

New Draft Industrial Property Law in Progress

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After being opened for the public consultation by The Turkish Patent Institute ("TPI"), the Draft Industrial Property Law ("Draft Law") was sent to Turkish Parliament for the final vote. The Draft Law contains provisions on trademarks, patents, industrial designs and geographical indications which are currently addressed by separate Decree Laws.

The Draft Law clarifies and enacts some issues which have been developed by the courts and are accepted by TPI on the basis of precedents.

The current law complies with most of the international treaties and conventions, to which Turkey is a signatory. However, the Draft Law aims to comply with the Trademark Law Treaty, and also introduces new provisions in light of the 2015 amendments to TRIPS and the EU Trademark Directive and Regulation.

The Draft Law introduces promising improvements to the Turkish system, clarifying gray areas which tend to cause problems in practice. A major improvement is the introduction of consent letters as an available method to overcome a provisional refusal decision, based upon a prior trademark. The current law does not accept consent letters, coexistence agreements or other arrangements to overcome such provisional refusals. The Draft Law would allow overcoming a provisional refusal based upon likelihood of confusion by submitting a notarized consent letter from the earlier trademark holder.

Additionally, the Draft Law accepts that goods and services falling into the same or different classes do automatically cause trademarks to be considered similar or different. Bad-faith is included as a ground for refusal/cancellation in the Draft Law. Although not previously **fisted** among the grounds for refusal, in light of a recent Court of Appeal decision, bad-faith has now been introduced as a ground for refusal.

The Draft Law clearly defines the start date for the five year non-use grace period as being the date on which the registration was published. Further, an applicant can now request the opponent to prove use of the trademark which forms the basis of an opposition if the non-use grace period is expired. The opponent is then required to demonstrate actual and continuous use of the trademark in the Turkish market, or to show justifiable grounds for non-use. The TPI will reject the opposition if the opponent cannot provide either. Alternatively, the TPI will partially accept the opposition if the opponent proves demonstrated use for a certain portion of the goods and services covered by the basis mark.

The Draft Law rectifies a practical communication problem between the WIPO and the TPI. The problem causes Madrid extensions to be refused based on the existence of national applications which were filed after the international application but recorded earlier in the TPI's system. The Draft Law clearly accepts that designations cannot be rejected based on the existence of a national mark which was filed after the international trademark's application (or priority) date.

The Draft Law sets forth that the two month period for contesting the TPI's decisions about international applications begins at the end of 15* day after the WIPO notifies the holder (or its representative).

The new law reduces the Design Law's opposition period from six months to three starting from the publication date and appears to change the three-year repair period clause in the current Design Law as the law does not foresee any exclusive term for design holders against fair use exceptions which do not infringe the right arising from a design registration.

The proposed improvements and clarifications are promising considering the practical gray areas which currently exist. Local practitioners are holding their breath until the draft law is accepted. Turkey has long been waiting for intellectual property legislation which is accepted as "Law", rather than a "By-Law".