

## TURKEY: IS NEW IP CODE IN LINE WITH EPC?

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The new Industrial Property Code entered into force in January 2017 and repealed Decree Law No 551 on Patents and other decree laws pertaining to IP rights. The new Industrial Property Code only brings a few changes to the Decree Law previously in effect. One of the changes brought by the new Code is that, similar to the European Patent Convention to which Turkey is a party, a post-grant opposition system has been introduced. Accordingly third parties may oppose against the grant of the patent within six months of the publication of the grant decision in the Official Bulletin. Under the now repealed Decree Law, third parties were only allowed to comment on the search report on patent application within six months of publication of the search report.

As a post-grant opposition system is introduced, the legislator also considered the scenario of a concurrent invalidation action against the patent, while the post-grant opposition is pending. According to the new Code, any invalidation action filed before the authorised courts must be suspended to await the outcome of the opposition proceedings. However, the legislator brought this obligation only for national patents, which are examined before and granted by the Turkish Patent and Trade Mark Office (TPMO). There is no explicit provision in the new law for European patents granted by the EPO and validated before TPMO while the post-grant opposition is pending before EPO, although the only difference between the two situations is the authority conducting the post-grant opposition and in fact TPMO has legally transferred its authority to EPO in respect of European patent applications. This ostensibly constitutes discrimination against European patents, which is particularly thought provoking since national patents are not as common as national validations of European patents.

Another important issue is that although a post-grant opposition system is brought in, the new law still rules that a patent can only be limited during the procedures (examination or post-grant opposition) before the TPMO. That is to say, national patents are not allowed to be limited during their protection term and/or in case of an invalidation action against the patent.

As well as being inconsistent with Article 138(3) of the EPC and creating bifurcation between European patents validated in Turkey and national filings, this provision makes the post-grant opposition system useless, or at least vulnerable to being used in bad faith.

However, it is inevitable that third parties will prefer to challenge the patent via an invalidation action, where the patent holder will have no right to amend or limit the patent, rather than via an opposition, where the patent holder may be able to maintain its patent through amendments or limitations.

Without enabling the patent holder to file amendments or limitations during the life of the patent, or at least in case of invalidation actions against the patent, the post-grant opposition system cannot achieve its aims, and may end up being used as a part of a strategy against the patent holder.



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