

How can the applicants of International Registration applications claim non-use defense in Turkey

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Intellectual Property Law allows the applicants to request the proof of use of the opponent's trademark(s) in the event that the opposition is filed on the basis of "likelihood of confusion" providing that the opponent's trademark(s) is registered more than 5 years at the time of the application or priority date of the conflicting application. Upon the request of the applicant, Turkish Patent and Trademark Office requires the submission of use evidences or justifiable reasons for non-use. If the use cannot be proven by the opponent, the opposition is rejected. If the use is proven only for a part of the goods and services, the opposition is reviewed for the same/similar goods and services to used ones.

It should be noted that, the proof of use request should be submitted in a very strict and non-extendable deadline of 1 month as of the notification of the opposition to the applicant. However, the Office does not notify the applicants of IR applications filed through WIPO with the designation of Turkey with third party oppositions since Madrid Protocol does not contain such notification system. The Office notifies the applicant with the decision if it partially or totally accepts the opposition and the applicant has a right to appeal such decision. The problem in here is that the applicants of IR applications cannot claim non-use defense at appeal stage and they encounter with the rejection of their applications while they may save the applications with the non-use defense.

In order to not lose the right to claim non-use defense and save the application with this defense argument, we advise the applicants of IR applications to follow up the status of their applications and once detected the third party opposition, to file a counterstatement by claiming the non-use defense if the conditions are met as soon as possible before the issuance of TPTO's decision. At one trademark attorney's consultation meeting, the Office has orally announced that it will take the non-use defenses of the IR applications' applicants into consideration even if they do not notify the oppositions.

Last but not least, during the same consultation meeting, the President of the Office has orally told that there will be an amendment at Madrid Protocol to allow the national offices to notify the third party oppositions in a near future which will procedurally solve this problem.

For more information, please contact:



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