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# Goodbye Decree\* Welcome Code\*\*

IP LAW NO. 6769 HAS ENTERED INTO FORCE

The Industrial Property Rights in Turkey have been regulated not by Law but by Decree Laws which have been in force for over 20 years. Following both the cancellation decisions of the Constitutional Court in the last period and the difficulties in keeping up with the developments in the conditions of industrial property rights, the expected law has finally entered into force. The new IP law no. 6769 will be implemented effective as January 10, 2017. Thus, regulation of industrial property rights by Decree Laws came to an end in Turkey.

\* Decree Law no. 556

\*\* IP Law no. 6769



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## I - History

In the context of the Customs Union Agreement signed at the end of the works carried out on the European Union harmonization process, legal regulations related to the protection of industrial property rights under the main headings of patent, industrial design, trademark, geographical signs and integrated circuit topography were made.

In 1995, Decree Law No 556 Pertaining to the Protection of Trademarks;

Decree-Law No 554 Pertaining to the Protection of Industrial Designs;

Decree-Law No 551 Pertaining to the Protection of Patent Rights;

Decree-Law No 555 Pertaining to the Protection of Geographical Signs, entered into force and during the EU harmonization process legal regulations with respect to industrial rights were implemented through decree laws.

However, due to certain reasons such as increasing demand towards industrial property rights, development and growth of Turkey's economic conditions, expansion of the scope of EU integration, Decree Law no. 556 has become unable to meet the legal requirements. The deficiencies have been tried to be overcome with additional clauses.

Moreover, the topic of regulating the industrial property rights which have the nature of intangible rights by Decree Laws were contentious which was eventually taken to the Constitutional Court whereby a final decision was issued by the said court.

Many innovations came into force with the newly adopted law. This news is focused on those basic prominent changes.

\* Letter of Consent

\*Utility Model

\*Protection of Unregistered Industrial Designs



## The Constitutional Court has put an end to Decree Laws

IP Law no. 6769 has entered into force effective as of 10.01.2017

The Constitutional Court stated in its various decisions in 2008 and 2014 that the industrial property rights which are covered under “intangible properties” are property rights included in the Article 35 of the second chapter titled “Personal Rights and Duties” of the second part of the Constitution and that according to the first paragraph of Article 91 of the Constitution, reserving states of siege and emergency, fundamental rights and personal rights and duties comprised in the first and second chapters and political rights and duties comprised in the fourth chapter of the second part of the Constitution cannot be regulated by decree laws, and based on these grounds it started cancelling articles one by one related to trademarks, designs, patents and geographical signs.

In practice, the fact that the most important articles regulating the industrial property rights are canceled one by one has caused great uncertainty and the need to eliminate the problems that may arise due to Decree Laws and loss of rights have forced decree laws to become laws as soon as possible. Furthermore, considering that the developing economic conditions are in line with the EU acquis and considering the need, the Industrial Property Law no. 6769 has been accepted effective as of 10.01.2017.

The law consists of 5 basic sections.

The 1<sup>st</sup> Section contains Regulations on Trademark Protection,

The 2<sup>nd</sup> Section contains Regulations Regarding Geographical Signs and Traditional Product Name,

The 3<sup>rd</sup> Section contains Regulations on Design Rights,

The 4<sup>th</sup> Section contains Regulations on Patent Rights,

The 5<sup>th</sup> Section contains Regulations on Common Procedures and the Establishment and Operation of the Turkish Trademark and Patent Office.

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## II - Highlights

### 1<sup>st</sup> Section Regarding Trademark Regulations;

Regulations on trademark rights generally appear to be of the same nature as the Decree Law no.556 on the Protection of Trademarks. It is seen that particularly the articles of the Decree Law which were cancelled by the Constitutional Court have been regulated with Law No. 6769.

#### **One the most important change is letter of consent.**

According to 3<sup>rd</sup> subparagraph of article 5 of IP Law no. 6769, in case of application of the trademarks which would be rejected in absolute terms in accordance with article 7 of the Decree Law No. 556, if the owner of the prior trademark right consents to the application and submits this consent to the Office in written and as notarized, the trademark will be registered in multiple applicants.

