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Turkish Court of Appeal considers mandatory mediation requirement in disputes containing both monetary and non-monetary claims

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- **Mediation became mandatory for monetary-related commercial disputes from 1 January 2019, but the practical impact of this change had remained unclear**
- **Based on a recent Court of Appeal decision, it appears that monetary and non-monetary claims can be filed together without going through mandatory mediation**
- **This decision is significant in view of the high number of IP-related cases that include both types of claim**

Background

[Mediation became mandatory for monetary-related commercial disputes](#) from 1 January 2019 in Turkey. This new concept also applies to IP-related disputes in which compensation or the payment of a certain amount is sought. The practical impact of this change has been controversial among the Turkish IP community, especially for cases including both monetary and non-monetary claims.

Even though this concept is still relatively new in Turkey, the implementation of mandatory mediation has been reviewed by the Turkish Court of Appeal in one of its recent decisions.

Facts

An action was filed before the first-instance IP Court, which included the following trademark-related requests, in addition to requests for monetary and non-monetary compensation:

- determination of infringement;
- prevention of infringement;
- suspension of infringement; and
- prohibition of the transfer of the trademark to third parties until the court renders its final decision.

The first-instance IP Court determined that both monetary and non-monetary claims were being raised in this case. Considering that monetary claims are subject to mandatory mediation and that the claims must be examined as a whole, it ruled that the cause of action had been violated since the plaintiff had not first applied for mediation for the monetary claims. As a result, the IP Court decided to dismiss the case on procedural grounds. The plaintiff appealed the decision before the District Court, which rejected the appeal. The matter was then reviewed by the Court of Appeal upon further appeal.

Court of Appeal decision

The Court of Appeal referred to Article 110 of the Turkish Code of Civil Procedure, which states that independent claims can be raised together if the competent court is the same. The Court of Appeal applied this article to the present case, since independent monetary and non-monetary claims had been filed together. After remarking that mediation was not mandatory for the non-monetary claims, the Court of Appeal ruled that the lower courts should have reviewed the matter on its merits. The Court of Appeal stressed that mediation is not mandatory in cases where the claims that are subject to mandatory mediation and those that are not are filed together. The Court of Appeal thus gave weight to the presence of non-monetary claims and, since those are not subject to mandatory mediation, it concluded that the lower courts could not rule that there was a lack of procedural step.

As a result, the Court of Appeal overturned the lower courts' decisions and the case was sent back to the IP Court (Merit No 2019/4851 E, Decision No 2020/2732 K, 11th Civil Chamber of the Court of Appeal, 10 June 2020). A trial will now start, and the IP Court will decide whether to comply with the Court of Appeal's ruling or not.

Comment

This decision is significant in view of the high number of IP-related cases that include both monetary and non-monetary claims, especially when the infringement of an IP right is at stake. Based on the Court of Appeal's current standpoint, it can be concluded that monetary and non-monetary claims can be filed together without going through mandatory mediation. However, different courts may still reach contradictory

conclusions, as was seen in the present case. In the upcoming period, the Court of Appeal's approach may prevail, or the courts may examine claims separately based on whether they are subject to mandatory mediation or not, in order to find a middle ground. More court decisions are needed before there is an established case law regarding this recently-introduced concept.

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