

client alert

INTELLECTUAL PROPERTY | TURKEY

JULY 2017

REGULATION UNDER NEW INDUSTRIAL PROPERTY LAW

As announced in our previous newsletters, the new Industrial Property Law No. 6769 (the “IP Law”), came into effect by repealing Decree Law No. 556 on the Protection of Trademarks, Decree Law No. 551 on the Protection of Patents and Utility Models (the “Decree Law”), Decree Law No. 554 on the Protection of Industrial Designs, and Decree Law No. 555 on the Protection of Geographical Indications (they will hereinafter be jointly referred to as the “Decree Laws”).

Recently, the Regulation for the Implementation of IP Law (Regulation) has also come into force. This Client Alert focuses on procedural changes brought by the Regulation. Please note that most provisions of the previous Regulations regulating Trademarks, Designs, Patents and Utility Models were upheld in the new Regulation, with some amendments as described below.

REMOVAL OF HARDCOPY APPLICATIONS

Under the Decree Laws, applications could be filed both online and as hardcopy. Under the new Regulation, such options are removed and all applications must be made online through the Turkish Patent and Trademark Office (TPTO) online system. Applicants will therefore need an e-signature or mobile signature to complete their applications. Any application submitted in another form will not be accepted, and the application fee may be returned where requested by the applicant.

OPPOSITION DEADLINES

As mentioned in the previous Client Alert, the opposition deadline against applications published in the official trademark bulletin has been shortened to 2 months under the new IP Law. Such period is stated in the new Regulation as well. Please note that the opposition period in Turkey cannot be extended under any circumstances.

APPEAL FEES

Under the new Regulation, appeal fees can be refunded where an appeal against the Turkish Patent Institute’s *ex parte* transaction is accepted. This opportunity is not valid where the appeal is only partially accepted. Also, such opportunity is not valid where the trademarks cited as grounds for trademark refusal are revoked at the time as the appeal investigation, or where the reason for refusal is overcome further to assignment, consent, address, type or title change and/or where the acquired distinctiveness arguments are accepted.

LETTER OF CONSENT FOR CO-EXISTENCE

Under the new Regulation, the content of and procedural requirements for the letter of consent are detailed in Article 10 of Regulation. Most importantly, the letter of consent must be prepared as a signed form approved by the TPTO and sealed by a Notary Public. The letter of consent must be unconditional.

Such letter must be submitted to the TPTO at the time of application. In the case of opposition, it may be submitted until the TPTO gives its decision on the opposition. Additionally, further to submission of the consent, it cannot be withdrawn.

If the applicant does not submit a consent form despite applying for such consent, the TPTO does not give an extra time for the completion of said document, and the consent application is determined as not made.

If there is a recorded exclusive licensee of the trademark, consent of such licensee is also requested by the TPTO.

“NON-USE COUNTER-ARGUMENT” OF APPLICANT AND EVIDENCE SUBMISSION

As stated in our previous Client Alert, further to meeting with opposition on the grounds of likelihood of confusion, if the trademark cited as grounds of opposition has been registered for more than five years, the applicant may request evidence proving that the cited trademark is being used in Turkey or justify reasons for non-use.

Such request should be made clearly and unconditionally, and the registration number of trademarks whose use evidence is requested should be stated clearly. Otherwise, the request is refused.

Once the request is submitted appropriately, the TPTO grants one month for the submission of evidence. If the evidence cannot be submitted within the deadline and if no other trademark is indicated as grounds for opposition, then the TPTO does not examine it and refuses the opposition.

If the TPTO deems it necessary, TPTO grants one month to the applicant for the submission of its opinion in relation to the submitted evidence.

If the opponent files its evidence proving the use of trademarks cited as grounds for opposition at the time of opposition and if the TPTO finds this evidence enough for the examination, it may not request the submission of further evidence.

In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

You can also find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).

CONTACTS

ESRA DÜNDAR LOISEAU
dundar@odsavukatlik.com

ARZU BEKEM
bekem@odsavukatlik.com