The letter of consent can be submitted for applications filed after 10.01.2017 only. The letter can be submitted to the Office at the time of application. In this way, the Office will not be able to reject ex officio. However, if the letter of consent is presented during the possible objection following the rejection decision on the first examination, the application for trademark registration will be valid again. Since the Regulation on Implementation of Law No. 6769 has entered into force on 24.04.2017 and will be subject of the next IP newsletter.

#### **The appeal period has been reduced from three months to two months.**

#### **Another prominent change is the "the request of proof of use".**

The opposing party may be required to provide proof of the use of the trademark which is presented as the base of the opposition. There is a requirement that the trademark is registered for more than 5 years. If the use of the trademark cannot be proved, the opposition will be rejected.

The cancellation case of the non-use of a trademark is also covered in the law. Additionally, if the trademark owner knows that a third party has used his trademark without consent and still remains silent for 5 years which was not period indicated in the Decree Law, the cancellation of the latter trademark cannot be requested -except for bad faith.

LOC may be  
submitted for  
applications  
filed after  
10.01.2017

\* Proof of use  
in opposition

\* Opposition  
period  
decreased to  
two months

\* Well-known  
trademark  
protection in  
accordance  
with the Paris  
Agreement



\* 3 years  
protection for  
unregistered  
designs

\* Protection  
for parts of  
combined  
products

\*Requirement  
of description  
removed

\* Right of  
filing multiple  
design  
applications

### 3<sup>rd</sup> Section Regarding the Regulations on Industrial Design Registrations;

**One of the most important regulations concerning designs is the regulation for three years protection of unregistered designs.**

However, in order to protect the unregistered design against third parties, the other party must be aware of the unregistered design and bad faith is a must. It is one of the basic conditions that the ambiguity is created by exact copying.

Furthermore, there is also a regulation made with regards to the parts of combined products. Accordingly, it is regulated that the use of the parts that are dependent on the appearance of the combined product three years after the date on which the design was first introduced to the market for the purpose of regaining the original appearance of the combined product and with the condition of not misleading about the origin of such parts will not violate the right of the design.

It is regulated that the use within three years period for repair purposes of the equivalent parts to be published by the Ministry of Science, Industry and Technology shall not be considered as a violation of the design right. Equivalent parts are products that can be passed on to a number of tests, and can be measured and verified to yield results given by the original part.

Another important point is that the requirement of the design description has been removed. Designs which are filed after 10.01.2017 will not have to submit descriptions.

Another controversial regulation is the article 60 of the Law No. 6769 entitled "Rights arising from prior use". In this context; an exceptional case has been regulated for designs which are covered by the protection of the registered design and which have been independently developed in good faith before the application date and which have been introduced in Turkey. Holder of the prior usage rights may use the product subject to design protection with the condition of being limited by this right, and limited to the needs of the business.



The multiple application requirements brought by the law allow for multiple applications for designs, provided that they are included in the same class in the Locarno Classification list. A parallelism with international applications has been achieved also by this regulation. It is also enacted in the article that for applications that do not comply with the multiple application requirements and exceed the specified number, a divisional application may be filed with the condition of reserving the first application date and priority rights.

In Article 64 of the Law, it has also been regulated with regards to innovation and it is regulated that if an exact copy of the design is previously presented to the public, the application will be rejected on the grounds that the characteristic of novelty is not present. However, the examination of innovation in the previous regulation was carried out based on the objections of third parties, and an ex officio innovation examination was not conducted.

#### 4<sup>th</sup> Section: Regarding Patent and Utility Model Registrations;

The most important change brought about by this law is **the removal of the non-substantive patent examination** by which the invention was provided with 7 years protection, linking utility model document to the search report and that the context of the report may be objected within 3 months.

The application-registration stages for patents have been regulated as "Application-Search Report-Examination Report and Publication Period". The aim is to shorten the period of granting a patent.

The requirement that the assignment fee concerning patent assignments is included in the assignment formalities or that the assignment fee must be declared at the time of application is also covered in the regulation.

In accordance with the regulations mentioned in the general headings above, the regulation of the industrial property rights by decree laws which was the case for more than twenty years in the Republic of Turkey has been brought to an end and the legal basis has been reached with Law No. 6769.

**Attorney at Law & Trademark Attorney**  
**DENİZ DİNAR UĞUR**

\*Examination  
of novelty in  
design  
applications

\* Non-  
substantive  
patent  
examination  
is gone.

\* Search  
report for  
utility model  
applications

\* Change in  
patent  
application  
phases