

Non-use cancellation actions filed before the effective date of the new IP Law are under the threat of being dismissed!

On January 06, 2017, the Turkish Constitutional Court abolished Article 14 of the Trademark Decree-Law no. 556 on the ground that it was contrary to Articles 2, 5, 13, 35, 48 and 91 of the Turkish Constitution, upon an appeal by the Second Chamber of the Istanbul Civil IP Court.

Article 14 set forth the legal basis for non-use cancellation of a trademark which has not been put to use in Turkey without a justifiable reason within a period of five years following the registration or of which use has been suspended during an uninterrupted period of five years.

Just a few days after such annulment, the long-awaited Turkish Industrial Law no. 6769 (the Law) came into force on January 10, 2017 and brought exactly same use requirements for registered trademarks with its Article 9 ordering cancellation of registered trademarks due to non-use.

It is surely beyond the doubt that cancellation actions filed after January 10, 2017 will be grounded with the Article 9 of the Law. However, whether or not the pending non-use cancellation actions before either the First Instance Courts or Courts of Appeals dating back to January 10th would be dismissed due to the lack of legal grounds has been uncertain.

Some held the view that such pending non-use cancellation actions shall be dismissed as the sole legal basis of non-use cancellation claims has been annulled. Still, it is mostly argued that the said pending cases shall not be dismissed and the legal gap created with the annulment decision shall be filled by the judges by virtue of the Article 5 of the Paris Convention and the Article 19 of the TRIPS Agreement to which Turkey is a party.

However, in very recent decisions of the IP Courts of the First Instance, the non-use cancellation actions dating back to January 10th have been refused on the ground of the four-day gap in law. Still, the Regional Court and Courts of Appeals will have the final say on this issue and their possible contrary decision may change the practice of the IP Courts.