

TURKEY

Patent use and compulsory licences

Gün + Partners

Istanbul



Selin Sinem Erciyas

New IP law abolished the provisions concerning the use requirement of patents and evidence on use detailed in the Decree Law on the Protection of Patent Rights. Instead, IP law now mentions the use requirement within the provision on compulsory licences, as a consequence of non-use of a patent.

Accordingly, a patent owner must use the patented invention. When assessing the use, market conditions and conditions under the control of the patent owner, as well as outside their control, are considered. At the end of three years after publication of a patent grant in the Bulletin or at the end of four years after the patent application date, whichever expires later, any interested party can request the issue of a compulsory licence. They can make this request on the grounds that at the date of demand for a compulsory licence the patented invention is not being used, no serious and real measures have been taken to make use of the patented invention or the level of current use does not satisfy domestic demand. The same applies to an uninterrupted cease of use of a patent for more than three years without justified reason.

The only provision in Turkish law that provides rules about the results of not filing evidence on use of a patent is in the Regulation on the Implementation of IP Law, which states that:

“the declaration *relaying whether* the patent is used or not used is submitted to the Institute within a certain period and then published in the Bulletin. The patents *for which no notification of use have been given* within this period shall be published in the Bulletin.”

The mentioned publication is a kind of announcement to third parties that the

patent is not used (without a justified reason) and therefore a licence over the patent may be requested from the patent owner.

This publication can give rise to a compulsory licence demand. In the case of a compulsory licence demand, a fixed legal procedure must be followed, and the evidence filed before the Turkish Patent Office (TPO) before this procedure starts can only be an indication of use of the patent. The evidence of use filed before the TPO does not automatically prevent the third party from demanding a compulsory licence. However, the patent holder may refer to this document/evidence while claiming that it does use the patent or there is a legitimate reason for non-use of the patent.

The lack of such a document or evidence does not ease, quicken or remove the fixed legal procedure to be followed by the third party demanding the compulsory licence. The third party has to apply to the court for a compulsory licence and must prove that it has tried hard to obtain from the patent owner a contractual licence on reasonable commercial terms and within a reasonable period of time.

These IP law provisions show that filing evidence on use of a patent or filing a statement before the TPO explaining the legitimate reason for not using the patent is optional. However, we believe that such a filing may have a role in discouraging a third party from demanding a compulsory licence by alleging non-use of the patent without a legitimate reason.