

Kore Şehitleri Cad. 17 Zincirlikuyu 34394 İstanbul, Turkey

T: +90 (212) 354 00 00 F: +90 (212) 274 20 95 E: gun@gun.av.tr

www.gun.av.tr

## Possible Effects of a Unified Patent Court in Türkiye

The concept of the Unified Patent Court (UPC) entered the lives of European Patent holders with the UPC Agreement, an international agreement dated 19 February 2013. The Unified Patent Court started operating as of 01 June, 2023. The Unified Patent Court constitutes a big and important step towards unity of the judiciary for European Union member states. The Statistics and Trends Centre of the European Patent Office (EPO) reported that 17,788 unitary effect requests were made and 17,249 unitary patents were registered for inclusion in this system until 10 January, 2024.

In this article, the possible effects of this system in Türkiye, party to the European Patent Convention (EPC) but outside the UPC system, will be examined.

As a non-European Union member state that is a party to the EPC, Türkiye is essentially in the same position as Norway and Switzerland in relation to the UPC. Likewise, the post-Brexit UK has joined the list of countries that are EPC parties but not UPC countries. It is not possible to say that the UPC system directly affects these countries. As a matter of fact, just like before the UPC, European and national patent applications will continue to be filed from these countries. In this respect, patent holders in countries that are not member states of the European Union are also able to include their European patents in the UPC system for UPC countries, or if they wish, they can keep their patents within the classical European patent system with the opt-out procedure during the 7-year transition period (this period can be extended for up to a further 7 years), and they benefit from national patent protection in their own countries.

Today, considering the comprehensive jurisprudence database created by the EPO, the UPC, which has just started operation and has announced that it has received 160 cases from day one until the end of December 2023, stands to benefit from the EPO case law until it forms its own established jurisprudence. Likewise, the European intellectual property law circles anticipate that UPC decisions, may impact the EPO case law.

It is worth noting that where patents that are the subject of both the appeal process at the EPO and the revocation action at the UPC, there is no regulation to make the appeal proceedings at the EPO a prejudicial matter or vice versa.

It can safely be said that the Turkish IP courts have started to reach a consensus on deeming opposition and especially appeal processes at the EPO a prejudicial matter before starting the examination phase of the invalidation proceedings against a European patent in Türkiye. In this context, the courts tend to wait for the EPO's decision to avoid unnecessarily burdening the judicial system since a revocation decision that the EPO may



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render will directly impact the patent validated in Türkiye. So, if the EPO revokes the patent after it is reflected in the registry in Türkiye, the Turkish IP courts decide that the case becomes devoid of essence without further examination. On the other hand, if the EPO decides to maintain the European patent as granted or after amendments or limitations, the local court starts the national examination and then decides on the validity or invalidity of the Turkish part of the patent. As it is seen, the EPO proceedings have great importance for the Turkish judiciary regarding European patents validated in Türkiye.

Despite absent legislation, our view is that the UPC proceedings and EPO evaluations have a high probability of affecting each other, and that the decisions to be made by the UPC regarding the validity of a European patent that is included in the UPC system and has validation in Türkiye may also affect the Turkish proceedings. Thus, considering that the decisions to be made by the UPC are expected to be concluded faster than the EPO process, it is possible to make the following inference: decisions made by the UPC regarding the validity of a European patent included in the UPC system will set a precedent before the EPO, so UPC decisions will now set a precedent in the Turkish proceedings. This situation raises the possibility that Turkish judges may slightly change their prejudicial matter practices.

Namely, when a national invalidation action is filed in Türkiye against a patent pending before the EPO, the local court will most likely decide to wait for the EPO process. If an invalidation action is also brought before the UPC at this time, the UPC decision will most probably be rendered before the EPO decision is made, as the UPC proceedings are expected to be concluded more quickly. A distinction is likely to be made at this point: If the UPC decides to invalidate the patent, we expect the Turkish court to continue waiting for the EPO decision, as it will expect that the EPO will also likely render a revocation decision. However, if the UPC validates the patent, will the Turkish court, expecting the EPO to follow this decision, initiate national proceedings to save time? Or will it continue to wait for the EPO's decision, even though it knows that the patent may be more likely to be validated by the EPO?

The answer to this question will depend on many emergent factors, such as the correlation between EPO decisions and UPC decisions over time, the decision-making speed of the UPC, and the amount of UPC decisions that Turkish courts will face. However, in such a case, one of the parties in invalidation actions may request the withdrawal of this decision to wait for the EPO's decision due to its strategy and its position in the market and this issue will have to be evaluated.