

## Mandatory Mediation in Turkey for IP Disputes with Monetary Claims

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### Introduction

On 1 January 2019, article 5/A of the Turkish Commercial Code (the “**TCC**”) came into force, thus mediation became a mandatory procedure for commercial disputes with monetary claims (i.e., payment of a debt or compensation) regardless of the amount in dispute<sup>1</sup>. In other words, mediation is now a condition to litigation for the respective disputes, meaning that if a lawsuit is filed before applying for mediation, such lawsuit shall be dismissed based on procedural grounds.

### IP-related disputes within the scope of mandatory mediation

Article 4 of the TCC includes disputes arising from intellectual property (“**IP**”) related matters among commercial disputes<sup>2</sup>. Therefore, in principle, IP-related disputes shall also be subject to the mandatory mediation procedure provided that they involve a monetary claim (payment of a debt or compensation). The source of such monetary claim is not taken into consideration in determining whether an IP dispute shall be subject to a mandatory mediation; this can be anything from an infringement of an IP right to a breach of payment duty in an IP-related contract, such as a license or assignment.

However, IP-related disputes which do not involve a monetary claim, such as lawsuits against the final decisions of the Turkish Patent and Trademark Office, lawsuits for the nullity or cancellation of an IP right, or a mere request for the termination of infringement shall not be subject to mandatory mediation.

For the avoidance of doubt, please note that disputes seen before the Turkish Patent and Trademark Office, such as oppositions to third party applications or to the decisions of the Office are not subject to any mandatory mediation procedures.

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<sup>1</sup> Mandatory mediation was firstly introduced into Turkish legal system in 2018 for labour-related disputes.

<sup>2</sup> As no distinction is made by article 4 in this regard, all types of IP rights shall be included in the scope of commercial disputes, including trademarks, patents, designs, utility models, and geographical indications regulated under the Industrial Property Law numbered 6769, copyrights regulated under the Law on Intellectual and Artistic Works numbered 5846, and new plant varieties regulated under the Law on the Protection of Plant Breeders’ Rights for New Plant Varieties numbered 5042. As article 4 of the TCC explicitly indicates so, one exception to this rule should be disputes arising from copyrights which do not relate to any commercial enterprise, yet others think that they should still be considered among commercial disputes, even in such cases.

## **General notes regarding mandatory mediation**

Duration: The mediation process shall be concluded within 6 weeks from the date of appointment of the mediator. This period may be extended by the mediator for up to 2 weeks. During mediation proceedings, the specified time periods relating to lawsuits will cease to continue.

Multiple or alternative claims: If one of the claims of the claimant is among the matters subject to mandatory mediation, then the file shall be subject to mandatory mediation.

Counter-claims: If the defendant files a counter-claim within the specified periods, and such counter-claim is among the matters subject to mandatory mediation, then the file shall be subject to mandatory mediation, regardless of whether the file has previously been submitted to mediation because of the claim of the claimant.

Interim injunction: Request for interim injunction, which is not subject to the mandatory mediation procedure, may be filed separately or with the petition initiating the lawsuit. However, waiting for the mediation to be concluded and filing the interim injunction request with the lawsuit petition may now jeopardize the protection sought from the interim injunction, as the defendant would be informed of a potential lawsuit due to the pending mediation proceedings. Therefore, it may be more reasonable to file an interim injunction request separately and before initiation of the mediation procedures.

## **How to opt-out**

Parties that may not wish to be part of such mediation proceedings may agree on arbitration before or after the dispute arises. Please remember that issues except for those subject to public order and thus of exclusive jurisdiction of national courts, such as the nullity or cancellation of the registration of IP rights, IP-related disputes including infringement of IP rights are considered arbitrable under Turkish law.

***For more information, please contact:***



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