) be me (civilization)” but “you (culture) must be me (civilization) in order to secure the object of value.” (Povinelli 2004)

Parts of these “civilizational” policies in this case, are IP laws and commercialization processes set as global standards. Complying with the global standards becomes a matter of trust between the world and the state as well as between the state and its citizens. One of the national experts who has been in charge of establishing and promoting TTOs in universities, stated that the most important obstacle for Turkish society with regard to innovativeness is its “copier mentality” and locates himself as the agent who trades this mentality against innovativeness in “society”:

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34 Stretching colonialism to contemporary capitalism is not convenient for both analytical and empirical reasons in this paper.

“Interviewer: In your opinion, what is the most important obstacle hindering innovativeness and technological development?”

Interviewee: For the future, *society in Turkey should have an innovative mentality*. In other words, people should get used to thinking in such a way that they focus on how to create a new idea, how to fix the problems through new ideas. *Right now, we do not have that mentality in society. Rather, they have a copier or imitator mentality.*

*... In Turkey, people do not think in innovative terms in general, which is a big problem. They do not think “how can I do something better or which processes will be better for producing better results”. Thus, there is not much innovation. I think this shift in mentality will require a lot of effort to change the cultural elements in society.*

I: Do you feel that you are part of this cultural transformation; do you contribute to this transformation?

I: Of course we do, because *we would like the accumulated knowledge in universities to go back to society through commercialization...* When we work on these issues, we feel as though we are part of the solution or at least supporting the solution.”<sup>35</sup> (December 2013, Ankara)

In these statements, the subjectivities of the political elite are framed as transforming “society” from copier mentality to innovative mentality. He perceives the commercialization of accumulated knowledge in universities through patenting them in Technological Transfer Offices as a matter of *mentality transformation*. Fixing the ills of society is asserted. Another expert stated that if knowledge is

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35 Author's translation. The original transcript:

A: Bu biraz kisisel bir soru ama sizce su anda Turkiye ekonomik kalkinmada iyi bir yerde mi? Iyi gidiyor mu?

B: Gittigi yola bakarsaniz cok kotu degil, ama varmasi gereken yere bakarsaniz hic de iyi degil. (guluyor) Yani sey, gidisat, 15-20 yil icerisindeki gidisat sey. Iyi. Ama gelmesi gereken yere baktiginizda iyi degil.

A: Gelmesi gereken yer neresi sizce?

B: Gelmesi gereken yer, toplumun yenilikci dusunme yapisina sahip olmasi, yani bir sorunun nasil cozulur, yeni bir fikir nasil gelistirilirim aliskin hale gelmesi. Su anda toplumda oyle bir aliskanlik yok. Yeni birsey nasil yaparimdan ziyade mevcutlara nasil benzerini yaparim turunde birsey var.

A: Nerdeyse bir kulturden mi bahsediyorsunuz?

B: Kultur evet evet, bu sadece urun gelistirmek de degil, yani inovasyon taniminda da vardir ya, eeee, yapilan islerin sureclerinde de bir suru iyilestirme yapmak lazim. Turkiye'de benim gordugum eksiklik insanlar genelde o yonde dusunmuyorlar. Ben bunu nasil daha iyi yapabilirim, bunu nasil yapsam daha iyi sonuc alirim diye yenilikci birsey cok fazla gelistirilmiyor. O cok kulturel degisiklik gerektiren birsey, zor.

A: Siz bu kulturel degisimin bir parcasi oldugunuzu dusunuyor musunuz? Ya da buna katkı sagladiginizi?

