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ROUNDTABLE MEETING ON POST-GRANT PATENT OPPOSITION BEFORE THE TURKISH PATENT AND TRADEMARK OFFICE

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POST-GRANT OPPOSITION SYSTEM BEFORE THE EUROPEAN PATENT OFFICE (“EPO”)

FICPI-Turkey held the ninth of its traditional roundtable meetings at Turkish Patent and Trademark Office (“Türk Patent”) on 13 December 2019. The meeting was moderated by Selin Sinem Erciyas, who is the Vice President of the Board of Directors of FICPI-Turkey and Serkan Özkan, who is an Intellectual Property Expert at Türk Patent. The post-grant patent opposition procedures were discussed at the meeting.

Dr. Elif Betül Akın, who is the President of the Re-Examination and Evaluation Board (“REEB”) of Türk Patent and Salih Bektaş, who is the President of Patent Department of Türk Patent, were also present at the meeting.

The meeting commenced with Dr. Elif Betül Akın’s speech, and she stated that they have not yet examined a post-grant patent opposition, the process has come into force with the Industrial Property Code no. 6769 (“IP Code”), and that the procedure was stipulated under Article 99 of the IP Code. She noted that the main purpose of this opposition process is to increase the quality of patents, to facilitate the registration processes, and to comply with the EPC. She added that the post-grant patent oppositions will be examined by the REEB, third parties will be able to file oppositions upon grant of the patent, and the decision will be made by REEB consisting of experts who did not participate in the first decision.

Salih Bektaş started his speech by implying that the IP Code aims to increase the quality of the patents and the patent system, by means of novelties such as removal of the patent system without examination, or the search requirement for utility models. He specified that international practices were taken as an example and passed into law with the IP Code,

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The meeting continued with Selin Sinem Erciyas' presentation on post-grant patent opposition procedures before the European Patent Office ("EPO"), where she provided general information on the same and also mentioned the oral proceedings system before EPO. Elif Betül Akın stated that the oral proceeding is a completely different process, that those included in this process have almost the same status as a judge, and that our law does not provide the administration such an authority. She made a comment explaining that oral proceedings could be very effective especially in terms of the patent process.

It was emphasised that the oppositions before EPO are subject to appeal, which is different from the system before the Türk Patent. Selin Sinem highlighted that the opposition division is not bounded by opposition grounds, and that they can examine the oppositions ex officio. She further gave the example of the event where there is an opposition filed asserting that there exists no novelty, and stated that the opposition division can rule that it also lacks the invention step, and the reason for that is the fact that public benefit prevails over others. She reminded attendees that although the opposition is withdrawn, a decision can be given on the opposition and the opposition unit serves a notice to the opponents pertaining to the amendments, and grants them the opportunity to present statements, which is different from the practice in Turkey.

Serkan Özkan started his presentation by stating that the IP Code provides the right to submit oppositions both before and post grant. At this point, a comparison between filing an opinion or opposition was made and it was stated that the purpose of opposition was to be a party, and to present a response. It was emphasised that, strategically, it is better to file an opposition instead of allowing the patent owner to make amendments upon presenting an opinion, if there is strong evidence. It was specified

The question whether an opposition could be filed against the European Patent Fascicule publications within the course of six months was answered negatively, since the publications of these fascicules are not deemed “publications” in the manner sought under the IP Code .

It was discussed whether an opinion could be filed on the amended version of the patent or not. It was stated that it would be similar to the REEB decisions, and no further oppositions would be filed. A court action could be filed against the decision, and the patent owner could again apply to the court, if requests a broader protection.



It was reminded that the parties of the Board decision could file a court action against the Board decision, whereas the third parties could file an invalidity action. Here, it was noted that the court would decide which claim set is patentable, and that the court is entitled to rule on the patent’s registration and the reversal of the REEB decision, instead of submitting back to the Office. However, it was specified that this matter is controversial, since the court is making a decision in place of the Office. It was emphasised that this process must be perceived as if it is the follow-up of the opposition process. Therefore, it is stated that an invalidity action should not be filed until the cancellation action is concluded, or that the

The meeting, where the parties discussed post grant opposition procedures before EPO and how these oppositions will be handled by Türk Patent, has been very fruitful for both the Türk Patent representatives and participants.

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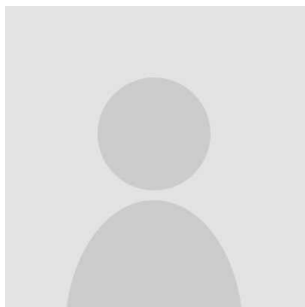
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