

The Impact of Suspended Deadlines on Intellectual Property Rights Due to COVID-19 Pandemic

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On 26 March 2020, a new law, the Law Amending Certain Laws numbered 7226 has been published in the Repeated Official Gazette dated 26 March 2020 and numbered 31080 ("**Law**") to address the concerns of professionals missing and/or meeting any legal deadlines during this pandemic. According to the law, in order to prevent any loss of rights amid the spread of COVID-19, all deadlines have been suspended as of **13 March 2020** retrospectively until **30 April 2020** for all civil, criminal and administrative legal proceedings with limited exemptions.

The Law has several impacts to consider with respect to intellectual and industrial property rights ("**IPRs**")

- Since the law specifically states that all deadlines to establish, use or end a right and obligatory administrative application deadline are suspended, the law also refers to the deadlines of the Turkish Patent and Trademark Office ("**TPTO**"). Indeed, on 27 March 2020, TPTO published an announcement underlining that additional time shall be granted to right owners who had to meet deadlines falling between 13 March 2020 - 30 April 2020. The Law includes all deadlines for IPRs for establishing, enforcing, maintaining or ending a right, including annual payments, renewals, claiming priority, filing responses to office actions, oppositions, filing actions against the final decisions of TPTO etc. As to the official bulletins published by TPTO, even though the announcement does not address them, the latest bulletin dated 27 March 2020 has been duly published. The upcoming bulletins are yet under risk, as TPTO may refrain from filing them from preventing any confusions.

According to The Law, the remaining days between the date of the suspension and the date of the term's expiry will start running again from 30 April 2020. For all time periods, which were 15 days long or lower at the date of the suspension, i.e. 13 March 2020, shall be extended for a further 15 days as of 30 April 2020. However, TPTO's announcement has not clarified the methods of how the remaining times shall be calculated. For example, for deadlines, which started running before 13 March 2020 and which has longer than 15 days to end, it is debatable how the remaining time shall be calculated. For example, if a deadline of 2 months, has started running on 10 March 2020, the time period has started running for 3 days before the suspension, and it shall continue as of 1 May 2020. However, whether the new deadline should be calculated by adding the suspension time to the actual deadline (10 May 2020) or adding the actual time period to 1 May 2020 and going back to the days passed until 13 March 2020 is still not clear.

In any event, even if the deadlines are suspended with The Law, TPTO is still fully operational, and any documents or transactions can be filed through TPTO's online system without waiting for the extended deadlines.

- As for the domain names, on 27 March 2020, the Domain Name Authority under the Middle East Technical University has also announced that temporarily, no domain names shall be suspended due to lack of payments amid COVID-19 pandemic.
- Moreover, on the same day, Turkey's Ministry of Commerce ("**Ministry**") has also published an announcement regarding customs. However, in this announcement, the Ministry has not addressed the deadlines of the IPR owners in case suspicious goods are seized at the customs due to possible infringement. Normally, under the Customs Law numbered 4458, in case of the decision to seize the custom process is rendered, the complainant has to file either a civil lawsuit against the owner of the seized goods at a competent court and obtain a preliminary injunction order or file a criminal complaint and obtain a decision from the Court of Peace for seizure of those goods and submit it to the customs within 10 business days after receiving the decision.

In our opinion, this time period of 10 business days shall not be suspended or extended in accordance with The Law. The reason behind this interpretation is based on the exceptions provided under The Law. Indeed, the following are exempted by The Law:

- Statute of limitations set forth in the laws for crime and punishment, misdemeanors, administrative sanctions, and disciplinary and preventive imprisonments.
- Statute of limitations for protective measures under the Criminal Procedural Law.
- Statute of limitations to complete a preliminary injunction procedure under Civil Procedural Law.

As the seizure before the customs is ensured by a preliminary injunction decision from a civil court or a seizure decision from the criminal courts (classified as protective measure), the deadline of IPR holders will continue running even during the suspension period foreseen by The Law.

The spread of the COVID-19 also affects the transactions and proceedings in Turkish Republic of Northern Cyprus. In this context, the Official Receipt and Recordship Office ("the Office") is now closed and non-operational. Since there is not an online system available, it is not possible to continue operations online and no provisions or decisions announced as to deadlines falling between the dates the Office is closed. Still, considering the exceptional circumstances, it is expected that any loss of rights during this period will be remedied.

Due to the COVID-19 pandemic, European Intellectual Property Office ("**EUIPO**"), with its decision dated 16 March 2020, decided to extend all deadlines for transactions and proceedings falling between 9 March 2020 and 30 April 2020 to 1 May 220.

Similarly, European Patent Office ("**EPO**") has decided to postpone until further notice all oral proceedings in examination and opposition proceedings scheduled until 17 April 2020 unless they have already been confirmed to take place by means of videoconferencing. Moreover, it has been decided to extend all deadlines falling on and after 15 March 2020 until 17 April 2020.

Different to the above practices, World Intellectual Property Organization ("**WIPO**") is continuing operations under the Patent Cooperation Treaty (PCT), the Madrid System for the International Registration of Marks, the Hague System for the International Registration of Industrial Designs, the Lisbon System for the International Registration of Geographical Indications as well as other intellectual property. By acknowledging the difficulties, the parties may face, WIPO still offers options to remedy any missed deadlines. Indeed, for example, the users of the Madrid System who have failed to meet a time limit for a communication addressed to WIPO may be excused if they send that communication within five days after regaining access to mail or delivery services or to electronic communication. In any event, the WIPO must receive the communication no later than six months from the date on which the time limit concerned expired.

Consequently, The Law generally aims to remedy any circumstances, where the parties were not able to meet a deadline amid the COVID-19 pandemic. Yet, even though The Law allows parties to file actions, and request the determination of evidence or preliminary injunctions, it has to be noted that the procedures will be more difficult to follow up and continue slower, as the deadlines for the counterparties will not start running.