B: Dushunuyoruz cunku biz universitedeki biriken fikrin toplum tarafından kullanilmasini arzu ediyoruz. Bu tabii ki yeni birsey olmak zorunda ya da bir firma bir urun gelistirecek bu urun gelistirirken bir bilgiye ihtiyaci var, AR-GE'nin bir kismini yaptirmaya ihtiyaci var, bircok katkiya ihtiyaci varsa bunu universite bunyesinde nasil cozebilir teknoloji transfer ofisleri islerinden bir tanesi bu. Bu zamanda bunlarla ilgili calistigimizda tabii ki bir coum uretigimizi dushunuyoruz. En azindan destekledigimizi dushunuyoruz.

not registered and commercialized, then it is wasted, while emphasizing “raising awareness”<sup>36</sup> about not wasting knowledge in society. These subjectivities within the state situate themselves as the “modernizing agents” for “society” because in their view, “society” in Turkey has a “copier” mentality that is inferior. For the experts, this inferiorized otherness of “society” has to be fixed through “educating” them or “raising awareness” among them and newly emerging institutions such as TTOs in the universities are the most important driving forces of this *transformation*. For experts, “society” is a malleable entity that is expected to be more innovative, but inferior to a copier mentality for now. The national patent experts who are part of the political elite situate themselves as transmitters for modernity. They produce the elite/mass divide (Chatterjee 2010) and distinguish themselves as part of modern world, “raising awareness”<sup>37</sup> in the masses. Seeking recognition from the “modern” world is part of political elite’s imagination making their subjectivities. This transformatory position makes valuating IP a matter of valuating degrees of ‘modernity’; complying with “global standards” becomes synonymous with attaining “civilization”.

Raising awareness is concretized in the form of establishing TTOs in the universities. These new institutions not only subjectify more citizens as potential domestic patent applicants, they are also process models prescribed by the WIPO, followed and articulated as part of “global standards”. Moreover, the number of domestic patent applications is also a significant measure for evaluating the country’s rankings in the indices. Activities of ‘awareness-raising’ by national experts are not limited to TTOs; they also opened up museums to show the difference between the copy and the original, and prepared a curriculum for a course named “Technology and Design” for secondary schools, while ‘training’ secondary school teachers to teach this course by promoting similar processes and subjectifications.

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36 From the in-depth interviews with national patent experts, the author did in December 2013.

37 From the in-depth interviews with national patent experts, the author did in December 2013.

One can argue that copying models and following global standards regarding IP can be counted as part of neo-colonialism (Aoki 1998), with respect to coloniality rather than colonialism (Quijano 2000). Walter Mignolo, borrowing from Quijano, refers to the power of Western epistemology as a colonizing entity holding control over social orders and people's perceptions of their subjectivities (2002). Mignolo specifies the coloniality of power in the knowledge field for Latin American contexts:

*“The expansion of Western capitalism implied the expansion of Western epistemology in all its ramifications, from the instrumental reason that went along with capitalism and the industrial revolution, to the theories of the state, to the criticism of both capitalism and the state.”* (2002)

Discussing Eastern European contexts regarding empire and coloniality, Jozsef Borocz clarifies coloniality as the cognitive mapping of the populations and creating a fixed system of inferiorized otherness (2001). If we think of IP as an institution in Turkey as a case to think of coloniality accepting this definition, the second part of the definition resonates: creating a fixed system of inferiorized otherness. The political elite imagines 'society' as the backward other to 'fix' its copier mentality and distinguish itself as the modernizing agents. This does not mean that they are passive recipients of domination or neo-colonialism, they are active subjects. They do make IP together with global institutions; they do not only localize or 'imitate' them. They articulate 'global standards' and transform them into a matter of modernity and of status for themselves.

Institutionalization of IP is an interesting case because the national experts have to find IP worth<sup>38</sup> institutionalizing with a focus on 'domestic patent applicants' and by establishing TTOs in universities (Stark 2000). Coercive measures stemming from debt and economic dependency are only partly subjectifying them. A more interesting part of the story is that they do not take every models or policies that the WIPO suggests. They attempt to commercialize IP to economize it as a valuable 'asset'

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38 For a detailed discussion of importance of sociology of worth, see Luc Boltanski and Laurent Thevenot, *De la justification: Les economies de la grandeur*. Paris: Paris: Gallimard, 1991. Also, David Stark. October 2000. "For a Sociology of Worth," Working Paper Series, Center on Organizational Innovation, Columbia University. Available online at [http://www.coi.columbia.edu/pdf/stark\\_fsw.pdf](http://www.coi.columbia.edu/pdf/stark_fsw.pdf).

