

Turkey Adopts Mandatory Mediation for Monetary Claims Arising From IP Law

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Turkey has recently adopted new legislation requiring application to mandatory mediation for monetary claims arising from Intellectual Property Law. Law Number 7155 on Procedures of Initiation of Execution Proceedings Concerning Monetary Receivables Originating from Subscription Agreements ("**Law Number 7155**") was published in the Official Gazette dated 19 December 2018 and numbered 30630. Law Number 7155 made amendments to the Turkish Commercial Code numbered 6102 ("**TCC**"), and Law on Mediation in Civil Disputes numbered 6325 ("**Mediation Law**").

With the new amendments, mediation became a prerequisite for filing lawsuits concerning commercial disputes. Consequently, if a lawsuit is brought before the court without applying to mediation first, the case will be dismissed *ex-officio* on procedural grounds without any further examination of the merits of the case.

The mediation requirement applies to acts and operations deriving from private law at parties' free disposal. The main objective of the mediation requirement is to lessen the commercial courts' workload as well as speeding up the disputes resolution process.

New Regulations' Impact on Monetary-Related Intellectual Property Disputes

Law Number 7155 amending TCC and Mediation Law stipulates mediation as a prerequisite to filing a lawsuit in commercial disputes, including IP disputes concerning monetary claims. The court should take the fulfillment of this requirement into consideration *ex-officio* and the case will be dismissed on procedural grounds without any further examination of the merits of the case. Unlike the general provisions outlined in procedural law, where the judge grants an extension of time to the parties to complete the deficiencies instead of rejecting the case as a whole, it is safe to say that this is a rather strict implementation.

Even though the IP disputes are not explicitly listed among those subject to the mediation requirement by the newly introduced Article 5/A of the TCC, the new amendment applies to all disputes which fall under the scope of Article 4 of the TCC and other legislation concerning monetary receivables and compensation claims, where disputes arising from IP legislation are also considered to be commercial actions. Accordingly, mediation is deemed to be a prerequisite for monetary claims arising from IP law.

The following can be mentioned as examples:

- Compensation claims due to trademark/patent/design/utility model infringement.
- Cases related to the determination and demand of the compulsory license.
- Lawsuits concerning the refund of the price paid per the contracts established before the cancellation of an IPR.

Further to that, during the period between the application to the mediation bureau and the preparation of the final report by the mediator, the statute of limitations and lapse of time will be suspended. This means, in the event that a preliminary injunction is imposed before the action, the time limit to file a lawsuit according to the IP law does not run during the period from the date of application to mediation office until the issuance of the final report.

Although preliminary injunction requests are not subject to mediation requirement, if the preliminary injunction and a compensation requests are directed at court at the same time, the mediation condition should be fulfilled first. In that case, it must be considered that the other party may learn about the plaintiff's intentions during the mediation process, and a possible injunction may be fruitless. Therefore, the idea of filing the two requests, *preliminary injunction request* and *compensation claims*, separately or successively may be entertained depending on the particulars of the case.

Mediation Procedure in General

Mediation application should be made to the mediation bureau within the jurisdiction of the competent court with regards to the subject of the dispute at hand (=for intellectual property disputes= IP Courts) and upon the appointment of the mediation by the mediation bureau, the mediator should call the parties for an initial meeting. The mediation process will be completed within six weeks beginning from the appointment of the mediator. This period can be extended for a maximum of two weeks if deemed necessary by the mediator.

In case parties reach an agreement, they pay the necessary expenses of the mediation equally, unless decided otherwise. If they fail to settle, these expenses will be burdened upon the party that the court rules against. The party not attending the first mandatory session held by the mediator without a valid reason will burden the total cost of the proceedings even if the mediation is fruitless and court rules in its favor.

In case of failing to reach an agreement through the mediation process, the party to file a lawsuit must attach the final mediation report to the lawsuit petition. If not, the judge will give the party one week to submit the final report to the file, or the case will be rejected. With regards to lawsuits outside the scope of the new amendments made with the Law Number 7155, parties can still choose to resolve their disputes through voluntary mediation; however, since mediation is not mandatory in these instances, filing a lawsuit without applying for mediation will not be construed as a reason to dismiss the case at hand on procedural grounds.

Finally, provisions on mediation as a precondition will not apply in case arbitration or other alternative dispute settlement requirements are envisaged by special laws or where an arbitration agreement between the parties is in place. Besides, the new regulations also will not be applied about cases pending before courts of the first instance, regional courts of justice and the Court of Cassation as of the date of these regulations' entry into force.

Conclusion

The amendment to the provisions governing mediation came into force very recently, without allowing the practitioners to determine precisely which disputes stated in the IP legislation will be subject to arbitration and to set out the best strategy in IP disputes with both monetary and non-monetary claims. Such issues would inevitably be discussed and resolved in time by case law and practice of the Court of Cassation. The new legislation, once it is fully established, will hopefully provide a time-and-cost-effective alternative dispute resolution method for the parties and decrease IP courts' workload.

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