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Turkey: New Code of Civil Procedure Extends Deadlines in Patent Litigation

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The “Code on the Amendment of the Code of Civil Procedure and of Some Other Laws” entered into force in Turkey recently. This Code focusses on the principle of procedural economy and acceleration of the judicial process. One of the Code’s amendments important for patent law practice concerns the extension of the legal period in which to submit statements challenging court expert reports. This amendment to Article 281 of the Code of Civil Procedure (“CCP”) stipulates that the Judge may grant an additional two-week period to submit statements challenging the expert report. In Turkish practice, it is regarded as necessary to retain an expert for resolution of the disputes that are related to patent law, and expert reports generally sway the balance.

The following sentence has been added to the first paragraph of Article 281 of the CCP that regulates objections to experts reports: *“If it is very difficult or impossible to prepare a statement countering the expert report, or it requires special or technical preparatory work, an extension of time may be granted to the party who petitions the court within this period, on the understanding that the extension period starts from expiration of the deadline for submissions, the extension will be granted only once, and the period granted does not exceed two weeks.”*

With this amendment, the judge may add two additional weeks to the two-week period granted to the parties in which to submit their statements refuting the expert report, and the period the parties shall have in which to submit their statements and objections may be extended to a maximum of one month. It is stated as a basis for this amendment that there are complaints about insufficiency of the two-week period given in practice in which to examine the expert report and to prepare counter-statements.

The wording of the amendment to Article 281 CCP seems to be similar to Article 127 of the CCP, which reads as follows: *“A defendant may submit a petition in response within two weeks from the delivery of a plaintiff’s petition. However, if submission of a response petition within such period is difficult or impossible, a time extension (not exceeding one month) may be granted by the court, one time only, upon the timely request of the defendant.”*

While the provisions of both Articles seem similar, it is notable that there are two important differences between them. The first difference is that “the requirement for special or technical preparatory work” has been introduced as a condition to extend the time in which to submit an objection petition to the expert report, as an alternative to the condition that it is too difficult or

impossible to prepare counter-statements within a two-week period of time.

When implementation of Article 127 CCP is considered, an extension of time is granted in cases where comprehensive preparation is needed to prepare a petition in response; i.e. it is necessary to check accounts, balance sheets, books, or attend at a warehouse. Specific to patent proceedings, since technical examination is required independently from the scope of the invention claimed under the disputed patent, and such examination should be based on comprehensive research, an extension of time is often requested and the courts have accepted this request. Accordingly, even if the subject matter of an action requires special or technical preparatory work, this is considered within the scope of the condition that submission of the petition within the given deadline is very difficult or impossible, and this extension of time is already provided for under Article 127 CCP in patent litigation.

With regard to filing statements and objections to an expert report, a separate consideration is that the subject matter of the lawsuit requires special or technical preparatory work. Since this situation will eliminate any uncertainty in patent invalidation actions, as patent law proceedings require technical examination, consequently, an extension of time will be granted upon the request of the plaintiff. Thus, in our opinion, the granting of a one-month period to parties in which to submit their statements challenging the expert report will become uniform practice in patent proceedings.

The second important difference between Article 127 and Article 281 of the CCP is the duration of extension to be granted. While an extension up to one month may be granted in which to submit responses to an action, it is regulated that an extension of up to two weeks may be granted in which to submit statements in rebuttal to the expert report. In our opinion, even though the law-maker has correctly identified the problem and attempted to offer a solution, determination of the extension period for a maximum of two weeks renders this solution inadequate.

As we have noted earlier, expert reports are mostly more comprehensive and lengthy than the parties' petitions, and they are also more technical. As a result, it is more difficult to understand them since they do not contain a legal assessment. On the other hand, in practice, it is not allowed to render a decision that is contrary to the expert reports, or to reach a decision based on a single report, without answering the parties' objections, if any. Therefore, the parties' petitions refuting the expert reports are intended to directly determine the good faith of the case and, in that regard, relevant petitions may play a role that are more effective and important than the response and replication petitions submitted during the exchange of petitions. As such, while a period of up to one month is granted in which to submit responses to an action, the extension of the period in which to submit objections to the expert report of not more than two weeks is insufficient for a sound and comprehensive assessment, and for the parties to properly exercise their right to be heard.

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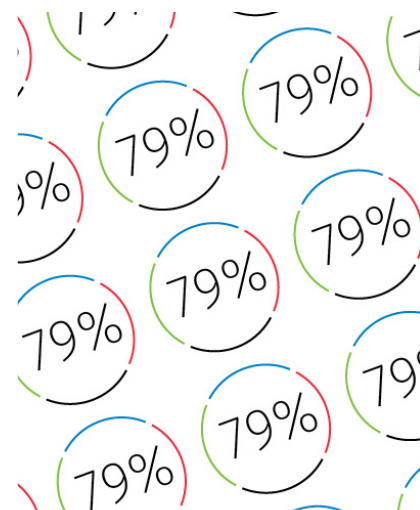
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