

1. Will there be any loss of rights due to the failure to file patent applications or to make other transactions on time because of the COVID-19 pandemic?

Pursuant to provisional article 1 of The Law on Amendment of Certain Laws No. 7226 ("Law No. 7226"), which enacted by the Turkish Grand National Assembly ("Assembly") on 25 March 2020, any and all terms in scope of the acquisition, use or extinction of a right, including the terms for filing lawsuits, enforcement proceedings, applications, objections, notices, notifications, submission periods, prescription periods and statutory limitations, along with the mandatory administrative application terms; terms specified under the Administrative Procedure Code numbered 2577, the Criminal Procedure Code dated numbered 5271, the Civil Procedure Code numbered 6100 and terms specified in other laws containing procedural provisions, terms determined by the judges and terms for mediation and conciliation facilities have been suspended retrospectively from 13 March 2020 (inclusive), until 30 April 2020 (inclusive) in order to prevent the adverse effects of the COVID-19 outbreak from creating a loss of rights. In addition, if there are 15 or less days for the expiry of a term as of 1 May 2020, that term will be deemed extended for further 15 days starting from the day following the end of the suspension period.

Subsequently, the Presidential decree "On Extension of the Suspension Period to Prevent the Loss of Legal Rights" was published in the Official Gazette dated 30 April 2020 and entered into force and in order to prevent the spread of covid-19 pandemic in our country and the loss of rights that may arise from proceedings, the suspension period provided in the first paragraph of the provisional article 1 of the Law No. 7226 has been extended from 1/5/2020 (inclusive) until 15/6/2020 (inclusive) (provided that reassessment will be conducted if the danger of spreading the pandemic has previously removed), except for the periods related to the mandatory administrative application procedure provided in the Public Procurement Law No. 4734. In this context, the Turkish Patent and Trademark Institution has evaluated that the periods related to the patent application and other patent transactions to be made before the Institution have also suspended, with the announcement issued on 27 March 2020, therefore there will be no loss of rights.

As of 15 June 2020, a new presidential decree to suspend the periods once again has not been published, taking into account the normalization process, therefore the periods have started to run again.

Regardless of this Law, perhaps the other provision that should be in the spotlight when the terms resume starting is, the Article 107 of the Industrial Property Law No. 6769 ("IPL") which is stating that, if patent application owners or the patent owners, despite full compliance with all conditions of the patent application procedure or patent-related procedures, are faced with the following consequences due to non-compliance with certain deadlines: rejection of the patent application, the application being considered as withdrawn, the patent being considered as invalid in accordance with article 99, or any other loss of rights, they may apply for reinstatement of rights.

2. What will be the effect of the COVID-19 pandemic to the patent cases on trial?

Declaration of the COVID-19 outbreak as a pandemic by the World Health Organization and increase in the number of new COVID-19 cases reported in Turkey with each passing day have prompted the judicial authorities to take some measures. Within this scope; with the letter sent by the General Secretariat of the Supreme Council of Judges and Prosecutors, postponement of hearings and investigations other than investigations and proceedings involving an arrestee and other issues which are deemed urgent to avoid creating any problem related to conduct of judicial procedures and use of the SEGBIS (Sound and Video Information System) if deemed necessary have been requested to be considered by the Courts.

In practice, effects of this letter have been manifested in different ways in every Court House and even in every Court. While some courts have postponed hearings and set a specific date for postponed hearings, other courts have preferred to postpone hearings without setting a specific date.

While it is discussed that it would be more appropriate to implement the judicial recess provisions of Article 101 et seq. of the Code of Civil Procedure No. 6100 considering the losses of rights which will be caused by continuation of legal terms during this period; these discussions have been finished by the Law No. 7226 enacted by the Assembly ("Assembly") on 25 March 2020. While the Law in question has not been promulgated in the Official Gazette yet; the legal periods have been temporarily ceased from 13 March 2020 to 30 April 2020 due to the unprecedented effects created by the COVID-19 outbreak in the society to avoid problems which may cause trouble to parties about issues such as submission of petitions, expert examination and notifications. On the other side; the authority to postpone hearings and proceedings has been vested in the Supreme Council of Judges and Prosecutors and the Supreme Court Assembly of Civil Chambers depending on competency in order to avoid the differences in practice.

On June 30 April 2020, Supreme Council of Judges and Prosecutors decided to postpone the hearings and negotiations until June 15, 2020 in terms of the civil and administrative authorities of the first instance, as well as the district courts and district administrative courts.

Although hearings are started to be heard as of 15 June 2020, the growing number of COVID-19 cases and predictions that the second wave will begin in October have raised the possibility that the hearings will be postponed again.

3. How will the applications filed for determination of evidence and preliminary injunction, which are grounded on patent rights, be affected during this process?

The terms regarding the procedures that are completing the preliminary injunction are excluded from the scope of the provisional article 1 of the Law No. 7226. Therefore, the judicial authorities still accepts the applications for determination of evidence and preliminary injunction, which are considered urgent matters in line with the letter sent by the Supreme Council of Judges and Prosecutors. However the primary problem in practice is that experts who are required to receive the file to conduct an expert examination, which is of critical importance since the applications for determination of evidence and preliminary injunction grounded on patent rights are highly technical by nature, are reluctant to visit court houses to take delivery of files because of the COVID-19 pandemic. Considering urgency of this matter; an alternative solution must be introduced as soon as possible to avoid any loss of right on the applicant's side. Within this scope; delivery of the files to be examined by experts over the Internet or by mail could be a solution.