

NEW PRACTICE: MEDIATION IN TRADEMARK OPPOSITIONS

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The Turkish Patent and Trademark Office ('the Office') has been empowered to propose an alternative dispute resolution mechanism i.e. the mediation during the trademark opposition procedure by the new Industrial Property Code No. 6769 ('IP Code') which entered into force on January 10th of 2017. The Regulation issued for the implementation of the IP Code provides details on how the mediation should be effected.

Turkey, has also enacted an independent Act i.e. Turkish Mediation Act on Civil Disputes which entered into force on 23 June 2013. The New IP Code refers to this legislation in implementing the mediation procedure.

Mediation in the IP Code

- According to the IP Code, during the examination the opposition, the Office may invite the parties to solve the dispute through mediation.
- Upon the receipt of the invitation the parties are required to inform the Office of within a period of 1 month as from the date of notification whether they would like to use mediation option. If one party fails to respond within the granted time, the Office shall deem that the invitation has been refused and therefore will continue its evaluation of the opposition.
- If the trademark applicant is represented by a trademark attorney, the attorney is obliged to report mediation invitation to the applicant immediately.
- If the parties agree on mediation, the examination of the opposition will be adjourned for a period of three (3) months by the Office. The Office is entitled to grant an extension up to three (3) months upon the parties' mutual request.
- When the mediation process is completed, the parties shall inform the Office on

- how the mediation process is completed with an original or notarized minutes within one (1) month as from the date of completion of mediation process.
- Should the parties fail either to settle or deliver the duly minutes within the specified time, the Office shall continue the opposition evaluation by itself. In case of settlement, the Office shall conclude the matter consistent with the parties' agreement. If the dispute is solved through mediation and the settlement agreement is endorsed by the Court the agreement will be deemed as a court verdict and will have the same effect in execution.
 - Besides, the period of mediation will not be counted in the calculation of prescription period.

Conclusion

Mediation is a cost-effective and efficient procedure to solve IP disputes of achieving that result while preserving, and at times even enhancing, the relationship of the parties.¹

One of the latest survey dated 2016 showed that mediation settlement ratio in the subject of intellectual property disputes are 70%.²

Considering the fact that the mediation is now available for trademark disputes before the Office, we believe that this will provide a great opportunity for settling the complex and multiple oppositions between the same parties and therefore trigger successful co-existence agreements given that the settlement agreements may have an effect of court verdict in case they are endorsed by the Court.

¹ WIPO 'What is Mediation?', available at <<http://www.wipo.int/amc/en/mediation/what-meditation.html>> (last accessed on 21.07.2017).

² Centre for Effective Dispute Resolution 'The Seventh Mediation Audit - A survey of commercial mediator attitudes and experience', available at <[https://www.cedr.com/docslib/The_Seventh_Mediation_Audit_\(2016\).pdf](https://www.cedr.com/docslib/The_Seventh_Mediation_Audit_(2016).pdf)> (last accessed on 21.07.2017).