

What Brings The New IP Law For Designs: Major Changes for Design Protection in Turkey

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No Formal Requirement for Design Description

Submission of the description of the industrial design during the prosecution period becomes optional. The description of the designs is not anymore a mandatory requirement to be filed for prosecution purposes and the information provided in the description will not affect the scope of protection, if any.

Novelty Examination at the Application Stage

TPO will carry a novelty examination for industrial design applications and designs which are not novel will be rejected ex-officio.

Invisible Parts of a Complex Product are Not Protective Any More

Only visible parts of a complex product shall be protected if they meet novelty and individual character criteria according to the new law considering that only visible parts meet novelty and individual character criteria.

Opposition Period

The post-grant opposition period has been shortened from six months to three months. This will have the effect of reducing the total registration time to less than a year and designs will be approved for registration just after the publication period ends in case of any opposition. The Turkish Patent Office will continue publishing design bulletins twice a month.

Non-Registered Industrial Design Rights

A design will also be protected as a non-registered design right only if the design was first made available to the public in Turkey. The protection term is three years as from the date the design was first made available to the public. The rights derived from design protection can be used for non-registered designs to prevent third parties usage of identical or similar of a non-registered design.

Due Dates for Renewal of Designs Changed

The previous regulation was that designs may be renewed “until the last day of the respective month”. This regulation now changed and renewal requests must be made until the absolute same day coming from the filing date. But a renewal with surcharge within 6 months starting from the expiry date is still possible.

Disclosing the Designers is Not Mandatory

Until the new IP Law, it was mandatory to disclose the designer(s) and their designs but the new law brings an option and the applicant may not give the information of the designer(s).

Multiple Applications System Re-Adapted

Application of several designs may be combined in one application as a multiple design application. However, this possibility was subject to the condition, that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same sub-class according to the previous regulation. The new IP Law allows filing the multiple design applications in case the products belong to the same class but not same sub-class. Belonging to the same class is enough and TPO do not interest any more whether these are also in the same sub-class.

Expanded Priority Rights

Natural or legal persons or their legal successors in title who are nationals of any state party to the Paris Convention or if not nationals who are domiciled or have an active business in these states, shall enjoy a right of priority of six months from the date of filing a valid application at the authorized bodies of these states, for the purpose of filing an application for obtaining a registration certificate in Turkey in respect of the same design. The new IP Law introduces an expanded priority rights in the way that patent or utility model applications will also be considered as priority along with the prior design applications.

Address, Legal Entity And Company Name Changes Will Influence Entire IP Portfolio

Pursuant to the new IP Law a change of address, legal entity and company name will be reflected in the entire IP portfolio of an applicant, which comprises trademarks, industrial designs, patents and utility models registered or pending in the name of the same owner.

Important Remarks

- Any applications filed before the publication of the new law will enjoy the earlier regulations in force.
- Trademark litigation allows for civil and/or criminal proceedings whereas a civil proceeding is available for patent and design litigations.
- Registered IP rights will not constitute a legitimate defense against any infringement claim brought by the owner of the earlier IP right.
- The new intellectual property law introduces the “international exhaustion of rights principle”, thereby replacing the earlier “national exhaustion principle”.

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