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Latest Developments On Administrative Revocation Of Trademarks!

While the relevant article regulating the transfer of authority to examine the requests for revocation of trademarks to the Turkish Patent and Trademark Office ("the Office") was not yet entered into force and there were still a level of uncertainty concerning the procedure, the first development in this regard took place on October 23, 2023 when the Office published and opened the "Draft Regulation for Amendment of the Regulation on the Implementation of the Industrial Property Law" ("Draft Regulation") for comments.

Despite the Draft Regulation not having been published yet, on January 10, 2024, the Office undertook the authority to revoke the trademarks and began to accept requests for revocation as "preliminary applications". As per an unofficial information, the Draft Regulation is at the approval stage before the Ministry.

Here below is a brief discussion of matters that are regulated (or not) in the Draft Regulation and which were expected to have been clarified as of 10 January 2024.

When the Draft Regulation is reviewed, it is seen that Section 3 titled "Opposition, Proof of Use and Settlement" has been amended to be titled as "Opposition, Proof of Use, Revocation and Settlement" and additional provisions regarding administrative revocation are included under Article 30(A) titled "Request for Revocation". According to the relevant article, the revocation request may be filed by "relevant persons" against the persons registered before the Office as trademark owners or their legal successors, and if the request is filed through a trademark agent, a power of attorney is not required to be submitted. The revocation request may be made through a form provided by the Office by clearly indicating the trademark, goods and/or services for which the revocation is requested.

Here, we would like to draw attention to the term "relevant persons" mentioned in the Article. Although no definition is provided in the Draft Regulation, according to the statement made by the Office during the Symposium on Administrative Revocation of Trademarks organised by the Board of IP and Competition Law of the Ankara Bar Association on April 17, 2024, the Office prepared a guideline, to be available after the relevant legislation is published, including the definition of the term "relevant persons" amongst other details and information.

In addition; during the Symposium it was also informed by the Office that the requirement of "legitimate interest" - foreseen in the article stipulating that if it is requested for the decision of revocation to take effect before the date on which the request was submitted to the Office, this request and the date on which the decision is expected to take effect must be clearly indicated in the submitted revocation request and the requesting party must prove that it has a legitimate interest in this scope – which was included in the Draft Regulation opened for comments on October 23, 2023 has been removed from the relevant Article afterwards.



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It is underlined at the aforementioned Symposium that the Draft Regulation states that "The Office shall allow the trademark owner a 1-month period to submit its responses and evidence regarding the revocation request. If requested within this 1-month period, the Office may grant an additional period of up to 1-month. Any submission of response or evidence after the given time period shall not be taken into consideration by the Office." and in accordance with this provision, it is emphasised that information and documents not submitted within the time limit shall not be taken into consideration and that there are no procedure such as counter-response to the response petition/second response petition within the revocation procedure before the Office. Similarly, it was also emphasized that in the cancelation actions filed against the Office's final decisions on the revocation request, it is not possible to submit new information and documents regarding the revocation request, and if submitted, they shall not be taken into consideration as well. Therefore, submitting of information and documents regarding the request within the given periods stipulated in the legislation is important.

One of the most important issues conveyed during the Symposium was the fate of the revocation requests that have been accepted as "preliminary applications". It is mentioned that a Provisional Article has been included in the Regulation, and when the Draft Regulation is published, pursuant to this Provisional Article, the requesting parties will be notified of any deficiencies in their applications and will be requested to remedy these deficiencies within a period of 1-month; and if the deficiencies (such as the payment of the application fee of the request) are completed within the given period, it is expected that the Office will proceed to examine the request on its merits. The developments regarding the official fee for the request for revocation should also be mentioned. Following the announcement made by the Office on April 24, 2024, the "Communiqué on the Turkish Patent and Trademark Office Fee Tariff for the Year 2024" was published in the Official Gazette No. 32526 and dated April 24, 2024, making the official fee for request for revocation 16,300.00 TRY. Thus, the total amount to be paid for each application of request for trademark revocation is 19,560.00 TRY including 20% VAT for 2024.

Although not included in the Draft Regulation, according to the information provided by the Office at the Symposium, it is assumed that the Trademarks Department will examine the revocation requests at the first stage, and appeals against the decision of the Trademarks Department will be examined by the Re-Examination and Evaluation Board ("Higher Board"), thus, a two-stage review is foreseen before the Office. Pursuant to the Draft Regulation, the Office's final decisions on revocation requests are recorded in the Registry and published in the Bulletin. Therefore, if it is determined that no appeal has been filed before the Higher Board against the Trademarks Department's decision on the revocation request within 2 months following the notification of the decision, or if the Higher Board decides on the revocation request, the decision will be recorded in the Registry and published in the Bulletin.

Finally, we would like to underline that the Draft Regulation also stipulates that it is possible to withdraw the revocation request until the final decision is taken by the Office on the request, and if the withdrawal is to be made via a trademark agent, a power of attorney indicating authorisation for the withdrawal must be submitted.



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Consequently, the publication of the Regulation and the subsequent guidelines to be prepared by the Office in order for the administrative revocation procedure to be clarified in detail and to become fully functional is expected.