through a particular process; by establishing new institutions of TTOs in the universities and subjectifying citizens as entrepreneurial innovators with legal and institutional means. They follow the models of the WIPO and copy the processes, but they also follow the existing developmental idealism interacting with modernities in Turkish context (Kavas 2015). Their subjectivities become a significant part of institutionalization processes because the local experts distinguish their positions as an epistemological and symbolic authority in a Bourdieusian way<sup>39</sup> (1986), not only because they are experts on techniques and legal texts, but also because they are part of the political elite seeking recognition from the ‘modern’ world by finding solutions to 'global problems of production and of innovation'. They ‘know what is best’ for ‘society’ and distinguish themselves as ‘agents of progress’ with regards to modernity.

### **3. Conclusion:**

Historicizing IP and its institutionalization as a socio-legal institution and looking into its relations with local experts' subjectivities, enables me to follow the asymmetries in relations of domination. Subjectivities tied with wider socio-historical frameworks answer the question of why these experts choose certain policies to model from, but not the others or why they do not have a reactive diffusion like Brazil or India. The process models prescribed by WIPO to institutionalize IP as an “asset” are significant parts of these processes. National experts emulate them such that they commercialize knowledge through prioritizing an increase in 'domestic patent applicants' and an increase in numbers of TTOs in universities with this priority in mind. These models legitimate local experts' choices of IP policies. Moreover, these models become the only model to follow as a matter of

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<sup>39</sup> Bourdieu thoroughly analyzes the forms of capital and their transitions to each other in his famous essay, Bourdieu, P. (1986) The forms of capital. In J. Richardson (Ed.) *Handbook of Theory and Research for the Sociology of Education* (New York, Greenwood), 241-258. However, I do refer to Bourdieu's forms of capital because I would like to emphasize the distinction the national experts accumulate through valuation processes as part of the process. I do not agree to call every phenomenon of accumulation “capital”. This understanding has the danger of economizing every aspects of life and “capital” as a word is too important to lose its meaning because of conceptual stretching.



expertise. The experts *perform* the models such that they establish new institutions Technology Transfer Offices in the universities to subjectify citizens as entrepreneurial innovators under the category of 'domestic patent applicants'. It also gives an insight on asymmetrical relations between 'global' experts of WIPO and national experts in their exchange. This category of 'domestic patent applicants' become a matter of development articulated in a particular way by the national experts as a matter of degrees of modernity and of status for their authority of knowledge.

In the second part of this paper, I tried to answer to the questions of how this bifurcation between foreign innovator and citizens with copier mentality become hegemonic with further historical research and contextual analysis. This part is divided into two parts, coercive and hegemonic measures affecting each other; I give a historical account of the institutionalization of IP as a legal construction, surrounded with coercive measures from international and regional organizations due to overwhelming debt relations; I also give a socio-historical analysis of IP as a matter of recognition for political elite subjects who position themselves as the intermediaries between the “not-so-modern” society and “modern world”.

Copying or modeling IP policies is a significant common denominator for these frameworks. The legal infrastructure is a translation of its 'western' counterparts; the process models are prescribed by WIPO as the only model to follow for national experts. However, the political elite does not merely simply copy or imitate legal texts and process models in IP institutionalization, they articulate IP policies such that they distinguish their positions from the ‘masses’ and claim recognition from the ‘modern world’ through establishing new institutions and subjectifying new agents in universities.

