

TURKEY

Turning the Turkish tide on rising tactical patent invalidation actions

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Filing patent invalidation actions for tactical purposes such as jeopardising patent infringement actions of patent owners and gaining time by complicating the infringement proceedings has become a common strategy of infringers in recent years. This strategy may cause the patent owner to suffer due to the inability to use its patent properly during the limited protection period of 20 years, even if the invalidity claims do not have a solid basis and they are filed on a 'try your luck' basis.

Invalidity action filed in response to infringement action

In a recent infringement action in Turkey, the defendant company responded to the action with a very brief defence comprising a couple of paragraphs, stating that it does not infringe the patent and the patent should be invalidated. The defence petition lacked any ground or evidence for the invalidation demand. Although the aim of the defendant was clearly to distract the focus of the infringement action and jeopardise patent enforcement, the court felt obliged to take the invalidity demand into consideration.

In fact, according to Turkish procedural law, the parties must concretise the facts they rely on in a demonstrable manner. It is mandatory for the parties to clearly state the evidence they rely on, and which evidence is used to prove which fact.

However, it has been observed that in many cases, intellectual property

courts continued to hear the case even when the requesting party did not fulfil the obligation to concretise their demand. Instead, the court often appointed an expert panel, which should be appointed only to assist the court in the technical aspects of a case, and inherently made the panel perform the concretisation duty that the requesting party was supposed to fulfil. Normally, assessing the invalidity without concretising the case and without matching the prior art documents/arguments with the alleged invalidity ground should not be possible.

Claim's weak foundation and lack of concretisation exposed

Gün and Partners, representing the patent owner, countered the defendant party's tactical move with a strategy that emphasised the procedural deficiencies in its invalidation request and, due to all these procedural shortcomings, repelled the request before its substance was entered, leading to its rejection.

Gün and Partners' petition explained in detail that simply requesting the invalidation of a patent does not mean concretising the invalidation action. For this reason, to prevent the defendant's malicious efforts, the court was requested to decide first to separate the invalidation action from the main infringement case and to give the defendant a definite period for the concretisation of the separated invalidation action.

Upon Gün and Partners' insistent, detailed explanations in petitions and during the oral hearings, the court separated the invalidation action from the main infringement action and granted the defendant a definite time in which to concretise its case. After the expiry of the definite time, the court evaluated the invalidation action and determined that the invalidation action had not been concretised within the given term. Finally, the court decided that the invalidation

action should be deemed not filed, in accordance with Article 119 of the Code of Civil Procedure, as the case was not concretised.

Significance of the decision

The decision of the court is important in the prevention of future malicious and tactical invalidation actions that put the burden of concretising the case on the court and leave the judicial authority under an unnecessary workload, while jeopardising the infringement action of the patent right holder without any legitimate or founded reasons.