

The Role and Benefits of Injunctions in Turkish Intellectual Property Law

8 Mar 2018

We are connected to the whole world with simply the click of a button. In moments a trade secret can become public knowledge, patents or designs can lose their novelty, or all work and effort invested in IP development can be lost. Intellectual property rights can be irreparably and irrecoverably damaged by third party acts. In this environment, injunctions play a significant role during intellectual property litigation.

Injunctions are effective tools during cancellation, invalidation and infringement actions, in order to preserve the final result which the plaintiff seeks to achieve.

A plaintiff's claim can be irreparably damaged before and during a trial, meaning that even if the plaintiff is ultimately successful, the remedy they are awarded can become ineffective over the course of the trial. For example, the counterparty could transfer the IP (patent, trademark, industrial design) to a third party, damage its novelty, continue to produce and sell infringing products, or even initiate an infringement/invalidation action against the legitimate right owner as a counter-attack.

To avoid such possibilities, plaintiffs can ask the court to grant a temporary injunction to preserve the status of the possible final trial outcome.

The theory and practice of injunctions under Turkish IP and Procedural Laws

The legal framework and criteria for injunctions in Turkey are outlined by the Code of Civil Procedure, as well as the Intellectual Property Law.

Injunctions can be obtained either before or during a trial. To obtain an injunction the requesting party must prove to the court's satisfaction that either:

- Irreparable harm will arise if the injunction is not granted, or
- The outcome which the requesting party seeks in its main action will be unlikely unless the injunction is granted.

Under Turkish law, the requested injunction must seek to protect the potential outcome of the main action, but must not actually achieve this outcome itself. That is, the requesting party may not use the injunction mechanism to achieve the ultimate outcome which they are pursuing through their main legal action. If a requested injunction fails to meet this criterion, the court may reject the request, or alternatively postpone the request until later in the trial (if the request is filed during a trial).

If a requesting party files an injunction request before a trial has been initiated, it must then file the main action within two weeks of that date. If the requesting party does not file the main action by this deadline, the injunction will lapse and become invalid.

Generally, before granting an injunction, the court must give the counterparty an opportunity to be heard and defend their position. Turkish courts generally refrain from issuing a preliminary injunction without hearing the counterparty.

However, courts can depart from this general rule where doing so would undermine the point of the injunction request. In such cases, courts have the discretion to issue injunctive decisions without notifying the counterparty of the request, or hearing the counterparty's arguments. For example, where the requesting party's rights require immediate protection, or notifying the counterparty would cause irreparable damage to the main action, or unnecessarily prolong the proceedings. The onus is on the requesting party to prove in their initial injunction request that such a condition exists and specifically request that the counterparty not be notified of the injunction request.

Upon receiving a preliminary injunction request, a common approach during complex conflicts is for courts to use an expert witness to evaluate the technical merits of the conflict at hand. When the expert's report is prepared, the court will issue its decision about the preliminary injunction request. However, if the court decides to notify the counterparty and hear its defence, the expert report will be delivered to the parties, who receive two weeks to submit their response. In this case, the court will issue its decision after receiving the parties' responses.

Courts can accept, partially accept, or refuse a preliminary injunction request. Requesting parties can appeal a refusal or partial acceptance before the Regional Courts within two weeks of being notified about the decision.

If the court accepts the preliminary injunction, the requesting party must organize the application within one week after the injunction is issued. The injunction application changes in accordance with the nature of injunction. The courts appoint Enforcement Offices for seizure and collection of the goods/tools etc. Also, the court will directly correspond with Authorities like Customs, Domain Authority etc.

If the court issues the preliminary injunction without notifying the counterparty, the counterparty receives a one-week period to file an objection with the same court which issued the decision. The mechanism is intended to ensure the court hears the counterparty's merits, before escalating the matter to a higher court. The decision given about the counterparty's objection can be appealed further, to the Regional Courts, within two weeks of notification. Decisions by the Regional Courts are final though and cannot be appealed to the Court of Appeal.

If the counterparty was notified about the injunction request, they receive a two week period to file an appeal of the acceptance or partial acceptance decision with the Regional Courts.

When a court grants a preliminary injunction, generally:

- The requesting party will be required to deposit a significant monetary guarantee with the court, to cover possible damages to the counterparty which could arise due to the injunction.
- Courts will require the counterparty to deposit a guarantee with the court, rather than suspending their trade or production of the allegedly infringing goods. The basis for this is that suspending trade and production of the goods could cause significant and disproportional costs, as well as irreparably damaging the counterparty's business and reputation.

- The requesting party will be held responsible for damages caused by an illegitimate or wrongful injunction decision. If such circumstances exist, the damaged party has the right to initiate a separate civil claim seeking compensation from the party which wrongfully obtained the injunction.

Commonly requested injunctions

Turkish courts are generally reluctant to grant preliminary injunctions. The same reluctance extends to injunctions sought in the context of intellectual property disputes. An exception to this are injunctions which prevent the counterparty from transferring the disputed registered IP right to a third party until the final judgment is issued.

Below are some of the possible injunctive requests available in the context of intellectual property disputes:

- Preventing a counterparty from transferring a registered IP right to a third party until the final judgment is issued.
- Preventing a counterparty from using the IP rights until the final judgment is issued.
- Preventing a counterparty using its rights which arise from the disputed IP rights against the plaintiff and its affiliates until the final judgment is issued.
- Suspending the sale and production of allegedly infringing products.
- Seizing the sale and production of allegedly infringing products.
- Monetary guarantee deposited with the court to cover the plaintiff's claims (if successful).

Preliminary injunctions hold an important place in IP litigation proceedings and the courts often use experts during the process, particularly in cases where the stakes are high or the technical background is complex.

Related Attorneys

- [IŞIK ÖZDOĞAN, LL.M.](#)
- [YONCA ÇELEBİ](#)