This multi-faceted analysis also gives rise to new questions regarding the relationship between domination and subversion through a broader perspective of postcolonial scholarship. Sociological institutionalism stayed relatively distant with respect to the postcolonial interventions or questions of

subjectivities of policy-makers, the organization theorists rather focus on institutions without a human face. I do not think post-colonial scholarship means studying non-western contexts; it is rather intended to disturb the relations between modalities of the imagination of the west and the rest which are used almost synonymously with the words “modern” and “static”. Moreover, postcolonial sociology signifies co-constitution of material networks (Go 2013) There has been some emphasis on relations and connections making economies in economic sociology literature such as Bockman and Eyal’s article on transnational ties, specifying how global networks actually work and what role local actors play in these exchanges (2002). Fourcade, meanwhile, has carried out research on the transnational ties of economists establishing a global profession (2006). This paper is just another attempt of pointing out connections, relations and asymmetric co-constitution of economic knowledge. While the category of “domestic patent applicant” and institutionalization of intellectual property law are “western” categories that are enforced in Turkish context through international institutions, the national experts also articulate IP as a matter of degrees of modernity and of social status for their own positions as “modernizing agents” transforming copier mentality of “society” into entrepreneurial innovator mentality established as “global standards” in global networks of patent experts.

### Appendix 1- History of Patent Law in Europe and its implications on history of patent law in Turkey

The Agreement	Date	Purpose	Details related Turkey
Ihtira Berati (Ottoman Patent Law)	1879	Giving royalties and privileges to monopolize production.	A translation of French Patent Law except few articles
Paris Convention	1883	Protection of industrial property among member states	Turkey became a member in 1925 after the emergence of Republic of Turkey.
World Intellectual Property Organization (WIPO) Convention	1967 1974 (WIPO becomes a United Nations agency)	Protection of industrial property around the world; the emergence of the WIPO as the administrative body of the Paris Convention.	Turkey became a member in 1976.
Patent Cooperation Treaty (PCT)	1978	Assistance in patent protection worldwide and for patent Offices with their patent granting decisions, and facilitates public access to a wealth of technical information relating to those inventions.	Turkey signed and ratified this treaty in 1995, after January 1, 1996 the treaty is in implementation.
European Union Customs Union	1968	No customs are levied on goods travelling within the customs union.	Turkey became part of the EU Customs Union in 1995, only excluding agricultural products.
Strasbourg Agreement	1971	Establishing International Patent Classification (IPC) system	This agreement has been effectuated on 10 January 1996.
European Patent Convention (Munich)	1973	Founding a European patent system.	This convention has been effectuated on 11 January 2000.
General Agreement on Tariffs and Trade (GATT)	1994	Regulation of international trade in general.	Turkey has been one of 125 founding countries.
Decree Law- No. 544	1994 (June)	Establishment and the functions of the Turkish Patent Institute	The institute is one of the impacts of Uruguay Round which ended up with the emergence of World Trade Organization and TRIPs.
World Trade	1995	Regulation of	After 3 years of transitional

Organization (WTO) Convention and the Agreement on Trade Related-Aspects of Intellectual Property Rights (TRIPs)		international trade law based on intellectual property with enforcement such as economic sanctions.	period, January 1 <sup>st</sup> , 1999, these agreements are effectuated. This agreement and convention made IP law binding for each member. 160 countries are members of WTO.
Decree Law- No.551	1995	Patent law	The Turkish translation of European Patent Convention except few articles, following European Commission Directives <sup>40</sup> . A new law has been drafted, waiting for the parliament to approve.
Intellectual Property Courts	2001	The emergence of specific courts for IP law for enforcement	This was to be in line with <i>acquis communautaire</i> of EU accession period.
Decree Law- No. 5000	2003	Redefining the function of the Turkish Patent Institute.	
Law 4128/2004	2004	Amending the Laws on Patents, Designs, Geographical Indications and Trademarks.	
New Draft Law	Awaiting	Amending universities to be patent-holders.	Imitating Bayh-Dole Act of United States.

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**40** See details of the European Patent Convention, <http://www.epo.org/law-practice/legal-texts/epc.html> (accessed online on January 10, 2015). See details of the Directive on the enforcement of intellectual property rights, [http://ec.europa.eu/internal\\_market/iprenforcement/directive/index\\_en.htm](http://ec.europa.eu/internal_market/iprenforcement/directive/index_en.htm) (accessed online on January 10, 2015)

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