

FICPI-Turkey 2nd Roundtable Meeting on Article 155 of the IP Code

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FICPI-Turkey arranged its second roundtable meeting on the Article 155 of the Industrial Property Code no. 6769 (hereinafter referred to as "IP Code"), which is; a patent, trademark or design right holder cannot allege its registered rights as a defense in an infringement action filed by a prior right holder. This article has become a consolidated article for patents, trademarks and designs with the entrance into force of the IP Code on January 10, 2017, while it used to be applied only on patents with the Decree Law no. 551 on protection of patents, while trademark and design rights registered before the Turkish Patent and Trademark Office used to constitute a legitimate defense against infringement claims, unless the registered right is invalidated and removed from the register.

There are still discrepancies on the interpretation of this article despite the time having passed as from the entrance into force of the IP Code; thus the Board of Directors of FICPI-Turkey has chosen this subject as the subject of the second roundtable meeting for providing the opportunity for the participants to share their opinions and concerns as to the interpretation and implementation of this article.

Ms. Gökçe İzgi, who is a member the Board of Directors of FICPI-Turkey, moderated the meeting and 20 participants were present including some FICPI-Turkey members. Following the opening speech made by Mr. Uğur Aktekin, the President of FICPI-Turkey, Ms. İzgi began the discussion providing brief info on the subject. She mentioned the changing approach of Court of Appeal in time as to the infringement of a registered right, which had a quite strict approach as to the protection of a registered right at the beginning of 2002's and then changing its attitude as from 2011 considering especially the registrations obtained in bad faith.



Ms. İzgi started the discussions on the substantive provisions and interpretation of this article, where she declared her own opinion that, first of all, there should be registered rights, one earlier and one later, and also an infringement action, while it should not be a must any more to file an invalidation action against the registered right and bad faith is not compulsory, either. The participants discussed on these provisions, namely as to whether registration should be sought or genuine right ownership would be taken into consideration by courts and while bad faith is not mentioned on the article, whether courts should evaluate also bad faith, or not and to what extent.

Following the discussions on the infringement of trademarks where it was concluded that this article would provide practical benefit as it would not be compulsory to wait any more for the finalization of an invalidation action against the registered right for filing an infringement action, the discussions were directed to patents and designs and participants gave some examples where the courts arrived at decision where the later patent or design constituted infringement or not. Further, it was discussed that rights obtained with registration of trademarks, designs and patents were property rights, namely constitutional rights, thus they could be restricted only by law, but in this case a property right would have been restricted by a court decision.

Finally it was discussed whether the Article 155 could also be applied on the pending court actions filed before January 10, 2017, which is the date where the said IP Code entered into force, and participants discussed on whether the registration dates or the date on which the court action was filed should be taken into consideration.

To sum up, it was observed during the discussions that there were discrepancies as to the interpretation of this article in respect to trademarks, patents and designs and also the expected implementation of the said article by courts. In this regard, the implementation of the Article by courts is enthusiastically waited. FICPI-Turkey has successfully finalized its second roundtable meeting with the great interest and appreciation of the participants and will continue arranging roundtable meetings on such hot topics for providing such discussion platforms of high quality.

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